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A Prospective Enlargement of the Roles of the Bretton Woods Financial Institutions in International Peace Operations

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John D. Ciorciari

Abstract

This Article reviews the principal means of IFI peace-building and offers several proposals to enhance the effectiveness of those means. Focusing primarily on the World Bank Group and the IMF, this Article posits that profound changes are necessary if the Bretton Woods institutions are to realize their potential as leaders in the international peace process. Part I of this Article provides a brief historical account of the Bretton Woods institutions and discusses relevant provisions in their charters, elucidating the factors that have traditionally prevented IFI participation in peace operations. Part II describes and reviews IFI post-conflict reconstruction programs in the post-Cold War era, devoting particular attention to the 1997 World Bank initiative entitled *A Framework for World Bank Involvement in Post-Conflict Reconstruction* (the "Framework"). Part III reviews conditionality, as exercised by the IMF and the World Bank Group, and discusses its potential as a tool for peace-building. Finally, Part IV offers proposals for greater IFI impact and efficiency in peace operations, including a reinterpretation of the concept of "political" action as employed in the IBRD, IDA, and regional bank Articles of Agreement; a more flexible and country-specific approach to conditionality; and a greater coordination with relief agencies, non-governmental organizations, bilateral donors, and other U.N. organizations.

A PROSPECTIVE ENLARGEMENT OF THE ROLES OF THE BRETTON WOODS FINANCIAL INSTITUTIONS IN INTERNATIONAL PEACE OPERATIONS

*John D. Ciorciari**

INTRODUCTION

Since the end of the Cold War, the developing world has witnessed a dramatic proliferation of civil and international military conflict. Among the poorest twenty nations in the world, fifteen have endured military conflict in the past decade.¹ Over fifty nations have experienced serious incidences of conflict, either international or civil in nature, and virtually every low-income nation has either undergone deadly conflict or shared a border with a nation at war.² Peace operations have thus become a preeminent concern for the United Nations and the greater international community, occupying ever-greater amounts of finances, technology, and human resources.³

Ironically, peacekeeping functions were not foreseen when the United Nations Charter was drafted in 1945,⁴ and during

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1. THE WORLD BANK GROUP, A FRAMEWORK FOR WORLD BANK INVOLVEMENT IN POST-CONFLICT RECONSTRUCTION at i (Apr. 25, 1997) [hereinafter FRAMEWORK FOR WORLD BANK RECONSTRUCTION].

2. *Id.* at ii. The International Bank for Reconstruction and Development ("IBRD," "World Bank," or "Bank") also asserts that "there have been more conflicts in the past 20 years than at any other time this century." See Graham Bowley, *Prevention Is Better than Cure*, FIN. TIMES (London), Sept. 27, 1996, at 25; The World Bank Group, *Supporting Peace: The World Bank's Role in Post-Conflict Reconstruction* (visited Apr. 1, 1998) <<http://www.worldbank.org/html/extrd/backgrd/ibrd/peace.htm>> (on file with the *Fordham International Law Journal*).

3. In the 1995, the international community spent over US\$3 billion on peacekeeping operations conducted in sixteen nations. Bowley, *supra* note 2, at 25. Total outlays on Bosnia and Herzegovina alone have amounted to approximately US\$15 billion. See John Stremlau & Francisco Sagasti, *Preventing Deadly Conflict: Does the World Bank Have a Role?*, Report for the Carnegie Commission on Preventing Deadly Conflict (1998), ch. 1, ¶ 23 (visited Nov. 18, 1998) <<http://www.ccpdc.org/pubs/worldbank/world.html>> (on file with the *Fordham International Law Journal*).

4. In fact, peacekeeping operations were of dubious legality for many years be-

the Cold War years, only thirteen U.N. peacekeeping operations were conducted, twelve of which related to European decolonizations.⁵ Such initiatives were limited to "classical peacekeeping," which comprised monitoring and enforcing cease-fires, patrolling hostile frontier lines, and interposing between belligerents.⁶ Since the end of the Cold War, however, the nature of peace operations has profoundly changed.⁷ Emerging-world conflicts have become more profuse and more complex, while the U.N. collective security system has realized enhanced freedom of action no longer encumbered by the bipolar geopolitical framework of the Cold War era.⁸

The result has been a drastic expansion in the number, size, and scope of peace operations. Since 1989, twenty-five new peacekeeping forces have been created.⁹ In addition, peace operations have developed far beyond the bounds of "classical peacekeeping," involving an ever-broader range of international participants and activities.¹⁰

In his 1992 *Agenda for Peace*, U.N. Secretary-General Boutros Boutros-Ghali divided post-Cold War peace operations into three major categories: peacekeeping, peace-making, and peace-building.¹¹ Boutros-Ghali defined peace-building, the

cause the U.N. Charter provisions were not drafted in their anticipation. Chapter VI of the U.N. Charter authorizes the United Nations to seek solutions to a conflict between consenting parties. See U.N. CHARTER ch. VI. Chapter VII allows the United Nations to restore international peace and security via military action if the U.N. Security Council deems such action necessary. *Id.* ch. VII. Peacekeeping was viewed as intermediate between these two forms of action and was therefore referred to as "Chapter 6½ operations." Adam Roberts, *The Crisis in U.N. Peacekeeping*, in *MANAGING GLOBAL CHAOS* 297, 298 (Chester A. Crocker et al. eds., 1996).

5. Roberts, *supra* note 4, at 298.

6. Mario Zucconi, *Extended Peacekeeping: Planning and Technical Requirements: 98 Lessons from Recent Operations*, in U.S. CONGRESS, OFFICE OF TECHNOLOGY ASSESSMENT IMPROVING THE PROSPECTS FOR FUTURE INTERNATIONAL PEACE OPERATIONS: WORKSHOP PROCEEDINGS 41, 43 (1995).

7. See generally STEVEN R. RATNER, *THE NEW U.N. PEACEKEEPING: BUILDING PEACE IN LANDS OF CONFLICT AFTER THE COLD WAR*, ch. 1 (1996).

8. Anne Orford, *Locating the International: Military and Monetary Interventions After the Cold War*, 38 *HARV. INT'L L.J.* 443 (1997); Stremlau & Sagasti, *supra* note 3, ch. 1, ¶ 46.

9. RATNER, *supra* note 7, at 1.

10. John A. MacInnis, *The Role of the United Nations with Respect to the Means for Accomplishing the Maintenance and Restoration of Peace*, 26 *GA. J. INT'L & COMP. L.* 81 (1996).

11. U.N. Secretary General Boutros Boutros-Ghali, 1992 *Agenda for Peace*, U.N. Doc. A/47/277-S/24111 (June 17, 1992). Despite the definition provided, there is no consensus among scholars as to the distinguishing features of peacekeeping, peace-

most novel and far-reaching of the operational prongs, as "efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people."¹² His vision for a new breadth of international intervention has been realized in recent years as the concept of peace-building has been increasingly accepted and put into practice.¹³

Among the most important peace-building activities are those conducted by the international financial institutions ("IFIs" or "Bretton Woods institutions"), including the International Bank for Reconstruction and Development ("IBRD," "World Bank," or "Bank"), the International Monetary Fund ("IMF" or "Fund"), the International Development Association ("IDA"), and regional development banks. In recent years, the IFIs have diverged from traditional practices to realize a heightened participation in peace operations.¹⁴ Their increased involvement is premised upon two related theories. First, it is widely believed that most of the conflicts in the post-Cold War era have been linked to, if not the direct result of, economic plight and concomitant political instability.¹⁵ Second, it is com-

making, and peace-building. RATNER, *supra* note 7, at 16. John Linarelli argues that they "can be viewed as part of a seamless web of activities designed to create the conditions for long-term peace." Although peace-building is often associated with post-conflict reconstruction and development, Linarelli argues that it should occur both prior to and after conflict. John Linarelli, *Peace-Building*, 24 *DENV. INT'L J. L. & POL'Y* 253, 254 (1996).

12. Boutros-Ghali, *supra* note 11. Boutros-Ghali gave an analogous definition of peace-building in his 1994 Agenda for Development. See *An Agenda for Development: Report of the Secretary General*, U.N. GAOR, 48th Sess., Agenda Item 91, U.N. Doc. A/48/935 (1994). For further discussion of the concept of peace-building, see Fen Osler Hampson, *Can Peacebuilding Work?*, 30 *CORNELL INT'L L.J.* 701, 701-05 (1997).

13. This Article will define international financial institution ("IFI") action taken both before and after conflict occurs as part of a peace-building process encompassing both preventative and curative measures.

14. Peace-building initiatives, by the international financial institutions ("IFIs" or "Bretton Woods institutions") and others, have been in the ascendant in recent years. See *Reworking the U.N.*, *ECONOMIST*, Feb. 15, 1997, at 17. An example of the heightened IFI participation in peace-building is the newly-implemented ten-year, US\$25 billion program for Africa, led by the United Nations and the World Bank, to promote peace, education, health, and good governance. The Bank has agreed to mobilize the necessary funding. *U.N. to Launch 10-Year Program to Aid Africa*, *XINHUA NEWSWIRE*, Mar. 8, 1996; *U.N. Will Provide Billions for African Development*, *SEATTLE TIMES*, Mar. 15, 1996, at A16; see Bowley, *supra* note 2, at 25.

15. See NICOLE BALL, *MAKING PEACE WORK: THE ROLE OF THE INTERNATIONAL DEVELOPMENT COMMUNITY* 104 (1996).

monly held that building lasting peace requires more than peacekeeping and relief aid; it requires sustainable economic development.¹⁶

The theory that economic development is critical to the maintenance of peace drove the 1944 creation of the IFIs at Bretton Woods.¹⁷ Historical factors and interpretations of key charter provisions, however, led the IFIs away from direct involvement in peace operations.¹⁸ Only in recent years, with the enhanced freedom of action afforded by the post-Cold War era,¹⁹ have the Bretton Woods institutions returned to a greater focus upon and participation in peace operations.

There are two major means by which the Bretton Woods institutions have sought to build peace, both of which emanate from their abundant financial power. Those means correspond conceptually to prevention and cure, addressing deadly conflict from *ex ante* and *ex post* perspectives. The *ex ante* approach is based on conditionality, a method that premises financial assistance on a recipient nation's compliance with certain measures. When those measures are designed to effect lasting peace, conditionality functions as a device for conflict prevention. The *ex post* approach to conflict is based on reconstruction, the process of transforming a war-torn society into one with the social, political, and economic stability necessary to embark on a sustainable program of development, and eventually self-reliance. Although reconstruction has been the predominant focus of IFI initiatives thus far, both means are potentially utile in the peace-building process.²⁰

16. Linarelli, *supra* note 11, at 253-54. Steven Holtzman, a World Bank social scientist who directs the IBRD Post-Conflict Unit, asserted that: "Humanitarian aid without sustainable paths forward represents an increasingly expensive Band-aid" and peacekeeping operations are "nothing more than a security framework which cannot alone facilitate a transition out of war." See Bowley, *supra* note 2, at 25.

17. See *infra* Part II.A.

18. For a discussion of the historical factors that led to the relative lack of IFI involvement in peace operations, see *infra* Part II.

19. See generally Orford, *supra* note 8.

20. U.N. Secretary-General Kofi Annan has advocated the use of both reconstruction and conditionality as peace-building tools. *Report by Annan Explores Causes, Cures of Africa Conflict*, AFR. NEWS SERVICE, Apr. 16, 1998. The Carnegie Commission on the Prevention of Deadly Conflict likewise recommends that IFIs take both forms of action. See Carnegie Commission on the Prevention of Deadly Conflict, *Preventing Deadly Conflict: Final Report: Chapter 6* (visited Feb. 16, 1998) <<http://www.ccpdc.org/pubs/rept97/text/Chapt6.htm>> (on file with the *Fordham International Law Journal*).

Despite the recent increase in IFI peace-building projects, significant obstacles continue to impede their effectiveness. The charters of the IBRD, IDA, and regional banks, which prohibit certain types of "political" activity, remain the foremost impediments to constructive involvement.²¹ Economic concerns, particularly the management of IFI credit risk, also pose challenges, as do organizational efficiency and expertise within the IFIs. Furthermore, institutional divisions within the United Nations present challenges to integration and cooperation.²² All such obstacles reduce the promptness and efficacy of IFI peace-building initiatives.

This Article reviews the principal means of IFI peace-building and offers several proposals to enhance the effectiveness of those means. Focusing primarily on the World Bank Group²³ and the IMF, this Article posits that profound changes are necessary if the Bretton Woods institutions are to realize their potential as leaders in the international peace process. Part I of this Article provides a brief historical account of the Bretton Woods institutions and discusses relevant provisions in their charters, elucidating the factors that have traditionally prevented IFI participation in peace operations. Part II describes and reviews IFI post-conflict reconstruction programs in the post-Cold War era, devoting particular attention to the 1997 World Bank initiative entitled *A Framework for World Bank Involvement in Post-Conflict Reconstruction* (the "Framework").²⁴ Part III reviews conditionality, as exercised by the IMF and the World Bank Group, and discusses its potential as a tool for peace-building. Finally, Part IV offers proposals for greater IFI impact and efficiency in peace operations, including a reinterpretation of the concept of "political" action as employed in the IBRD, IDA, and regional bank Articles of Agreement; a more flexible and country-specific approach to conditionality; and a greater coordination with relief agencies, non-governmental organizations, bilateral donors, and other U.N. organizations.

21. Linarelli, *supra* note 11, at 280.

22. Alvaro de Soto & Graciano del Castillo, *Obstacles to Peacebuilding: United Nations*, FOREIGN POL'Y, Mar. 22, 1994, at 69.

23. The World Bank Group comprises the IBRD and the International Development Association (the "IDA"). See Orford, *supra* note 8, at 464-65 n.98.

24. See FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1.

I. BACKGROUND: RELEVANT HISTORY AND CHARTER PROVISIONS

A proper understanding of the potential roles of the Bretton Woods institutions in international peace operations requires a brief analysis of their history and critical charter provisions. The history of the IFIs elucidates many of the current barriers facing them in the peace-building context.

The World Bank and IMF were created in the wake of World War II at the Bretton Woods Conference in New Hampshire.²⁵ Their incorporation was motivated in large part by the pressing needs of the postwar international economy and the desire to erect a lasting peace.²⁶ The IMF was designed to promote relative exchange rate stability, to provide liquidity for short-term balance-of-payments deficits, and to manage exchange rate payments.²⁷ The World Bank would focus upon the reconstruction of besieged European nations and the development of less-advanced economies.²⁸ Although peace operations of the variety encountered in the post-Cold War era were not envisioned,²⁹ the IFIs were foreseen as important elements in the sustenance of global peace.

A. *The International Bank for Reconstruction and Development*

In present-day terms, the World Bank was created with a specific peace-building initiative in mind: to facilitate the reconstruction of nations ravaged by in World War II. Section I of Article I of the IBRD's Articles of Agreement sets forth that role as one of the principal enumerated functions of the Bank:

25. A third institution, the International Trade Organization, was proposed as well, but it failed to survive a veto in the U.S. Congress. Hans W. Singer, *Rethinking Bretton Woods: From an Historical Perspective*, in PROMOTING DEVELOPMENT: EFFECTIVE GLOBAL INSTITUTIONS FOR THE TWENTY-FIRST CENTURY 3 (Jo Marie Griesgraber & Bernhard G. Gunter eds., 1995).

26. The IFIs were to prevent a relapse into the type of depression that occurred in the 1930s, deemed a causal factor for World War II. See Michael P. Malloy, *Shifting Paradigms: Institutional Roles in a Changing World*, 62 *FORDHAM L. REV.* 1911, 1912 (1994); Stremlau & Sagasti, *supra* note 3, ch. 1, ¶ 1, 6. For a broad discussion of the objectives sought at the Bretton Woods Conference, see generally Gerald M. Meier, *The Bretton Woods Agreement—25 Years After*, 23 *STAN. L. REV.* 235, 237-45 (1971).

27. See DAVID D. DRISCOLL, *THE IMF AND THE WORLD BANK: HOW DO THEY DIFFER?* 2-3 (1994).

28. *Id.* at 5-7.

29. See *supra* note 4 and accompanying text.

To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.³⁰

Section V of Article I adds that the IBRD is “in the immediate post-war years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.”³¹ Thus, the IBRD was founded to address two major issues: the rebuilding of peaceful societies in the wake of war and the sustainable development of less economically advanced nations. A plain reading of Article I and the historical factors that drove the Bank’s creation suggest that reconstruction was intended to be, at least initially, the predominant IBRD role.³²

Soon after its inception, the Bank was granted an early reprieve from one of its twin missions. By 1947, the United States had become concerned about the slow progress of economic recovery in Europe.³³ Therefore, the U.S. Congress enacted the

30. See Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, art. I, § 1 (as amended effective Feb. 16, 1989), *reprinted in* IBRAHIM F.I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD* 345 (1992) [hereinafter *IBRD Articles of Agreement*].

31. IBRD Articles of Agreement, *supra* note 30, art. I, § 5. The additional enumerated purposes of the IBRD include the following:

(II) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment, by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources. (III) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories. (IV) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first. (V) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members

Id. art. I, §§ II-V.

32. Michael Malloy argues that “the priority of reconstruction over development” is a “key, original value of the Bretton Woods System.” Malloy, *supra* note 26, at 1929.

33. U.S. President Truman initiated the “Truman Plan” to mobilize support for Europe, and U.S. Secretary of State George Marshall formulated the program that became known as the Marshall Plan. See Caroline Doggart, *From Reconstruction to Develop-*

Marshall Plan, which assumed the responsibility of rebuilding the war-torn states of Europe and Japan,³⁴ leaving the World Bank to concentrate upon its second major purpose: development.³⁵ Thus, in its formative years, the World Bank assumed an emphasis on development, profoundly influencing its growth and direction.³⁶ Over time, the primacy of development in the IBRD agenda has created a conceptual and institutional barrier against Bank action in post-conflict societies, a factor that remains problematic in the post-Cold War era.³⁷

Although the World Bank was designed to facilitate the reconstruction of postwar Europe, it was born in a turbulent era of geopolitical history, a fact that resulted in significant restrictions on its permitted scope of action. Three of the paramount voices at the Bretton Woods Conference were those of the United States, Great Britain, and Russia. The balancing of tripolar political ideologies—capitalist, socialist, and communist—was an indispensable consideration in the founding of international financial organs. Consequently, Lord John Maynard Keynes, concerned primarily about potential IBRD biases against socialism, proposed that the Bank be prohibited from activities that interfere with, or discriminate on the basis of, the political affairs of member nations.³⁸ That provision became Section 10 of Article IV, which reads as follows:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.³⁹

ment in Europe and Japan, in *THE EVOLVING ROLE OF THE WORLD BANK: HELPING MEET THE CHALLENGE OF DEVELOPMENT* 37, 41 (K. Sarwar Lateef ed., 1995).

34. See *id.*, at 52-53; Halim Moris, *The World Bank and Human Rights: Indispensable Partnership or Mismatched Alliance?*, 4 *ILSA J. INT'L & COMP. L.* 173, 178 (1997).

35. Singer, *supra* note 25, at 4. For a more comprehensive discussion of the Bank's historical shift from reconstruction to development in its nascent years, see generally Duggart, *supra* note 33, at 37-53.

36. Duggart, *supra* note 33, at 52-53; Stremlau & Sagasti, *supra* note 3, ch. 1, ¶ 12.

37. See Linarelli, *supra* note 11, at 280-81.

38. Interview with Abram Chayes, Professor, Harvard Law School, in Cambridge, Mass. (Apr. 10, 1998).

39. IBRD Articles of Agreement, *supra* note 30, art. IV, § 10.

The language of this provision was left intentionally broad, thus circumscribing as narrowly as possible the IBRD's ability to move beyond "economic considerations." The provision's lack of specificity facilitated expansive definitions of "political affairs" and "political character," which were adopted and developed throughout the Bank's early years.

An expansive interpretation of the "political action" provision was deemed imperative in the Cold War geopolitical framework.⁴⁰ Given the intense political tension between nations, particularly the United States and the U.S.S.R., IFI efforts to promote liberal democracy in emerging or war-stricken nations would have generated substantial resistance within the United Nations and the wider international community. As a result, the broad interpretation of Article IV, Section 10 was accepted, eclipsing many forms of action by the IBRD and its subsidiaries, whose charters contain substantially identical provisions.⁴¹

Article IV, Section 10, as interpreted, has been a major factor in the Bank's relative lack of involvement in peace operations throughout its history as U.N.-mediated peace processes were considered topics of inherently political character throughout the Cold War.⁴² Although the fall of the Communist regime in Russia has reduced practical barriers to IFI action in arguably "political" spheres, Article IV, Section 10 has not been significantly reinterpreted. Consequently, even in the context of a more unipolar geopolitical climate, the Bank has been limited by the broad traditional reading of Article IV, Section 10.

In reconstruction projects, this charter provision has essen-

40. See Dominique Carreau, *Why Not Merge the IMF and the World Bank?*, 62 FORDHAM L. REV. 1989, 1992 (1994). Dominique Carreau offers a second interpretation as to why the Bank was prohibited from political activity. She contends that the World Bank functions largely as a commercial bank and that to meddle in the affairs of clients would subject the Bank to liability. *Id.* Carreau also acknowledges the importance of the geopolitical factors in the apoliticization of the Bank. *Id.*

41. See IBRAHIM F.I. SHIHATA, *THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT* 2 n.2 (1990). Language similar to that of Article IV, § 10 of the IBRD Article of Agreement appears in the charters of the International Development Association, Charter of the International Development Association arts. V, § 6, VI, § 5c, the International Finance Corporation, Charter of the International Finance Corporation arts. III, IV, § 5c, the Multilateral Investment Guarantee Agency, Charter of the Multilateral Investment Guarantee Agency arts. 33(c), 34, the Asian Development Bank, Charter of the Asian Development Bank art. 36, the IDB, Charter of the IDB art. VIII, § 5d-f, and the African Development Bank, Charter of the African Development Bank art. 38.

42. See Stremmlau & Sagasti, *supra* note 3, ch. 1, ¶ 18.

tially limited the Bank to involvement after a state has achieved a reasonable measure of political stability.⁴³ In the use of conditionality, Article IV, Section 10 has confined the Bank to primarily economic and social reform. Although substantial evidence suggests that IBRD programs do have a pronounced political impact,⁴⁴ the World Bank's broadly-interpreted prohibition on political action has clearly retarded its historical and present-day participation in peace operations.⁴⁵

Despite historical barriers to post-war reconstruction and "political" intervention, the World Bank has become markedly more involved in peace operations in recent years. The most important steps have been taken in post-conflict reconstruction, as James D. Wolfensohn, the current IBRD President; has actively sought to bolster Bank action in nations afflicted by war. His principal initiative, encapsulated in a 1997 IBRD publication, will be reviewed extensively in Part II of this Article.

B. *The International Monetary Fund*

Unlike the World Bank, the IMF was not created to address specific tasks in post-war reconstruction or development. Rather, the IMF was to serve as a type of international central bank, maintaining exchange rate stability, providing short-term liquidity to members in need of balance-of-payments support, presiding over international exchange rate payments, and promoting the Bretton Woods "code of good monetary conduct."⁴⁶ Although international monetary policy was to be an indirect factor in the maintenance of the peace, the IMF was not conceived as an agency directed toward the needs of post-conflict or deeply-impooverished nations.

43. Linarelli, *supra* note 11, at 281.

44. See generally Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, 6 HARV. HUM. RTS. J. 159 (1993); Orford, *supra* note 8.

45. Linarelli, *supra* note 11, at 281. Due to their political limitation, Linarelli characterizes both the Bank and the International Monetary Fund ("IMF") as "far from the ideal institutions for peace-building." *Id.* The restriction on their political involvement has effectively shielded them from many forms of action in early-stage peace-building or where national politics are highly volatile. *Id.* "Thus, there is a void between United Nations functions in peace-building and that of the Bretton Woods institutions." *Id.*

46. The "code of good monetary conduct" entailed the avoidance of "competitive exchange depreciation" and therefore reinforced the IMF's other roles. See Carreau, *supra* note 40, at 1990-91.

Article I of the IMF Articles of Agreement sets forth its purposes, two of which bear particular relevance to the peace-building process:

(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy . . .

(v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.⁴⁷

The “development of productive resources” and provision of short-term liquidity were not the predominant functions of the IMF at its outset. As decolonization progressed throughout the world, however, the IMF began increasingly to turn to developing markets.

The most profound change in the IMF took place, however, on August 15, 1971, when President Richard Nixon and the United States revolutionized the international monetary system, moving off of the gold standard.⁴⁸ The IMF, an organization created to oversee the Bretton Woods exchange rate regime, was forced to explore and to develop other roles, many of which related to development. Since the move from the gold standard, Fund activities have converged toward those of the IBRD, center-

47. The remaining purposes set forth in Article I of the Articles of Agreement of the IMF are as follow: (i) To promote international monetary cooperation through a permanent institution that provides the machinery for consultation and collaboration on international monetary problems; (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation; (iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions that hamper the growth of world trade; and (vi) In accordance with the above, to shorten the duration and to lessen the degree of disequilibrium in the international balances of payments of members. Articles of Agreement of the International Monetary Fund, *reprinted in* PAUL B. STEPHAN III ET AL., DOCUMENTS FOR INTERNATIONAL BUSINESS AND ECONOMICS 1 (1993) [hereinafter IMF Articles of Agreement].

48. In 1971, the United States decided to devalue the dollar by allowing it to float against other currencies. U.S. President Nixon also suspended the redemption of dollars for gold. The U.S. decision revolutionized the international monetary regime and the IMF. See Malloy, *supra* note 26, at 1922; Carreau, *supra* note 40, at 1994.

ing more upon structural adjustment and emerging-world macroeconomic development.

The history of the IMF has left it with profound institutional questions in the present era. Many observers have viewed the Fund and the World Bank as functionally difficult to distinguish,⁴⁹ and some have suggested a merger.⁵⁰ In the context of peace operations, it is unclear how the role of the IMF will diverge from the role of the Bank. To date, the Bank has taken the lead role in post-conflict reconstruction, and IMF participation in the peace process has been limited. Its recent programs are discussed below.

The IMF does have an important peace-building advantage vis-à-vis other IFIs. Because the drafters at Bretton Woods perceived its functions as inherently less political than those of the Bank, the IMF has no charter provision forbidding its involvement in "political" subject matter. As an historical matter, the IMF has followed a practice similar to that of the Bank, the IDA, and the regional development banks. The IMF, however, lacks the encumbrance of an explicit legal restriction in its charter.

II. POST-CONFLICT RECONSTRUCTION

Post-conflict reconstruction is one of the two major IFI approaches to peace-building. It is an *ex post* form of action, "curing" conflict by healing the deep economic and social wounds inflicted by war. It necessarily performs an *ex ante* function as well, however, by preventing relapse into conflict due to continued social and economic plight.

Legally, reconstruction is the IFIs' less controversial means of addressing conflict. As discussed above, the World Bank was specifically created to address the reconstruction needs of post-conflict societies.⁵¹ The IMF, while lacking an explicit statutory mandate to carry out reconstruction programs, has appropriately encountered little legal resistance to post-conflict involvement, which is easily subsumed under its authorized functions as a provider of short-term liquidity and a developer of productive resources.

In recent years, reconstruction programs have become a sig-

49. See Malloy, *supra* note 26, at 1923; Carreau, *supra* note 40, at 1995.

50. See generally Carreau, *supra* note 40, at 1995.

51. See *supra* note 30 and accompanying text.

nificant focus of the World Bank, and the IMF has likewise heightened its involvement. Part II of this Article begins with a review of World Bank initiatives to date, focusing on the Bank's primary statement of policy and recommendations in the field, the *Framework*, a paper released by President James D. Wolfensohn in April 1997.⁵² Part II then provides a brief review of recent initiatives by the IMF in post-conflict reconstruction.

A. *Review of World Bank Programs*

When James D. Wolfensohn took office in 1995, he enumerated six major goals for the World Bank during a speech at the Annual Meetings of the World Bank Group.⁵³ He described the last of his six objectives as follows: “[the IBRD] must anticipate and be organized for post-conflict economic development programs, when war is replaced by peace.”⁵⁴ It is notable that he used the term “post-conflict development programs,”⁵⁵ as opposed to “reconstruction programs.” His speech broadly reflected a vision of the World Bank as a development agency with certain functions in post-conflict countries, not an agency with two similarly important mandates: development and reconstruction.⁵⁶

The historical World Bank prioritization on its development mandate is the foremost impediment to IBRD effectiveness in post-conflict reconstruction. While there is no doubt that the IBRD has a statutory mandate as a development agency, it likewise has a clearly-delineated role as a reconstruction agency.⁵⁷

52. *See supra* note 1.

53. James D. Wolfensohn, 1995 Annual Meetings Speech (Oct. 10, 1995) (transcript available at <<http://www.worldbank.org/html/extdr/exteme/jdwamsp.htm>>) (on file with the *Fordham International Law Journal*) [hereinafter Wolfensohn, 1995 Annual Meetings Speech].

54. *Id.*

55. *Id.*

56. Although Wolfensohn included post-conflict efforts as one of his six priorities upon assuming the Bank's presidency, his first three annual addresses somewhat belie that priority, focusing predominantly upon development issues and mentioning post-conflict involvement only briefly. *See id.*; *see also* James D. Wolfensohn, 1996 Annual Meetings Speech (Oct. 1, 1996) (transcript available at <<http://www.worldbank.org/html/extdr/exteme/jdwams96.htm>>) (on file with the *Fordham International Law Journal*); James D. Wolfensohn, 1997 Annual Meetings Address: The Challenge of Inclusion (Sept. 23, 1997) (transcript available at <http://www.worldbank.org/html/extdr/am97/jdw_sp/jwsp97e.htm>) (on file with the *Fordham International Law Journal*).

57. *See supra* Part I.A.

In the post-Cold War era, the proliferation of armed conflict demands that it adapt to fill that charter-prescribed role. Thus far, however, the World Bank has not made the far-reaching institutional changes necessary to maximize its effectiveness as a reconstruction agency.

Despite its failure to embrace its reconstruction role fully, the World Bank has made significant and laudable progress in post-conflict reconstruction.⁵⁸ The following discussion centers around the World Bank's 1997 *Framework*, which includes World Bank policy and recommendations for post-conflict intervention. In most aspects, the initiative is well-directed and appropriate, and it properly identifies the major areas for IBRD action. It is overly conservative in its general approach, however, due to the central problem identified above: the Bank's unwillingness to make more extensive institutional changes and embrace a dual identity. Consequently, the Bank remains unable to address all of the problems of reconstruction at maximal effectiveness.

1. Overview of the *Framework*

The World Bank's *Framework* was drafted "to provide a conceptual and operational framework for World Bank staff working in post-conflict situations, while encouraging ingenuity, creativity, and initiative appropriate to individual country situations."⁵⁹ The *Framework* begins with an introduction, emphasizing the international importance of the Bank's role in reconstruction.⁶⁰ It then highlights the profound social and economic costs of conflict and stresses the interrelated nature of war and impoverishment, charging the Bank to respond to the crises of post-war nations "within its development mandate."⁶¹ Finally, the *Framework* introduces the crucial role of "development assistance" in preventing relapses into conflict and asserts the importance of integrating country sensitivity into a vision of development.⁶²

The remainder of the *Framework* identifies challenges to the Bank in post-conflict reconstruction, provides lessons and examples from past experience, and develops therefrom a new model

58. Stremlau & Sagasti, *supra* note 3, ch. 1, ¶ 49.

59. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at i.

60. *See id.* at 1-2. Despite the stress that the *Framework* paper places upon reconstruction, the paper refers to the IBRD as a "development agency." *Id.*

61. *Id.* at 3.

62. *Id.* at 3-4.

for post-conflict intervention. The issues that it raises can be broadly divided as follows: early-phase activities, including demobilization, clearance of landmines, refugee resettlement, and vital infrastructure repair; donor coordination; operational efficiency, including the preparation of "Watching Briefs," the timely, effective implementation of strategy on the ground, increased field presence, and inter-agency cooperation; increased risk exposure; the need to work with a stable counterparty; and the looming problem of third-world debt. Bank activities and *Framework* guidelines in each of these areas are reviewed below.

As the following discussion will seek to demonstrate, many of the *Framework's* recommendations should indeed be used as models to build on in the future. In each major area of intervention, however, the IBRD is unable to perform at maximal efficiency, because, in various ways, it has yet to embrace its function as a reconstruction agency sufficiently.

2. Early-Phase Reconstruction Activities

One of the most critical aspects of peace-building is the creation, via early involvement, of conditions requisite to the resumption of normal economic activity and growth.⁶³ Such rebuilding is the essence of reconstruction: converting a society ravaged by conflict into one prepared to undertake sustainable development programs.⁶⁴ The *Framework* refers to the process as early-phase reconstruction and properly identifies its major components, which may be broadly divided into four categories: the demobilization and reintegration of ex-combatants; the neutralization and clearance of land mines; the resettlement of refugees and internally displaced persons ("IDPs"); and the construction of fundamental infrastructure needs such as irrigation, roads, and power.

Each of the four processes above represents a critical precursor to the resumption of sustainable economic growth and social stability. Each also represents a vital safeguard against resumption of conflict. Such processes are costly and challenging, however, and their demands often exceed the capacity of both

63. Nicole Ball terms such early involvement "post-conflict transition assistance" and deems it the key to successful peace-building operations. See BALL, *supra* note 15, at 49.

64. See generally *id.*

post-war states and the humanitarian aid community. U.N. peacekeeping operations are also not well-situated to accomplish all of the necessary tasks. Consequently, the World Bank must be a leading participant, providing both financial assistance and technical expertise in a timely manner. The *Framework* does not, however, provide detailed directives for early-phase reconstruction activities.

The following discussions will review recent World Bank programs in each of the four critical areas—demobilization, demining, refugee resettlement, and infrastructure-building—and highlight the challenges that remain. In each case, funding, sound planning and operation, and rapidity of response present the most significant challenges to IBRD efficacy. Each of these challenges is linked to the Bank's need to embrace its identity as a reconstruction agency more fully.

a. Demobilization and Reintegration Programs

Shortly after a successful cease-fire is achieved, a war-torn country is faced with the formidable tasks of demobilizing armed forces and reintegrating ex-combatants into the fabric of society. Demobilization and reintegration programs ("DRPs") therefore constitute a central element in the transition from war to peace and are clear prerequisites to the reemergence of social and economic stability.⁶⁵ The *Framework* acknowledges the World Bank's inadequate capacity to deal with such problems, but does not offer detailed prescriptions for improvement.⁶⁶

An effective DRP confers three extremely important benefits upon a society. First, it allows for a major reduction in fiscal

65. NAT J. COLETTA ET AL., *THE TRANSITION FROM WAR TO PEACE IN SUB-SAHARAN AFRICA* (1996); see also BALL, *supra* note 15, at 41-44 (providing brief overview of demobilization and reintegration programs ("DRPs") and issues crucial to their successful implementation); see also Hampson, *supra* note 12, at 706.

66. The World Bank paper entitled *A Framework for World Bank Involvement in Post-Conflict Reconstruction* ("*Framework*") asserts:

The expertise on demobilization and reintegration of ex-combatants developed in the Africa region and described in a best practices paper, is being drawn upon elsewhere on an *ad hoc* basis, but current ability to respond is limited. Reintegration of displaced populations is clearly a major component of the reconstruction task, indicating a need for greater Bank expertise and capacity, and greater collaboration with UNHCR. Sector work is needed, particularly where displacement is very high.

FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 27.

expenditures on the military.⁶⁷ In many nations emerging from war, a large fraction of government funds are spent on the armed forces. The redirection of those funds to pressing reconstruction needs eases the formidable burdens of internal and external debt of postwar countries and allows for a more expedient return to economic normalcy.⁶⁸ The second major benefit of a successful DRP is the reduction of security risks and social tension brought about by demilitarization.⁶⁹ Soldiers in post-conflict countries often present the greatest perceived threat to continued peace, and their reintegration eases the transition to peace and more stable governance. A final benefit of DRPs is the assistance that they provide ex-combatants, often a large fraction of the population, in their return to civil pursuits, often following years of armed combat.

In recent years, the World Bank has acquired limited experience in DRPs,⁷⁰ participating in multi-donor investments in Uganda,⁷¹ Bosnia,⁷² Mozambique, Ethiopia, Cambodia, and Sierra Leone. Although case studies show that demobilization can be effectively accomplished, program success has been highly variable from country to country.⁷³ Case studies demonstrate that

67. Following demobilization in Ethiopia, defense expenditures dropped from 46.6 percent to 16.4 percent of government outlays. Similar reductions occurred in Namibia, where expenditures fell from 12.4 percent to 6.4 percent, and Uganda, where expenditures fell from 34.9 percent to 25.0 percent. COLETTA ET AL., *supra* note 65, at 62.

68. *Id.* at 41; see MATS R. BERDAL, DISARMAMENT AND DEMOBILISATION AFTER CIVIL WARS 5 (1996).

69. BERDAL, *supra* note 68, at 5.

70. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 15.

71. The Uganda Veterans Assistance Program, hailed as an IBRD success, was conducted from 1992 to 1996, with the Bank serving as fund coordinator. The Bank-coordinated assistance of US\$20 million supported the establishment of the Uganda Veterans Association Board, which facilitated the demobilization and reintegration of 36,400 soldiers. Support for the soldiers' relatives was also provided. *Id.* at 16. See The World Bank Group, *The World Bank: Making a Difference: Ugandan Soldiers Return to Civilian Life* (visited Apr. 9, 1998) <<http://www.worldbank.org/html/extdr/backgrd/ibr/dif7.html>> (on file with the *Fordham International Law Journal*).

72. The 1996 project in Bosnia cost US\$20 million dollars, US\$7.5 million from an IBRD credit, and provides support for demobilized soldiers through two Employment and Training Foundations. The project provides employment counseling, training, and management assistance to demobilized ex-combatants. See The World Bank Group, *Demobilization Support and Reintegration* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/bosnia/b&h012.htm>> (on file with the *Fordham International Law Journal*).

73. Some of the more successful programs to date have been those conducted in Ethiopia and Uganda, where most program objectives were met. Less successful pro-

funding, timing, and ground expertise all present serious challenges to the effective implementation of a DRP.

The first critical concern in implementing an effective DRP is funding. DRPs require significant expenditures⁷⁴ and although funding is by no means sufficient to ensure successful demobilization and reintegration, it is almost always necessary for their effective implementation.⁷⁵ Unfortunately, financial succor from abroad has typically arrived well after the appropriate time for project commencement.⁷⁶ Donors tend to be conservative; they are reluctant to participate absent assurances of the political ability and volition to implement the DRP. In addition, many donors have yet to formally embrace the developmental nature of DRPs, treating them instead as political and military matters. Similar factors are responsible for the insufficient leadership of the IFIs in DRP financing.⁷⁷

When financing does materialize, it is frequently targeted toward specific areas of the program. Donors' earmarking of funds complicates coordination, often leading to disorderly administration and thus deterring additional donor participation.⁷⁸ The earmarking of funds can also generate resentment, as ex-combatants are funded disproportionately.⁷⁹ Finally, the objectives sought by donors do not always correspond to the

grams were implemented in Eritrea, Namibia, Rwanda, Zimbabwe, and Mozambique. See generally COLETTA ET AL., *supra* note 65, ch. 5.

74. The largest African DRP to date, which reintegrated approximately 475,000 Ethiopian ex-combatants, cost US\$195 million. *Id.* at 29.

75. BERDAL, *supra* note 68, at 59.

76. El Salvador provides an apt example. Since 1995, when the U.N. mission was formally accomplished, the peace process has been hindered by the lack of funding for reintegration programs. *Id.* Similar problems were experienced in Mozambique, where the peace process was delayed by a lack of funding for DRP programs in 1994, and in Liberia, where the 1996 resumption of conflict was partly attributed to the lack of resources for demobilization. Finally, a fund shortage was a major cause for the failure of the Angolan reintegration project in 1992. *Id.*; see COLETTA ET AL., *supra* note 65, at 30.

77. Although its charter provision barring political activity was formerly interpreted so as to discourage such activity, the World Bank has increasingly acknowledged the developmental import of DRPs. Nevertheless, credit risk and the traditional Bank practice of dealing with credible governments remains formidable. BERDAL, *supra* note 68, at 67-69.

78. *Id.* at 67. An example of targeted financing in the DRP context would be a donor's stipulation that funds be directed toward ex-soldiers suffering from a disability incurred in war. Analogous types of earmarking occurred during the implementation of a DRP in El Salvador. *Id.*

79. *Id.*

needs of program coordinators on the ground, which significantly stymies operational efficacy.⁸⁰ Thus far, though it is the logical agency to coordinate DRP funding, the World Bank has not provided a sufficient antidote.⁸¹

The second major concern in DRP implementation is timing. A successful DRP program requires substantial political will and leadership and should be addressed at the earliest stages of the peace process, even before a peace accord is signed.⁸² As many specific provisions as possible should be accounted for in the actual peace accord, as evidence suggests that terms left for subsequent workout lead to damaging politicization of the implementation process.⁸³ In addition, assistance is more likely to be timely and to fall into the temporal window necessary to establish peace, if negotiations take place early in the peace process.⁸⁴ Therefore, the World Bank should properly be involved, through representation if necessary, in early-stage peace talks. Its role as the international leader in post-conflict reconstruction makes it an appropriate agency to suggest terms for a DRP early in the peace process. To date, the World Bank has not taken on such a role, motivated at least in part by the view that certain reconstruction-related activities violate Article IV, Section 10 of its charter.⁸⁵

The third major challenge to implementation of an effective DRP is achieving sound management and expertise, both in planning and on the ground. Thus far, the World Bank has concededly failed to achieve sufficient expertise, a fact that must be

80. *Id.*

81. The IBRD has hesitated to fund certain projects due to a fear of corruption or political instability. Its contributions since 1990, however, are a very welcome addition to international peace operations. *Id.* at 68.

82. *Id.* at 21; see COLETTA ET AL., *supra* note 65, at 7.

83. BERDAL, *supra* note 68, at 74.

84. COLETTA ET AL., *supra* note 65, at 7.

85. The World Bank has not undertaken a role in the negotiation of peace accords, which it deems too highly political. The *Framework* includes the following as guiding principles of IBRD involvement in post-conflict reconstruction: “[t]he Bank is not in charge of peace-making or peace-keeping. These are functions of the U.N. and certain regional organizations. It should be noted, however, that through its developmental mandate the Bank can indirectly assist peace efforts” and “[u]nder the explicit provisions of its Articles of Agreement, the Bank does not question the political character of a member and should not interfere in the domestic political affairs of a member.” FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 8.

remedied.⁸⁶ A successful DRP requires several elements: local and national political cooperation,⁸⁷ a sound classification of the characteristics and needs of ex-combatants,⁸⁸ "safety-net" transitional assistance for the families of demobilized soldiers,⁸⁹ counseling and training services,⁹⁰ community awareness programs,⁹¹ efficient central coordination with local representation,⁹² and continual upgrade of ground operations to reflect country developments.⁹³ DRPs must also be conducted with a smooth and immediate transition from disarmament and demobilization to reintegration, with sufficient flexibility to respond quickly to needs on the ground.⁹⁴ Finally, greater attention must be paid to the rapid reform of police forces, local judicial systems, and other elements of the security sector.⁹⁵

While a thorough review of individual DRP programs and their strengths and weaknesses is beyond the scope of this essay, the complexity and importance of DRP implementation is evident. The World Bank has properly become involved in DRP funding in the past eight years, but its involvement must go deeper for future DRPs to meet with more consistent success. In order to do so, the Bank must move closer to the nexus of the peace process, immersing itself in some of the country-specific issues that it formerly deemed too political for its development mandate. It must also implement staff training that will bolster currently inadequate levels of institutional expertise.⁹⁶

b. Clearance of Landmines

The clearance of landmines is a second major concern in rebuilding war-torn societies.⁹⁷ During conflict, landmines are

86. *See supra* note 66.

87. *See* COLETTA ET AL., *supra* note 65, at 6-8.

88. *See id.* at 8-12.

89. *See id.* at 15-18.

90. *See id.* at 19.

91. *See id.* at 24-25.

92. *See id.* at 25-26.

93. *See id.* at 28.

94. BERDAL, *supra* note 68, at 75.

95. *Id.*

96. *See supra* note 66.

97. Land mine clearance has been, and continues to be, a major concern in the reconstruction of the former Yugoslavia. *See* The World Bank Group, *Reconstruction of Bosnia and Herzegovina: Clearing of Landmines* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/extme/landm.htm>> (on file with the *Fordham Interna-*

laid as a means to restrict the enemy's freedom of movement and to deter military advance.⁹⁸ Ninety percent of the casualties inflicted by mines, however, are civilian, and most occur after the cessation of conflict.⁹⁹ In post war societies, mine fields disrupt commerce and transportation, inhibiting the restoration of economic normalcy.¹⁰⁰ Further, landmines impose social and economic burdens by inflicting casualties and denying effective access to buildings, homes, and arable lands.¹⁰¹ Therefore, demining is often a condition precedent to resettlement and other phases of reconstruction can effectively occur,¹⁰² and its expedient completion is imperative. The financial costs of clearing landmines, however, are staggering, especially for societies whose fiscal resources are modest and thinly spread. Even with the most efficient existing technologies, the average cost of neutralizing one mine is estimated at US\$1,000.¹⁰³ Total clearance of mines from a war-stricken region takes many years and can entail a cost of hundreds of millions of dollars.¹⁰⁴

In 1996, the World Bank initiated a response to the problem of landmine clearance, implementing emergency programs in the former Yugoslavia. The first such program was a US\$67

tional Law Journal) [hereinafter *World Bank: Clearing of Landmines*]. Mines are also a serious concern in Azerbaijan, and their neutralization is a vital prerequisite to successful future development and relief efforts. See International Monetary Fund, *Azerbaijan—Enhanced Structural Adjustment Facility and Extended Fund Facility Policy Framework Paper, 1997-2000* (visited Nov. 18, 1998) <<http://www.imf.org/external/np/pfp/azerb/azer-01.htm>> (on file with the *Fordham International Law Journal*); see also Gilles Courrègelongue, *Mine Problems in Peacekeeping Operations*, in *IMPROVING THE PROSPECTS FOR FUTURE INTERNATIONAL PEACE OPERATIONS—WORKSHOP PROCEEDINGS 99, 103* (U.S. Congress, Office of Technology Assessment, 1995); Bowley, *supra* note 2.

98. See Courrègelongue, *supra* note 97, at 101.

99. *Landmines: The Invisible Goliath: Effects* (visited Nov. 18, 1998) <<http://library.advanced.org/11051/effects.htm>> (on file with the *Fordham International Law Journal*) [hereinafter *Goliath: Effects*].

100. *World Bank: Clearing of Landmines*, *supra* note 97.

101. *Id.*; see Courrègelongue, *supra* note 97, at 101 (asserting that "in many countries where peacekeeping and/or mine clearing operations are underway, mines have neither been laid according to military regulation nor to military logic," thus resulting in the placement of mines in residential communities).

102. *World Bank: Clearing of Landmines*, *supra* note 97.

103. Courrègelongue, *supra* note 97, at 103.

104. The World Bank Group, *Reconstruction of Bosnia and Herzegovina: Priorities for Recovery and Growth* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/extme/bhgen.htm>> (on file with the *Fordham International Law Journal*) [hereinafter *World Bank Priorities for Recovery and Growth*]; see *World Bank: Clearing of Landmines*, *supra* note 97.

million project in Bosnia and Herzegovina, eleven percent of which was funded by the Bank. The project involved setting up a Mine Action Center to coordinate activities, such as targeting mine clearance for critical points of infrastructure reconstruction, holding mine awareness programs for persons in affected areas, and providing technical assistance and training for mine clearance.¹⁰⁵ A similar US\$34 million project, eighty-three percent of which was funded by the World Bank, was implemented in Croatia to clear areas of high economic priority for reconstruction.¹⁰⁶ Nevertheless, in both Croatia and in Bosnia and Herzegovina, many areas of lesser economic priority were roped off to be cleared in the future.¹⁰⁷

Though the projects in the former Yugoslavia evidenced a Bank willingness to participate in mine-clearance, IBRD involvement must be drastically increased if peace-building is to occur at maximal efficacy.¹⁰⁸ At present, well over 110 million active mines are laid on the planet, killing over 800 people per month and maiming or crippling many more. Mines are being laid at twenty times the rate that they are being cleared, mostly in societies whose financial ability to address the problem is highly constrained.¹⁰⁹ In many war-torn societies, mine clearance thus becomes a rate limiting step to sustainable economic reconstruction.

Effective mine-clearance programs demand far more than financial capital. The neutralization of mines is extremely dangerous¹¹⁰ and requires significant inputs of ground expertise.

105. The World Bank Group, *Emergency Landmine Clearing Project* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/bosnia/b&h010.htm>> (on file with the *Fordham International Law Journal*).

106. The World Bank Group, *World Bank Helps Croatia Reconstruct Transportation Routes and Clear Mines* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/extme/1176.htm>> (on file with the *Fordham International Law Journal*).

107. *World Bank Priorities for Recovery and Growth*, *supra* note 104.

108. Nicole Ball affirms the urgency of mine clearance and provides a brief discussion of the issues it entails. See BALL, *supra* note 15, at 44-45.

109. Courrègelongue, *supra* note 97, at 103. Courrègelongue asserts that, as of 1995, two million mines were being laid per year, while the rate of demining is only 100,000 per annum. At that rate of clearance, all existing mines would not be neutralized for over 1,100 years, and to clean roads, villages, and houses alone would take 300 years. *Id.*

110. Even using the most advanced existing technologies, demining extracts a huge human cost. For every 1,000 mines cleared, one worker is severely injured, and for every 5,000 mines cleared, one worker is killed. *Id.* at 103. Proper training pro-

Despite efforts to develop safer and quicker methods of neutralization, manual detection remains the most effective method.¹¹¹ Consequently, thorough training programs for workers are essential, as are civilian awareness programs.¹¹² The World Bank should, either in its own ranks or through stable cooperation, develop institutional expertise in mine clearance that can be rapidly implemented in peace operations.

Although human expertise should be developed as rapidly as possible, the World Bank should also contribute, via a trust fund if necessary, to research for more effective mine clearance devices. Current methods of manual detection are clearly inadequate in terms of time, expense, and safety.¹¹³ Recent research efforts have focused upon infrared technology and penetrating radars, and studies will soon be undertaken using chemical and nuclear detection systems.¹¹⁴ Despite these efforts, no sufficient technology has been developed. The IBRD should play a leading role in the furtherance of research. Both the economic and social returns of an effective technology would add tremendously to the capacity of the Bank to conduct effective reconstruction.

c. Resettlement of Refugees and Internally Displaced Persons

A third area of major concern in the reconstruction of war-

grams cannot eliminate the perils of demining, but they may be able to mitigate the incidence of death and injury.

111. *Id.* at 101. There are three major methods used to detect landmines: manual detection, pyrotechnical and mechanical demining, and detection by sniffing dogs. Although pyrotechnical and mechanical demining are used in military emergencies, their collateral noise and blast effects suit them poorly to use in civilian areas. Sniffing dogs are likewise inadequate, as they tire quickly and fail to cover ground methodically. Since mines are generally small, many the size of a palm, dogs are estimated to miss approximately 40 percent of them in a given land area. *See id.* at 102.

112. Among the most tragic deaths associated with landmines occur when children mistake them for toys. This problem has been particularly acute in Afghanistan, where "butterfly" mines, easily mistakable for small toys, are prevalent. *See Landmines: The Invisible Goliath: What are They?* (visited Nov. 18, 1998) <<http://library.advanced.org/11051/what.htm>> (on file with the *Fordham International Law Journal*). Children and others must be well taught to avoid the mines laid in their environs.

113. There are two major manual-detection methods. The first is to kneel and to prod the ground with a nonmagnetic stick. This is extraordinarily time-intensive and dangerous; deminers must be relieved every 20 minutes to avoid fatal concentration lapses. The second method uses portable magnetometers, which can result in 1,000 false alarms for every mine cleared. Magnetometers also miss the increasing numbers of mines made with plastic. *See Courrègelongue, supra* note 97, at 101-02.

114. *Id.* at 104.

torn societies is the resettlement of IDPs¹¹⁵ and refugees. Traditionally, voluntary repatriation programs were viewed as the final step in a nation's return to normalcy, occurring after peace and a significant level of stability had been achieved.¹¹⁶ The large-scale nature of current refugee crises, however, has altered the traditional paradigm and prompted the international community to view resettlement, like demobilization and demining, as a problem to be addressed early in the peace process. Like a DRP, a resettlement program is complex and politically charged. It should be contemplated during peace negotiations and undertaken as soon as possible, as its implementation can become a rate limiting factor to stabilization and subsequent development.¹¹⁷

The U.N. High Commissioner for Refugees¹¹⁸ ("UNHCR")

115. The global number of refugees and internally displaced persons is staggering. In 1996, the U.N. High Commissioner for Refugees ("UNHCR") estimated that approximately 26 million persons worldwide were displaced from their normal living environs, including 13.2 million refugees, 4.7 million internally displaced persons, and 8.1 million others including victims and returnees of war. The largest populations of displaced persons were from Afghanistan (2.3 million), Rwanda (1.7 million), Bosnia and Herzegovina (1.3 million), Liberia (750,000), Iraq (630,000), Somalia (446,000), Sudan (424,000), Eritrea (362,000), Angola (324,000), and Sierra Leone (320,000). See U.N. HIGH COMMISSIONER FOR REFUGEES, INFORMATION PAPER 6 (1997).

The definitions of refugees and internally displaced persons are always highly controversial and are applied diversely by nations. See DANIELE JOLY, HEAVEN OR HELL? ASYLUM POLICIES IN EUROPE 8 (1996). Although the U.N. Convention on Refugees provides a definition, it is subject to interpretation. A sound definition of internally displaced persons ("IDPs") is equally difficult to achieve. That debate, however, lies beyond the scope of this endeavor, and in the present context, the UNHCR categorizations suffice. For the UNHCR definition of a "refugee," see DANIELE JOLY ET AL., REFUGEES: ASYLUM IN EUROPE? 1, 11, 19-20 (1992) [hereinafter JOLY, REFUGEES].

116. See U.N. High Commissioner for Refugees, *Issues: Durable Solutions* (visited Nov. 18, 1998) <<http://www.unhcr.ch/issues/durable/durable.htm>> (on file with the *Fordham International Law Journal*).

117. It is important to remember that, while the present discussion focuses upon the implications of resettlement for peace, refugee crises are also a grave concern for human rights. Often, refugees and IDPs do not possess adequate rights and living standards. See BENAIFER NOWROJEE, HUMAN RIGHTS WATCH, FAILING THE INTERNALLY DISPLACED: THE UNDP DISPLACED PERSONS PROGRAM IN KENYA 2 (1997). It is also notable that the U.N. Universal Declaration of Human Rights states that: "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care . . ." U.N. Universal Declaration of Human Rights, art. 25, § 1, cited in JOLY, REFUGEES, *supra* note 115, at 47. Therefore, rapid resettlement should be sought both for its peace implications and for other humanitarian reasons.

118. The UNHCR was established on January 1, 1951 to replace the defunct International Refugee Organization. See JOLY, REFUGEES, *supra* note 115, at 2-3. Since that

and other humanitarian organizations are actively engaged in refugee resettlement programs, and their successes have been myriad. The UNHCR has substantial expertise and experience in coordinating refugee and IDP resettlement programs and should remain the primary coordinator of many tasks on the ground. Resettlement projects are costly and difficult to achieve,¹¹⁹ however, and neither the UNHCR nor afflicted states have adequate human or financial resources to address refugee crises fully and promptly.

Thus far, World Bank involvement has been limited.¹²⁰ It has designed several operations in partnership with, and at the request of, the UNHCR and other international organizations. Its goal has been to develop programs that will sustainably continue projects initiated by the humanitarian aid community. A significant increase in Bank participation, however, is needed. Although the World Bank's *Framework* asserts that "[t]he high degree of displacement, and the increasing numbers of internally displaced, in some countries makes directed resettlement programs impracticable or accessible to only specific concentrated groups of displaced,"¹²¹ refugee and IDP resettlement needs IFI financial and technical support to implement effective programs swiftly.

As in other areas, the World Bank should develop greater

time, it has been the primary U.N. agency charged with the provision of relief and repatriation for displaced persons. *Id.* at 11.

119. Refugee resettlement must take account of a variety of factors; programs must be tailored to respond to the particular needs of refugees of varying family relationships, age, gender, socio-economic background, and history of migration. *See generally* JOLY, *REFUGEES*, *supra* note 115, ch. 7. Resettlement entails the rapid provision of housing, employment opportunities, education and training, health services, transportation, and basic utilities. *See id.* ch. 8. Finally, resettled persons must be effectively reintegrated into a social and political fabric from which they were excluded. This requires sensitizing communities through a variety of awareness programs. *See id.* ch. 9. Consequently, the expertise demanded in resettling populations is substantial.

120. Limited IBRD collaboration with the UNHCR has occurred since 1984, when an initial program for development-oriented assistance to third-world refugees was created. The Bank's early collaborative programs were generally confined to assisting refugees in resource management and food production. *See* James C. Hathaway, *A Reconsideration of the Underlying Premise of Refugee Law*, 31 *HARV. INT'L L. J.* 129, 159-60 (1990). Over the past six years, World Bank participation in repatriation programs has been growing, as the Bank has played a role in Mozambique, Sierra Leone, Azerbaijan, Eritrea, and elsewhere. *FRAMEWORK FOR WORLD BANK RECONSTRUCTION*, *supra* note 1, at 15.

121. *Id.*

institutional expertise in refugee and IDP resettlement. It is acceptable for the UNHCR and others to remain the primary coordinators of ground operations, but World Bank staff should be prepared to deal with operational problems as well. In this regard, the World Bank and UNHCR would profit from thorough training seminars, administered by the UNHCR, to edify World Bank staff working in the field. Resettlement combines complex economic, social, and political issues, and well-directed World Bank participation requires a sound base in knowledge and experience.

Not surprisingly, funding is the aspect in which the IBRD could play the greatest role. To be effective, resettlement programs entail moving large numbers of people, setting up institutions for education and employment, monitoring human rights practices, and other tasks. The high number of displaced persons makes all of those endeavors more costly to implement and to administer, and host countries rarely have the financial capacity or political will to carry out programs themselves. As a result, the World Bank must assume leadership in financing such programs. When a credible government counterparty is not available, the World Bank may rely on a trust fund or similar arrangement to administer funds.¹²²

As discussed above, resettlement should be initiated as soon as conditions permit. In some cases, resettlement programs may begin before an ultimate cease-fire occurs, as liberated or evacuated areas may permit rehabilitation or reintegration of displaced persons. The World Bank's program for Afghan Refugees in Pakistan, under which a trust fund allowed for funds to flow to refugees during continued conflict, is an excellent example of a successful wartime resettlement program,¹²³ as is its repatriation project in Azerbaijan.¹²⁴ In other societies, resettlement may best occur at a later point when social conditions allow it to proceed with lower risk and more cost efficiency. Those decisions should be made during peace negotiations with World Bank and UNHCR expertise exerting due influence.

122. Trust funds and other forms of financing are useful devices when the Bank does not have a suitable government counterparty with whom to deal. See *infra* Part II.A.5-6.

123. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 17.

124. In Azerbaijan, a resettlement program was effectively initiated before the occurrence of an ultimate cease-fire.

d. Building and Repair of Vital Infrastructure

A final precursor to a war-torn society's return to social and economic stability is the provision of basic infrastructure needs. The *Framework* appropriately asserts that infrastructure repair and building has been a "traditional area of strength"¹²⁵ for the IBRD. In fact, the bulk of the IBRD's post-conflict reconstruction efforts have come in the context of infrastructure support.¹²⁶ World Bank post-conflict infrastructure projects were developed by analogy to preexisting IBRD functions in the context of natural disasters.¹²⁷ Experience was also drawn from traditional infrastructure projects, conducted under normal development programs. Thus, the IBRD did not enter the sphere of infrastructure reconstruction via a sudden and profound institutional change; rather, its involvement grew gradually out of preexisting functions. Because the IBRD entered the field with transferable experience and expertise, emergency infrastructure repair and provision have been the World Bank's most successful post-conflict role.

Nevertheless, the *Framework* acknowledges that the World Bank's move into post-conflict infrastructure repair has not been without difficulty. It asserts that "the Bank's emergency guidelines were developed for a project-based response to natural disasters, not to the aftermath of intra-state conflicts[,] and thus represent an imperfect framework for response to post-conflict situations."¹²⁸ Post-conflict reconstruction is much more complex than that required in the aftermath of natural disasters because it must address a much wider scope of social and economic concerns.¹²⁹ While natural disasters tend to occur quickly and to harm physical infrastructure primarily, wars are prolonged, ravaging systems that may fairly be described as "social infrastructure," equally important to the restoration of normal, productive economic activity.¹³⁰

125. *FRAMEWORK FOR WORLD BANK RECONSTRUCTION*, *supra* note 1, at 14.

126. *Id.*

127. *Id.*

128. *Id.*

129. The *Framework* acknowledges the inadequacy of the Bank's traditional emergency project procedures. In 1997, the Bank's Operations Evaluation Department undertook a study to determine how the emergency procedure could be more effectively tailored to meet post-conflict needs. *Id.* at 26.

130. *Id.* at 14.

The World Bank has responded actively to both the physical and social aspects of infrastructure reconstruction. The most salient example has been the IBRD participation in the former Yugoslavia, where, for the first time in the Bank's history, its entire country portfolio has been administered under emergency procedures.¹³¹ When peace was established in Bosnia and Herzegovina, the World Bank set out numerous infrastructure-related objectives, among which were to restore energy service to local communities, to build and repair roads and bridges, to restore water and sewage services, and to construct health and educational facilities where needed.¹³² Since early 1996, the Bank has undertaken or completed many of those projects,¹³³ investing approximately US\$400 million in the region.¹³⁴ Similar rebuilding of infrastructure has occurred in Croatia since the establishment of peace.¹³⁵

The greater World Bank involvement in infrastructure repair has not been limited to the former Yugoslavia. Almost every World Bank reconstruction scheme has focused largely on the needs of vital infrastructure repair, particularly the provision of transportation, energy, and adequate water supply.¹³⁶ Such

131. *Id.*

132. See The World Bank Group, *Reconstruction of Bosnia and Herzegovina: Priorities for Recovery and Growth* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/extme/bhgen.htm>> (on file with the *Fordham International Law Journal*).

133. Examples of IBRD activity in infrastructure repair include rebuilding roads, railways, schools, hospitals, and bridges and restoring energy and water supplies. See The World Bank Group, *Rebuilding Bosnia to Hit Stride in 1997* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/extme/1229.htm>> (on file with the *Fordham International Law Journal*); The World Bank Group, *World Bank Approves Three Reconstruction Projects for Bosnia* (visited Nov. 4, 1998) <<http://www.worldbank.org/html/extdr/extme/1206.htm>> (on file with the *Fordham International Law Journal*); The World Bank Group, *World Bank Approves US\$50 Million to Repair More Schools and Highways in Bosnia and Herzegovina* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/extme/1460.htm>> (on file with the *Fordham International Law Journal*) [hereinafter *IBRD Repair of Bosnian Schools*].

134. See *IBRD Repair of Bosnian Schools*, *supra* note 133.

135. See The World Bank Group, *World Bank Helps Croatia Reconstruct Transportation Routes and Clear Mines* (visited Nov. 18, 1998) <<http://www.worldbank.org/html/extdr/extme/1176.htm>> (on file with the *Fordham International Law Journal*).

136. An extended report of IBRD operations is beyond the scope of this Article. For examples of Bank programs in individual countries, however, the IBRD internet site provides country profiles on-line. See, e.g., The World Bank Group, *Georgia* (visited Apr. 4, 1998) <<http://www.worldbank.org/html/extdr/offrep/eca/geocb.htm>> (on file with the *Fordham International Law Journal*); The World Bank Group, *Cambodia* (visited Apr. 4, 1998) <<http://www.worldbank.org/html/extdr/offrep/eap/cmbcb.htm>> (on file with the *Fordham International Law Journal*).

needs are obvious precursors to social stability and economic growth, and the World Bank has aptly focused substantial attention upon them. The Bank has also extended its programs to address many of the social needs that follow closely upon the building of infrastructure, providing technical and administrative counseling essential to the proper operation of public works.

Although the Bank has performed relatively well in the infrastructure context, there remains potential for improvement. The problems of donor support and coordination, response time, ground expertise, and interagency cooperation have inhibited the IBRD less in the context of infrastructure repair than in other contexts, but these problems have not been eliminated. Financing is still limited and imperfectly coordinated, succor is still delayed by procedural inefficiencies, World Bank personnel are still not prepared enough to achieve optimal efficacy in the field, and the Bank still faces inefficiencies and conflicts with other engaged agencies. These obstacles and the solutions prescribed by the *Framework* are reviewed in the ensuing sections.

3. Donor Support and Coordination

Some of the first major reconstruction hurdles addressed in the *Framework* relate to problems of donor support and coordination.¹³⁷ The *Framework* cites several major problems: first, donors typically prefer bilateral contributions, which fragments assistance and leads to problems with coordination.¹³⁸ Second, the earmarking of aid leads to disproportionate funds being channeled toward a narrow range of some activities and an underfunding of others.¹³⁹ Third, bureaucratic approval and procurement procedures often create substantial time delays between pledges and receipts of funds.¹⁴⁰ Finally, donor support is often less forthcoming once a conflict has receded from the popular media, creating problems with later-phase reconstruction activities.¹⁴¹ The *Framework* notes that a number of efforts have

137. Hampson, *supra* note 12, at 714; FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 7.

138. Rwanda, for example, attracted seven U.N. agencies, myriad bilateral donors, and over 200 NGOs, resulting in extreme confusion and significant delay. Insufficient coordination on the ground, and low participation of home-country donors, are related problems. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

been made internationally to increase aid coordination.¹⁴² None of these initiatives, however, has provided a sound response to the specific problems encountered in funding.

The *Framework* suggests means by which greater donor coordination could be achieved. First, it properly asserts the need for increased Bank leadership in inter-agency cooperation. It also appropriately recommends that “[c]oordination should not wait until program implementation, but should begin from the earliest efforts at needs assessment and planning.”¹⁴³ Finally, it proposes a “blueprint for reconstruction” to be used in each post-conflict setting.¹⁴⁴ A blueprint would delineate the roles of various participants and arrive at a pooling agreement for solicited funds.¹⁴⁵ The *Framework’s* recommendations are strong and should be duly considered. Even if reduced to practice, however, they would not solve all of the problems of donor coordination. The following section discusses those problems in turn.

The first difficult problem for the Bank to address will be nations’ preference for bilateral aid, which results in a high level of fragmentation and difficulty in coordination. The optimal international solution may be to create a new division within the World Bank to act as a central global “depository”¹⁴⁶ for bilateral reconstruction aid. The assistance of the United Nations, non-governmental organizations (“NGOs”), and recipient nations is critical in this respect, as each must accept and promote such an arrangement. Under the proposed system, “deposits” made with the World Bank would not be denominated as Bank funds; nations would not, by “depositing” with the World Bank, be supporting its programs.¹⁴⁷ Rather, the Bank would simply be the coordinating agency through which disbursements take place.

142. *Id.*

143. *Id.* at 26.

144. *Id.* The “blueprint for reconstruction” could include a rapidly-disbursed trust fund, administered by the Bank with unified authorization and payment policies. The *Framework* cites the examples of the Bosnia and West Bank/Gaza trust funds as examples. *Id.*

145. *Id.* A recent example was the interagency task force in Angola, whose heads were jointly appointed by the United Nations, the IBRD, and the IMF and charged with donor and agency coordination. *Id.*

146. Although the terms “deposit” and “depository” are used, they are not meant to connote the legal relationship that typically exists between a bank and its clients.

147. Thus, a country that wished to support a World Bank initiative, but also to grant direct foreign aid, could do so through separate departments in the Bank.

The use of the World Bank as an "aid depository" would create substantial additional work within the IBRD, as an entire new department would be required to administer the flow of funds. The returns in economic efficiency enjoyed by the international aid community, however, would almost certainly be substantial. Agencies would be able to establish "accounts" into which bilateral funds were "deposited," thus avoiding administrative confusion and allowing the World Bank, a body with paramount financial expertise, to monitor funds. The coordination of aid financing by the World Bank would thus create economies of scale, as fund coordination for post-conflict operations could be centrally administered.¹⁴⁸

Although the foregoing proposal would mark new territory for the IBRD, its experience managing trust funds and similar instruments should be largely transferable. The new World Bank department would be a much-needed financial analog to the U.N. Department of Humanitarian Affairs (the "UNDHA"), set up by the United Nations in 1992 to coordinate U.N.-mediated relief efforts.¹⁴⁹

In the likely event that the World Bank elects not to add the proposed division, it can address the problem of bilateral aid coordination by providing administrative advice to recipient nations. The World Bank could also encourage recipient nations to create temporary organizations similar to the one proposed above and provide technical assistance in its implementation. Finally, the World Bank should use influences available to it through the media and negotiating instruments, encouraging bilateral donors to consider multilateral fund coordination and consolidation.

The second problem encountered in fund coordination is the problem of earmarking by which donors specify the activities to which their contributions are directed. Earmarking creates numerous administrative and operational problems. It complicates the accounting and management of funds, and it results in the overallocation of funds to some projects and underallocation to others.¹⁵⁰ In addition, it restricts the discretion of World

148. Stremlau and Sagasti note that one of the principal challenges to contemporary reconstruction efforts is the absence of a lead coordinator analogous to the U.S. government under the Marshall Plan. Stremlau & Sagasti, *supra* note 3, ch. 2, ¶ 14.

149. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 7.

150. Donor support is inextricably linked to domestic political forces, which results

Bank staff in project implementation, as funds are only available in certain amounts for certain endeavors. Crises generating high coverage in the international media, such as those in the former Yugoslavia, the West Bank, and Gaza, inevitably receive much higher levels of donor support.¹⁵¹

Thus far, the World Bank and other international organizations have been unable to avoid earmarked funds, as donors frequently wish to assert some control over projects that they fund, and those funds are necessary to sustain reconstruction activities. There is no clear way for the World Bank to eschew earmarking without reducing its number of donors. The World Bank can continue to discourage "tied aid," but it is unlikely to be very successful in the short term. The best results will emerge from cooperation among international actors—it is incumbent on the entire peace-building community to demonstrate to donors the pitfalls of "tied aid." To that end, the World Bank should prepare and circulate a report detailing the estimated financial costs and project inefficiencies caused by earmarking. Donors must be made aware of the greater "returns" that they would realize without earmarking.

A third problem with donor support is linked to the World Bank's timing concerns. Bureaucratic approval processes and transaction procedures often delay funds for significant periods of time, when early-phase reconstruction is critical. The time frame in which sustainable peace-building can occur is sometimes brief, and money must be made available during or immediately after armed conflict.

The World Bank should address the problem of funding delays by formulating reconstruction projects during the initial stages of the peace process, when fighting is still occurring.¹⁵² Many of the World Bank's initial reconstruction activities, such as demining, resettlement, DRPs, and rebuilding of infrastruc-

in high funding for popular, politically supported projects. Reconstruction programs involving children's education may be more easily funded than those reintegrating ex-combatants, for example.

151. The Bank's major shareholders have provided much more financial support for Bosnia and Herzegovina and the West Bank and Gaza than they have for other conflicts. Therefore, the Bank has been encouraged to devote disproportionate levels of human and financial resources to those conflicts than others. Stremlau & Sagasti, *supra* note 3, ch. 2, ¶ 18.

152. See generally Nicole Ball, *The Challenge of Rebuilding War-Torn Societies*, in *MANAGING GLOBAL CHAOS* 607-22 (Chester A. Crocker et al. eds., 1996).

ture, can be largely foreseen during conflict. To the extent that conditions change, and as peace negotiations proceed, the IBRD plan can be updated. During that stage, the World Bank should solicit the necessary funds, allowing ample time before cease-fire for donors' bureaucratic processes to take place. Although as a practical matter some donors may not come forth with funds until later in the peace process, finances acquired in a timely manner can be applied to the Bank's initial programs.

Although the *Framework* does not specifically address the problem of early fund solicitation, its "new reconstruction framework" does include sound strategies to address the issue of timing. Those strategies, along with the *Framework's* ground operational recommendations, are the subject of the following discussion.

4. Timing, Preparation, and Operational Considerations

After highlighting problems with donor coordination, the *Framework* turns to additional key issues in reconstruction—timing, preparation, and field operations—and introduces its "new reconstruction framework," the most important contribution of the paper. The guidelines advanced in the new framework comprise the following: "(i) a framework for the timing and scale of Bank involvement in post-conflict countries, and (ii) a set of operational recommendations, which include new procedural guidelines from post conflict reconstruction activities."¹⁵³ Although the *Framework* asserts that the paper "largely consolidates recent Bank practice rather than breaking into new territory,"¹⁵⁴ that consolidation will prove invaluable in improving future Bank peace-building initiatives.

a. Timing and Preparation

Timing and preparation are the first subjects addressed in the "new framework," which details a multi-phase process. As discussed above, timing delays and lack of adequate preparation are obstacles to IBRD effectiveness in all of the major aspects of early-phase reconstruction.¹⁵⁵ The "new framework" addresses those obstacles by implementing two pre-involvement stages.

153. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 19.

154. *Id.*

155. See Ball, *supra* note 152.

The first pre-involvement stage entails the production of a "Watching Brief," a document designed to develop country understanding so that the Bank is prepared to act appropriately when feasible.¹⁵⁶ The IBRD will allocate modest financial resources to the maintenance of a Watching Brief in countries embroiled in conflict.¹⁵⁷ Coordination and consultation with the United Nations and NGOs will be an important tool in information gathering and cost reduction.¹⁵⁸ Watching Briefs will be updated continually to reflect country changes, and annual reports will be printed by the newly-established IBRD Post-Conflict Unit and circulated to relevant Bank personnel.¹⁵⁹

The "watching-brief stage" continues until "it becomes clear that there are opportunities for useful intervention."¹⁶⁰ Although the World Bank's language could be interpreted in more than one manner, a plain reading conveys the notion that the Bank should not move beyond the watching-brief stage until "useful intervention" is possible.¹⁶¹ This guideline undermines much of the usefulness of watching briefs because World Bank personnel are instructed not to create a plan of action until it can be implemented. As discussed above, preparing a plan and targeting funding before implementation is possible is the most certain means of reducing timing delays. Therefore, while Watching Briefs are an excellent means to prepare staff and to facilitate plan preparation, they should be replaced by fuller strategies early in the peace process.

The second phase of pre-involvement Bank procedure is to create a Transitional Support Strategy¹⁶² ("TSS"), which represents a fuller plan of action. When a clear possibility for useful intervention arises, World Bank regional staff will propose to the World Bank's Operating Committee ("OC") that a TSS be pre-

156. The explicit purposes of the watching brief are enumerated in the *Framework*. See FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 20.

157. *Id.* at 21. Funding for the watching-brief stage will only be necessary in those countries in which no Bank portfolio is active. *Id.* at 22.

158. Where possible, Bank personnel preparing Watching Briefs will work through agencies with local missions or representations. *Id.*

159. *Id.*

160. *Id.*

161. "During the watching brief period, judgments about the opportunities and risks associated with a higher level of activity would be updated continuously." *Id.* The *Framework* does not, however, suggest formulation of a comprehensive plan at the watching-brief stage.

162. *Id.*

pared.¹⁶³ Upon approval by the OC, with consultation of the Executive Directors, the TSS would commence, entailing a detailed assessment of country conditions and the formulation of a national recovery plan.¹⁶⁴ Once the World Bank regional staff prepare a full strategy for intervention, detailing risk analyses, plans for entry and exit, and prospective sources of finance,¹⁶⁵ the TCC will be presented to the OC¹⁶⁶ whose approval will depend upon three preconditions: "(i) there is sufficient indication that a sustainable cease-fire has been or will shortly be achieved, (ii) there is an effective counterpart for the Bank; [and] (iii) there is strong international cooperation with a well-defined role for the Bank."¹⁶⁷ Finally, the TSS will be forwarded to the executive directors for endorsement.¹⁶⁸

Like the concept of Watching Briefs, the TSS is a very well-conceived step in the Bank's pre-reconstruction process. The *Framework* takes an important step in allowing the TSS to be approved by the OC before a sustainable cease-fire occurs. As argued above, however, the TSS should be designed before country conditions are ripe for intervention.¹⁶⁹

Part of the World Bank's difficulty in the timing of post-conflict reconstruction programs relates to the complex nature of post-Cold War conflict and thus lies somewhat beyond its control. Early-phase activities theoretically can take place at any time between the initiation of armed conflict and the restoration of basic levels of political and social stability required for sound development. Within that time frame, a war is waged, an ultimate cease-fire occurs, and myriad preliminary rebuilding steps are taken. The prolonged ebb and flow of emerging-world con-

163. Funding for this part of the Bank's work in post conflict countries will be "explicit in the administrative budget." *Id.*

164. The formulation of a national recovery plan will not lock the IBRD into action. Each plan will include "*contingency plans* for exit or down-scaling of initiatives," which will consider factors such as the likelihood of resumed conflict, financial risks, and loss of international support for the program. *Id.* at 21-22 (emphasis in original).

165. The *Framework* asserts that, where possible, funding for Transitional Support Strategies should arise from Bank instruments. Institutional Development Fund grants, IBRD loans and credits, and Social Funds are all possible avenues of finance. When no stable government counterparty exists, trust funds or similar instruments may be chosen. *Id.*

166. *Id.* at 21.

167. *Id.* at 22.

168. *Id.*

169. See *supra* note 161 and accompanying text.

flicts, however, makes it difficult for the Bank and others to reliably predict when a sustainable peace accord will be signed. World Bank involvement should sometimes occur during conflict, as areas are liberated.¹⁷⁰ In other surroundings, involvement is not feasible until after a cease-fire is successfully held.

The *Framework* instructs World Bank personnel to commence “early reconstruction activities” once the TSS is approved by the OC and endorsed by the Executive Directors of the World Bank. Such activities include the four major tasks identified above: demobilization, demining, resettlement of displaced persons, and repair of vital infrastructure. Those activities are followed by “larger-scale operations,” including “physical reconstruction, economic recovery, institution building, and social reintegration.”¹⁷¹ The *Framework* appropriately does not attempt to create a bright line between early and later-phase reconstruction activities. In each country, the process of reconstruction must evolve in response to specific needs.¹⁷² The *Framework* offers little guidance as to how such affairs should be conducted, except to emphasize the need to be “flexible and modular,” amending programs as country conditions change.¹⁷³

As the reconstruction process continues, the IBRD can gradually resume “normal operations,”¹⁷⁴ which constitute the Bank’s traditional development projects.¹⁷⁵ Again, the *Framework* provides little specific guidance, asserting the importance of tailoring Country Assistance Strategies (“CAS”) to the particular

170. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 22.

171. *Id.* at 24.

172. The specific needs that arise will clearly differ among post-conflict nations. Carbonnier asserts: “from existing country case studies, it is obvious that the key issues facing war-torn societies as they start rebuilding their economies vary greatly from case to case.” Gilles Carbonnier, *Conflict, Postwar Rebuilding and the Economy: A Critical Review of the Literature*, WSP Occasional Paper No.2 (1998), ch. 3, § 1 (visited Nov. 18) <<http://www.unrisd.org/wsp/pop2/pop2-05.htm>> (on file with the *Fordham International Law Journal*).

173. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 25.

174. *Id.*

175. Late-stage IBRD reconstruction activities are presently underway in many countries, and the World Bank has acquired substantial experience in their implementation. To a large extent, such programs are analogous to the World Bank’s traditional development functions, and World Bank expertise is often transferable. Although late-stage activities are important aspects of peace-building, they occur at a stage of stability in which the Bank already functions well. Therefore, a prolonged discussion of such activities is beyond the scope of both the *Framework* and this Article.

needs of post-conflict societies.¹⁷⁶

b. Operational Considerations

After providing a time-line for reconstruction activity, the *Framework* turns to operational recommendations. The recommendations are uniformly well-directed and should contribute to enhanced efficiency if implemented. They are conservative, however, and the World Bank should consider more aggressive operational changes and additions if its impact is to be maximally effective.

The *Framework's* first recommendation is to increase IBRD field presence, which is essential to effective coordination with host countries and other organizations. Field presence is also necessary if the World Bank is to respond flexibly to country changes. The *Framework* suggests strengthening resident missions, setting up field offices, and delegating authority to field managers in post-conflict situations.¹⁷⁷ The costs and security concerns of setting up offices may be substantial, and the IBRD should consider moving into post-conflict settings with other agencies. Occupying adjacent space may facilitate interagency coordination, promote information transfer, and reduce some fixed costs, especially those related to security.

Linked to the need for field presence is the need for field expertise.¹⁷⁸ The Bank established a Post-Conflict Unit¹⁷⁹ in July 1997, which should function to consolidate learning about post-conflict intervention. Expertise clearly needs to be improved both in central Bank management and among field staff.¹⁸⁰ The *Framework* concedes that “[t]he [former] *ad hoc* arrangement of pulling in the available expertise to respond to each individual situation [was] not working satisfactorily . . . the Bank has not yet

176. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 25. Sustainable development, like late-stage reconstruction, is indisputably important to the overall maintenance of the peace, but its discussion exceeds the bounds of this Article.

177. The *Framework* recommends setting up offices within the post-conflict when possible. If security concerns are too great, an office in the nearest safe location is acceptable. *Id.*

178. Stremlau & Sagasti, *supra* note 3, ch. 1, ¶ 44.

179. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 28. The Post-Conflict Unit is currently in a trial period of three years.

180. “A broad consensus prevails among scholars that postconflict reconstruction cannot succeed unless the root causes of war are correctly understood and addressed.” Carbonnier, *supra* note 172, ch. 3, § 2.

fully understood the range of problems involved in rehabilitating societies which have so totally collapsed."¹⁸¹

The Post-Conflict Unit is charged with a large range of responsibilities: to provide a focal point for coordination with other agencies involved in reconstruction; to help Bank staff benefit from internal and external research on reconstruction; to provide Bank staff with expertise regarding demining, DRPs, and resettlement; to maintain multi-sectoral expertise to back up country teams; to organize missions to countries emerging from conflict; to participate in the design of reconstruction programs; to oversee the preparation of Watching Briefs; to disseminate analyses and information on reconstruction issues and practice via a database, internet site, and other means; to coordinate studies and hold seminars for World Bank staff; to serve as the Secretariat for World Bank-wide issues of reconstruction; to monitor implementation of policies and procedures, reporting to IBRD senior management; and, among still further tasks, to prepare an annual report.¹⁸² Although the creation of the Post-Conflict Unit may improve World Bank understanding of post-war issues, it is staffed by only three World Bank employees and "a couple of consultants."¹⁸³ Given the complexity of issues involved in reconstruction, the number of countries emerging from conflict, and the need for rapid improvement of an inadequate institutional knowledge base, the IBRD Post-Conflict Unit cannot be expected to perform all of its specified functions efficaciously—three staff members cannot respond to the demands of dozens of nations emerging from complex social, political, and military conflict. Ironically, the *Framework* advances the preceding list of functions as designed to ensure that the Post-Conflict Unit's work would not expand beyond its capacity.¹⁸⁴ If the World Bank is to be effective in reconstruction, meeting both the terms of its charter and the needs of post-Cold War reconstruction, it must dedicate significantly expanded resources, human and financial, to the unit.¹⁸⁵

The *Framework* also recommends an increase in expertise at

181. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 28.

182. *Id.* at 29.

183. *Id.* at 28.

184. *Id.*

185. The funds devoted to the Post-Conflict Unit are "modest" at present. For example, Watching Briefs are projected to consume only 0.5 to 1.0 staff person-year,

the levels of regional and country teams.¹⁸⁶ It recommends using World Bank resources to increase the size of country teams and recommends the cooperation between country teams to achieve regional expertise.¹⁸⁷ While both of these prescriptions are sound, the World Bank has yet to take substantial steps toward their achievement. In addition, the *Framework* says little about the use of local resources, NGOs, and relief organizations to assist field staff in gaining expertise. Undoubtedly, inter-agency seminars and discussions in the field will prove mutually beneficial if implemented.

The *Framework*'s second major operational recommendation is to forge strong partnerships with U.N. departments, NGOs, and relief agencies.¹⁸⁸ In the past, the problems of conflicting and overlapping mandates have plagued reconstruction efforts.¹⁸⁹ The World Bank should assist NGOs and local organizations in coordinating their programs, and such organizations should help the Bank by providing a nexus between the IBRD and specific local communities.

With regard to relief agencies, the *Framework* makes a slightly misguided recommendation that "[a]s a development agency, the Bank's main contribution in this area is likely to be in helping to close the 'gap' between relief and development."¹⁹⁰ Thus, the *Framework* again asserts the primacy of the World Bank's development mandate. In so doing, it creates a concept by which the World Bank is on one side of the "gap," and the relief agencies are on the other. In fact, as a reconstruction agency, the World Bank should fully span that gap, not simply minimize it. The *Framework* proceeds to describe a vision whereby relief agency programs are gradually supplanted by those of the World Bank,¹⁹¹ another indication that the IBRD perceives a discrete step between relief and reconstruction.¹⁹²

and the cost of planning and assessment of a reconstruction program is estimated at only US\$750,000. Stremlau & Sagasti, *supra* note 3, ch. 2, ¶ 3.

186. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 27-28.

187. *Id.*

188. *Id.* at 25.

189. For a discussion of the problems of inter-agency coordination, see *infra* Part IV.D.

190. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 25.

191. *Id.* at 26.

192. The *Framework* asserts that "it is likely that relief will continue to be needed during at least part of the reconstruction period." *Id.* at 26-27.

Such a vision undermines effective cooperation and places an artificial barrier between activities that are inextricably tied.¹⁹³

The *Framework* does not provide substantial guidance as to how inter-agency cooperation could be rendered more effective. Several proposals above, such as field operation in adjacent space, inter-agency training seminars, and greater central funding and operational coordination, would have the effect of increasing collaboration. A more detailed discussion of the problem of inter-agency collaboration can be found in Part IV of this Article.

5. Risks to the Bank

Another consideration for the World Bank discussed in the *Framework* is the increased risk associated with post-conflict involvement.¹⁹⁴ In a post-conflict setting, the probability of operational setbacks is greatly magnified and the resulting risks present deterrents to IBRD intervention. The *Framework* divides the risks incurred by the Bank into three categories: security risks, financial risks, and reputational risks.¹⁹⁵

Security risks arise when World Bank personnel are stationed in a hostile local environment.¹⁹⁶ The *Framework* recommends a greater nexus between the IBRD and U.N. peacekeeping forces,¹⁹⁷ which is the most secure way to ensure additional protection for Bank personnel. Physical consolidation of agency reconstruction offices, suggested above, may also facilitate security for staff of the World Bank and other organizations.

Financial risks are posed by the possibility of renewed hostilities, high political and economic instability, donor financing shortfalls, and impediments to coordination on the ground due

193. The process of refugee resettlement is one example of a step that cannot be bifurcated along lines of relief aid and developmental reconstruction. An effective resettlement program requires the Bank to assume an intermediate role, providing quasi-relief and quasi-developmental functions, while working with the UNHCR and others. See *supra* Part II.A.2(c).

194. Nicole Ball provides a discussion of the types of increased risks faced by IFIs in post-conflict settings: "the risks of doing business [in postconflict countries] are much higher than in 'normal' developing countries." See Ball, *supra* note 152. They include the risks of renewed hostilities, shortfalls in donor financing based on repayment concerns, and physical dangers to IFI staff. *Id.*

195. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 30.

196. See Ball, *supra* note 152.

197. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 30.

to a weak host-country institutional framework.¹⁹⁸ Financial return to World Bank projects may suffer, and the World Bank may be forced to withdraw in certain cases. Although donor coordination and diversification of the World Bank's investment portfolio can avert some of this added risk, there is no way to eliminate risk entirely. Therefore, if the World Bank is to be a leading agency in reconstruction, it must incur financial risks that it has thus far been loath to assume.¹⁹⁹

Financial risks are linked to the World Bank's reputation, which has long relied on its stable rating as a AAA borrower. The IBRD understandably seeks to maintain the most credible international reputation possible. If the World Bank does not assist nations in reconstruction, however, it is nearly certain that other financial organizations will not effectively fill the void. The IBRD must therefore accept some level of "reputational" risk along with the financial risk incurred in peace-building.

The discussion of reputational risk in the *Framework* assumes a certain connotation of "reputation," one aligned with the World Bank's traditional development function. The World Bank has long placed great priority on its perceived financial stability, a feature that may be desirable in a development bank but can hinder the effectiveness and involvement of a reconstruction agency. The IBRD, as an organization with dual missions, must find an appropriate balance between its "reputational" goals in development and reconstruction, cognizant of its status as the most appropriate international reconstruction agency.

Ultimately, the World Bank's steadfast self-perception as a development agency may worsen its exposure to reputational risk. An open institutional admission of the World Bank's dual functions and account of the relative risks of development and reconstruction would enable donor countries to assess the World Bank's credibility fairly.²⁰⁰ Under the present scheme, the

198. *Id.*; see Ball, *supra* note 152.

199. Linarelli argues that the Bank and the IMF, as lenders, have a duty as normal banks would, to protect their lenders by avoiding certain high-risk projects. Linarelli, *supra* note 11, at 280-81. His argument, however, is incomplete; the IFIs can operate at any level of risk, provided that they properly disclose risk and that lenders accept those terms as inherent in reconstruction projects.

200. Stremlau and Sagasti note one problem that arises from the current fund-pooling system. When the Bank has difficulty raising donor support for high-risk post-conflict countries, IDA grants may be the only financing option. If grants are given preferentially to post-conflict countries, the Bank will find itself in the awkward position

World Bank essentially combines those risk pools but retains its label as a "development agency." Thus, it may suffer a reputational loss in the development field. The World Bank should reconsider its financial priorities, disaggregating its financial accounting when possible and more openly dealing with the risks imposed by heightened post-conflict involvement.²⁰¹

6. Dealing with a Reliable Counterparty

A penultimate concern in post-conflict reconstruction, and one discussed in the *Framework*,²⁰² is finding a reliable counterparty with whom to deal. In many cases, especially those involving civil conflict, a stable and functioning government does not exist during or immediately after war. Peace accords often include an agreed procedure for elections, but there is often a significant time lapse between a cease-fire and the point at which election winners have reliably settled into office. During that time, it is essential for the World Bank to begin reconstruction processes, so that when elections conclude the victors have a reasonable opportunity to build peace and confidence among the people.

The World Bank traditionally dealt only with member governments in power, using a *de facto* definition of governance.²⁰³ That practice grew out of an interpretation of Article III, § 2 of the IBRD Articles of Agreement, which reads: "Each member shall deal with the Bank only through its Treasury, central bank, stabilization fund or other similar fiscal agency, and the Bank shall deal with members only by or through the same agencies."²⁰⁴ Membership to the World Bank is limited to members of the IMF,²⁰⁵ and the Fund limits its membership to coun-

of effectively rewarding conflict. Stremlau & Sagasti, *supra* note 3, ch. 2, ¶ 17. Such competition for funds is another reason why the Bank should more explicitly separate its functions.

201. Ball argues that "standard economic benchmarks . . . will have to be fundamentally altered, if the immediate objective is reconstruction rather than development." Stremlau & Sagasti, *supra* note 3, ch. 2, ¶ 5 (citing Ball, *supra* note 152).

202. FRAMEWORK FOR WORLD BANK RECONSTRUCTION, *supra* note 1, at 12-13.

203. "The crux of this policy is that the Bank does not make political choices but is guided by the actual situation (who is in effective control) and the general recognition of the international community." *Id.* at 13.

204. *IBRD Articles of Agreement*, *supra* note 30, art. III, § 2.

205. *Id.* art. II, § 1.

tries.²⁰⁶ Therefore, Article III, § 2 of the IBRD Articles of Agreement was interpreted as limiting the Bank to dealing with agents of empowered national governments.

The language of the provision, however, does not specifically limit the World Bank to formal organs of government because a "similar fiscal agency" need not be interpreted as an agency of a functioning central government. The *Framework* presumably adopts that interpretation, as it suggests that "there may be opportunities to work with sub-national units, NGOs or regional organizations even before the formation of a national government."²⁰⁷ The World Bank may also enter a country with no functioning government, provided no loans are involved, at the request of the United Nations or other international bodies.²⁰⁸ IDA grants are also theoretically possible,²⁰⁹ although they have not been implemented absent a functioning government. Any World Bank action in the absence of a functioning government, however, must be approved by the IBRD Executive Board with all World Bank members represented, making it procedurally difficult.

The World Bank has used a variety of means to deal with countries that are not yet members or that have no functioning government. To address problems in Eritrea, the Bank loaned money to Ethiopia, which in turn loaned the money to Eritrea.²¹⁰ In the West Bank and Gaza, loans to a non-member were justified on the basis that assistance was warranted "for the benefit of members."²¹¹

Trust funds offer the most promising route to intervention in non-members or nations without functioning governments.²¹² The World Bank can manage a trust comprised of contributions from member nations and disburse those funds without classifi-

206. See *IMF Articles of Agreement*, *supra* note 47, art. II, § 1-2.

207. *FRAMEWORK FOR WORLD BANK RECONSTRUCTION*, *supra* note 1, at 13.

208. *Id.* at 13.

209. *Id.* at 12-13.

210. *Id.* at 12.

211. *Id.* at 12 n.5. Bosnia and Herzegovina also received assistance, funded by the Netherlands, prior to membership once its intention to become a member was known. *Id.* at 13 n.6.

212. For a brief description of World Bank trust funds and how they are used, see The World Bank Group, *Trust Funds* (visited Apr. 25, 1998) <<http://www.worldbank.org/html/extdr/faq/fall9755.htm>> (on file with the *Fordham International Law Journal*) [hereinafter *IBRD Trust Funds*].

cation as a "Bank program." Thus, shareholder interests and World Bank credit is not at stake, and if the trust fund pays for its administrative costs, then it can be used to finance projects in nations with whom the World Bank could not ordinarily deal. A trust fund for the former Yugoslavia was used in this manner during the period before Bosnia and Herzegovina became a member.²¹³

Although trust funds and other World Bank remedies do not entirely cure the difficulty faced in states without stable governments, they provide ways to obviate the traditional charter restrictions. The ultimate limiting factor in World Bank involvement in "stateless societies" is therefore the risk that they pose, not the formal absence of a counterparty.

7. The Crisis of Emerging-World Debt

A final consideration for the World Bank in post-conflict intervention, and one shared by all international financial institutions, is the crisis of emerging-world debt. Many of the countries emerging from conflict bear unwieldy amounts of debt to IFIs, private lenders, and other nations. That debt frequently precedes conflict, worsens during war, and leaves a demolished nation with unrealistic repayment obligations. The *Framework* cites the problem and suggests that debt rescheduling is often necessary in post-conflict countries, but it does not offer a thorough discussion of the debt crisis.²¹⁴

The statistics on debt are daunting. Between 1980 and 1995, the debt of nearly every developing nation increased substantially.²¹⁵ Many nations must service an external debt that exceeds Gross National Product.²¹⁶ Some of the most severely indebted countries include Mozambique, Tanzania, Malawi, Sierra Leone, Nicaragua, Guinea-Bissau, Angola, and the Congo, most of which have experienced some form of civil or international

213. Once Bosnia and Herzegovina stated an intention to become a member of the Bank, additional funding for emergency reconstruction programs were drawn from the Bank-administered Policy and Human Development Fund. THE WORLD BANK, ANNUAL REPORT 1997, at 126 (1997) [hereinafter *IBRD ANNUAL REPORT 1997*].

214. *FRAMEWORK FOR WORLD BANK RECONSTRUCTION*, *supra* note 1, at 9.

215. See THE WORLD BANK, *WORLD DEVELOPMENT REPORT 1997: THE STATE IN A CHANGING WORLD* 246 (1997).

216. *Id.*

conflict in recent years.²¹⁷

The debt crisis poses a major obstacle to World Bank post-conflict intervention. If a nation has not cleared its arrears to the IFIs and Paris and London Club creditors, it poses a heightened risk to the World Bank as its ability to repay loans is doubtful. In such cases, the Bank often chooses not to participate until a suitable workout and rescheduling of debt have occurred. Even when debt is rescheduled, reconstruction programs add further debt to borrowing nations. Loans are therefore not ideal funding for many post-conflict initiatives.

The IBRD and IDA are both authorized to make direct grants,²¹⁸ which are clearly of great preference to recipient nations. When feasible, they should be preferentially applied to post-conflict societies or others whose economic well-being is essential to maintenance of the peace. The availability of grants is limited,²¹⁹ however, and they are consequently not a panacea for the debt crisis. The IBRD and IDA most commonly use loan-based financing for operations in post-conflict and other countries.²²⁰

Trust funds provide the most promising form of finance for some highly-indebted countries.²²¹ The World Bank currently operates over US\$1 billion in trust funds, several of which have contributed grants to post-conflict reconstruction efforts.²²² Those funds combine the resources of the World Bank and donor countries, primarily funding debt relief, technical assistance

217. In 1995, external debt as a percentage of GNP for some of the world's most heavily indebted nations was as follows: Nicaragua (590%), Mozambique (444%), Congo (366%), Guinea-Bissau (353%), and Angola (275%), and Ivory Coast (252%). *Id.*

218. The *IBRD Articles of Agreement* do not provide for grants, but they have been permitted through interpretation when they are drawn from net income. The IDA likewise has no charter mandate for grants but has added them by special resolution. See *FRAMEWORK FOR WORLD BANK RECONSTRUCTION*, *supra* note 1, at 8 n.3.

219. The IBRD transferred over US\$1 billion out of net income in 1997, including a US\$150 million transfer to the Trust Fund for Bosnia and Herzegovina, a US\$140 million transfer to the Trust Fund for Gaza and West Bank, and US\$500 for the HIPC Debt Initiative Trust Fund, discussed *infra*. See *IBRD ANNUAL REPORT 1997*, *supra* note 213, at 213-14. Nevertheless, such grants pale beside the US\$106 billion of outstanding Bank loans. *Id.* at 191.

220. Many post-conflict countries already have large outstanding loans from the IBRD and the IDA. For a table that summarizes the Bank's outstanding loans to member nations, see *id.* at 190-91.

221. See *IBRD Trust Funds*, *supra* note 212.

222. See *IBRD ANNUAL REPORT 1997*, *supra* note 213, at 125-26.

programs, and IBRD activities related to loan facilities.²²³

One of the trust funds set up in 1997 was a joint World Bank and IMF fund to help relieve the debt of some of the world's poorest nations. The Initiative for Heavily Indebted Poor Countries ("HIPC") is designed to alleviate debt burdens by distributing from the HIPC Trust Fund and the IDA grant window to qualifying nations.²²⁴ The HIPC program has recently been used to grant US\$3 billion of debt relief to Mozambique and US\$250 million to Mali, which became the seventh nation to benefit from the HIPC.²²⁵ The HIPC has relieved over US\$6 billion of debt to date.²²⁶ The HIPC initiative is an excellent start to remedy the problem of emerging-world debt. It is important to note, however, that the World Bank must devote more resources to debt reduction if it is to attack the problem of debt in post-conflict countries effectively.²²⁷

B. Review of IMF Programs

As an agency without a specific legal mandate to carry out reconstruction functions, the IMF does not have a charter-prescribed role in post-conflict settings.²²⁸ Nevertheless, in October 1995, following the lead of the World Bank, the Executive Board of the IMF approved a Post-Conflict Emergency Assistance program to bolster the IMF's activity in postwar nations.²²⁹ The program, an extension of a previous emergency assistance program

223. *Id.* at 124.

224. *Id.* at 2; see Tony Addison, *Ways to Make a Real Difference in Africa*, INT'L HERALD TRIB., Apr. 2, 1998, at 6. There are currently 41 nations classified as Heavily Indebted Poor Countries ("HIPCs") under the program. However, any nation meeting the program's eligibility criteria may receive assistance. To receive HIPC assistance, a nation must: (1) be eligible for concessional assistance from the IMF and IBRD, (2) face an unsustainable debt burden, and (3) establish a track record of sound reform policies through IFI-supported programs. See *Debt Initiative for the Heavily Indebted Poor Countries (HIPCs)* (visited Nov. 15, 1998) <<http://www.imf.org>> (on file with the *Fordham International Law Journal*).

225. See *Debt Initiative for the Heavily Indebted Poor Countries (HIPCs)*, *supra* note 224.

226. *Id.*

227. U.N. Secretary-General Kofi Annan has stressed the importance of IFI debt forgiveness programs as a means to build lasting peace. See *Report by Annan Causes, Cures of Africa Conflict*, *supra* note 20.

228. For a discussion of the charter provisions of the IMF and its lack of mandate for postwar reconstruction, see *supra* Part I.

229. International Monetary Fund, *IMF Involvement in Post-Conflict Countries* (visited April 2, 1998) <<http://www.imf.org/external/np/exr/facts/confl.htm>> (on file with the *Fordham International Law Journal*) [hereinafter *IMF Post-Conflict Involvement*].

covering natural disasters, has made expedited financial support available to post-conflict countries.²³⁰

The IMF Post-Conflict Emergency Assistance program is designed to restore macroeconomic stability to a nation and to catalyze balance-of-payments support from the international community.²³¹ To be eligible for the program, a country must meet four qualifying conditions: there must be an urgent balance-of-payments crisis, the country must have a highly disrupted "institutional and administrative capacity," the country's authorities must make a commitment of cooperation, and a concerted international reconstruction effort must be underway.²³² The final criterion, that a concerted international effort be underway before IMF involvement, displays the reluctance of the Fund to take a leading initial role in reconstruction.

A country that meets the IMF criteria for emergency assistance is first granted technical assistance and policy advice regarding issues of macroeconomic concern.²³³ In the second phase of the program, financial support is provided via traditional IMF loan and credit facilities. Since its inception, the Post-Conflict Emergency Assistance program has been employed in six countries: Bosnia and Herzegovina,²³⁴ Rwanda,²³⁵ Alba-

230. In countries requiring urgent balance-of-payments support, the IMF has provided funds within six to 12 months after the cessation of conflict. Timing has hinged upon several factors, such as the restoration of political stability, the formulation of an appropriate economic program, the mobilization of donor support, and sometimes the clearances of arrears by the host country. *Id.*

231. *Id.*

232. For a more detailed account of the criteria for assistance under the IMF's Post-Conflict Emergency Assistance program, see *IMF Assistance to Post-Conflict Countries* (visited Nov. 14, 1998) <<http://www.imf.org>> (on file with the *Fordham International Law Journal*).

233. Technical assistance has focused on fiscal, monetary, and exchange issues, as well as the effective collection of economic statistics. Policy advice has concentrated upon the preparation of sound budgets, quick-yielding revenue measures, and the establishment of sound monetary and exchange institutions. *Id.* All such assistance and advice is vital to the restoration of economic growth and the efficacious use of external aid.

234. On December 20, 1995, less than a week after signing the Dayton Peace Accords, Bosnia and Herzegovina succeeded to the membership of the former Yugoslavia in the IMF. On the same day, it became the first recipient of IMF emergency post-conflict assistance, drawing approximately US\$45 million to rebuild infrastructure and further political and economic integration. The IMF program has provided technical assistance in a number of areas, including the creation of a new central bank, fiscal planning, and tax reform. *Id.*

235. Since April 1997, Rwanda has twice received IMF credits under the Emer-

nia,²³⁶ Tajikistan,²³⁷ the Republic of Congo,²³⁸ and most recently, Sierra Leone.²³⁹

III. CONDITIONALITY

Conditionality programs are a second major means by which IFIs can increase their influence in the peace-building process. By making IFI financial assistance contingent on specified criteria, conditionality programs have used the substantial leverage of the IFIs to bring about a wide range of economic, legal, and other reforms. Traditionally, conditionality programs have predominantly targeted economic policies that are deemed essential for macroeconomic stability or economic growth. Through the course of their history, however, IFI conditionality has broadened to effect a wide range of social and legal reforms

gency Assistance program, totaling approximately US\$20 million. IMF funds have been applied to resettlement programs and economic rehabilitation. An IMF-coordinated technical assistance program has also been instrumental in the resumption of activities of the National Bank of Rwanda and has contributed to budgetary planning, gathering of macroeconomic data, and revenue administration. *IMF Gives Rwanda Credit*, AFR. NEWS, Jan. 6, 1998; *IMF Approves Second Loan for Rwanda*, L.A. TIMES, Dec. 13, 1997, at A10.

236. On November 7, 1997, the IMF approved an additional credit under the Post-Conflict Emergency Assistance program, as Albania drew approximately US\$12 million. *IMF Okays Emergency Post-Conflict Aid to Albania*, XINHUA NEWS, Nov. 7, 1997. The principal goals of the program are to effect disinflation of the lek, to contain Albania's budget deficit, and to resume economic growth. IMF advice has been instrumental in tax, banking, and budgetary reforms necessary to realize those objectives. *Albanian Lek Stable After Weathering the Worst*, FX MANAGER, Oct. 10, 1997, at 7; *IMF to Advance Emergency Funds in Reforms Go Ahead*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 5, 1997.

237. Emergency assistance was granted to Tajikistan in December 1997 and again in March 1998, as the IMF provided credits amounting to approximately US\$20 million. The credits were applied to Tajikistan's 1997-98 economic program, which tightened fiscal and monetary policies to reduce inflation and to stabilize the currency. See *IMF Assistance to Post-Conflict Countries*, *supra* note 232.

238. In July 1998, the IMF extended a credit of approximately US\$10 million to the Republic of Congo, supporting the government's 1998 economic program, which seeks to restore national security and to prepare the Congo for implementation of structural and administrative reform. See *IMF Approves Emergency Post-Conflict Assistance for the Republic of Congo* (visited Nov. 14, 1998) <<http://www.imf.org>> (on file with the *Fordham International Law Journal*).

239. Sierra Leone became the most recent nation to qualify for IMF emergency post-conflict assistance in November 1998. The program, which involves a credit of approximately US\$16 million, will be applied to restore fiscal imbalances and to restore relations with creditors, preparing Sierra Leone for sustainable development plans in 1999. See *IMF Approves Emergency Post-Conflict Assistance for the Republic of Sierra Leone* (visited Nov. 14, 1998) <<http://www.imf.org>> (on file with the *Fordham International Law Journal*).

as well. If properly applied, conditionality has the potential to function as an effective conflict-prevention measure, both before and during U.N.-mediated peace operations.

In the post-Cold War era, IFI use of "peace conditionality" has been increasingly advocated. "Peace conditionality" could entail making IFI financial assistance contingent upon a government's cooperation with its neighbors, compliance with international directives, or maintenance of the peace.²⁴⁰ U.N. Secretary-General Kofi Annan has advocated the use of "peace conditionality,"²⁴¹ as have numerous scholars²⁴² and organizations²⁴³ promoting international peace. Due largely to IFI reluctance to take "political" action, however, peace conditionality has yet to be widely implemented.

A. Origins

Conditionality began as a means to ensure the IMF's ability to provide short-term revolving liquidity to its member states.²⁴⁴ Conditions were thus designed to guarantee timely repayment, a factor perceived as critical for the success of the newly-created monetary system. After the collapse of the Bretton Woods monetary system in 1971, the IMF increasingly disbursed loans as a

240. The best example of "peace conditionality" to date occurred in Guatemala, where in May 1997, IMF Director Michael Camdessus publicly declared that the principal requirement attached to financial assistance was the timely implementation of peace accords signed in December 1996. Carbonnier, *supra* note 172, ch. 6.

241. See *Report by Annan: Causes, Cures of Africa Conflict*, *supra* note 20.

242. See, e.g., Robert Skidelsky & Edward Mortimer, *Economic Sanctions as a Means to International "Health,"* in STOPPING WARS BEFORE THEY START: PREVENTIVE DIPLOMACY 154, 171 (Kevin M. Cahill ed., 1996); Kevin M. Cahill, *Introduction to STOPPING WARS BEFORE THEY START: PREVENTIVE DIPLOMACY* 3, 13 (Kevin M. Cahill, ed., 1996) (referring to argument made by David Owen); Linarelli, *supra* note 11, at 269; Gilles Kepel & Andrew Pierre, *West Must Move to Stabilize War-Torn Algeria*, THE GLOBE & MAIL, July 18, 1996, at A15.

243. Both the Conflict Prevention Forum and the Carnegie Commission on the Prevention of Deadly Conflict advocate the use of conditionality to achieve goals related to the peace process. See, e.g., Conflict Prevention Forum, *A Guide: Costs and Causes of Conflict in the Greater Horn of Africa: Conditionality/Incentives for Conflict Prevention* (visited Nov. 18, 1998) <<http://www.caii-dc.com/ghai/toolbox10.htm>> (on file with the *Fordham International Law Journal*); Carnegie Commission on the Prevention of Deadly Conflict, *Promoting Democracy in the 1990s* (visited Nov. 18, 1998) <http://www.ccpdc.org/pubs/diamond/dia95_04.html> (on file with the *Fordham International Law Journal*).

244. IMF conditionality has been practiced since its early years, despite the fact that conditionality was never agreed to at the Bretton Woods Conference. It was not until 1969 that conditionality became embodied in the IMF Articles of Agreement. See JOHN SPRAOS, IMF CONDITIONALITY: INEFFECTUAL, INEFFICIENT, MISTARGETED 3 (1986).

form of development to poor countries, conditionality increasingly became a tool for reducing general "country risk," and the scope of IMF-targeted policies increased. In 1980, the World Bank, also heavily immersed in developing-world activities, began to use conditionality programs as well, responding to acute balance-of-payments crises in many of its borrowing countries.²⁴⁵ By the end of the Cold War, conditionality programs had expanded beyond the protection of short-term liquidity to address a wide range of economic, administrative, and arguably social policies.²⁴⁶ "Structural adjustment" via conditionality has become a dominant theme in international development.²⁴⁷

In principle, the IMF and World Bank do not exercise conditionality in areas that they deem "political" because the World Bank charter prohibits such involvement, as do historical policies of the IMF. For this reason, peace conditionality has yet to be acknowledged as a tool in peace-building.²⁴⁸ Politics and economics, however, cannot easily be separated in many emerging nations, and IFI "economic" considerations often have profound social and political impacts.²⁴⁹ Similarly, political developments, especially those that relate to peace, invariably have pronounced effects on economic development. Therefore, with an expansive definition of "economic considerations," IFI conditionality programs can enter the political and peace-building arenas.²⁵⁰

B. Criticisms of the Practice

Although the power of conditionality programs is clear, their effectiveness is widely disputed, especially in the context of peace-building. Several major criticisms have been made of IFI conditionality programs. First, many critics have argued that

245. See Ibrahim F. I. Shihata, *The World Bank and "Governance" Issues in Its Borrowing Members*, in *THE WORLD BANK IN A CHANGING WORLD* 53, 58 (Franziska Tschofen & Antonio R. Parra eds., 1991). At present, the World Bank's use of conditionality is functionally almost identical to that employed by the IMF. See Carreau, *supra* note 40, at 1999-2000.

246. See Cahn, *supra* note 44, at 160; Shihata, *supra* note 245, at 59 (asserting that "conditionality has thus evolved from macroeconomic measures to detailed reforms affecting the public administration itself"); Orford, *supra* note 8, at 465; Singer, *supra* note 25, at 5.

247. See Carreau, *supra* note 40, at 1996.

248. Stremlau & Sagasti, *supra* note 3, ch. 1, ¶ 19.

249. See Orford, *supra* note 8, at 459.

250. See Shihata, *supra* note 245, at 53.

stringent IMF and IBRD-imposed economic policies tend to destabilize emerging markets, leading to social and political upheaval, thus increasing the prospect of armed conflict.²⁵¹ Second, critics argue that conditionality is applied in a way that grossly oversteps the powers conferred in the IFI charters.²⁵² Third, critics fault the IFIs for implementing programs without proper regard for country conditions or consultation of local authorities, amounting to a form of neo-colonial governance.²⁵³ Fourth, IFI programs are criticized as too rigid, failing to allow for flexible application in changing economic and political settings.²⁵⁴ Finally, statistics suggest that conditionality does not, in fact, result in a reduction of credit risk for the Bretton Woods institutions.²⁵⁵ All of these factors have led emerging-world nations to resent and lack confidence in conditionality programs, which further impedes their effectiveness. Consequently, many disfavor the introduction of peace conditionality, which would represent an even greater extension of IFI influence in members' domestic affairs.

The first major criticism is that conditionality programs are too austere and actually destabilize emerging markets, economically and politically.²⁵⁶ In essence, those individuals opposed to

251. See *infra* notes 256-60 and accompanying text.

252. See *infra* notes 261-62 and accompanying text.

253. See *infra* notes 263-66 and accompanying text.

254. See *infra* notes 267-68 and accompanying text.

255. See *infra* note 269 and accompanying text.

256. See Orford, *supra* note 8, at 443. Orford argues that IMF and World Bank programs were significant contributing factors to the political destabilization in the former Yugoslavia, thus contributing to the outbreak of war. See *id.* Part II; see, e.g., Andrew J. Williams, *Economic Intervention by International Economic Organizations in Central and Eastern Europe: Will it Lead to More or Less "Security" for the Region?*, in *NEW FORMS OF SECURITY, VIEWS FROM CENTRAL, EASTERN, AND WESTERN EUROPE* 103, 109 (Pal Dunay et al. eds., 1995); Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War* 51-52 (1995); James Petras & Steve Vieux, *Bosnia and the Revival of U.S. Hegemony*, *NEW LEFT REV.*, July/Aug. 1996, at 10; Daniel C. Milder, *Foreign Assistance: Catalyst for Domestic Coalition Building*, in *THE WORLD BANK: LENDING ON A GLOBAL SCALE*, ch. 6 (Jo Marie Griesgraber & Bernhard G. Gunter eds., 1994).

For a contrary view, see SCOTT R. SIDELL, *THE IMF AND THIRD-WORLD POLITICAL INSTABILITY: IS THERE A CONNECTION?* 71 (1988). Sidell conducted a study of the relationship between conditionality and political instability and argues that the apparent association of the two variables can be explained by the "simultaneous existence of a variety of long-term structural economic problems, which, in and of themselves, tend to induce political instability." *Id.* Sidell argues that the media is somewhat responsible for the negative portrayal of IFI conditionality because its failures are disproportionately selected as newsworthy. *Id.*

conditionality programs contend that the needs of emerging nations, especially those on the brink of conflict, do not resound with the frugal spending caps and counter-inflationary policies forced upon them by IMF and World Bank structural adjustment programs.²⁵⁷ During fragile political periods, countries may need to indebt themselves in order to generate rapid economic growth and engender peace. In such situations, fiscal and monetary austerity often increases poverty and political unrest.²⁵⁸

Austere conditionality programs can effect political destabilization in two major ways. First, they can exacerbate economic conditions, leading to deflationary pressure, reduced national income, and the threat of unemployment.²⁵⁹ Economic frustration is inevitably related to popular confidence in and support of government, and that support is vital during periods in which there exists a threat to the peace. The second destabilizing effect of conditionality occurs when it forces economically-driven legal reform without proper regard to national politics.²⁶⁰ Constitutional and political reform designed to solidify long-term economic growth can upset delicate short-term political balances.

The second major criticism of conditionality is that it represents an overstepping of the legal bounds set forth in the IFI charters. Conditionality inheres somewhat in the nature of any lending operation, but the Articles of Agreement of the World Bank and IMF do not mandate the prescription of proper development policies, legal or constitutional reform for borrowing nations.²⁶¹ While the IFIs justify such intervention as economically justified means to reduce credit risk, many borrowers believe the

257. Haider Ali Kahn argues that the World Bank and the IMF are competent to deal with narrow issues of monetary and financial adjustment, but they lack an ability to integrate that competence into the complex social setting of emerging-world nations. Haider Ali Kahn, in *WORLD DEBT AND THE HUMAN CONDITION, STRUCTURAL ADJUSTMENT AND THE RIGHT TO DEVELOPMENT* 104 (Ved P. Nanda et al. eds., 1994). Consequently, IFI policies often have a negative impact on the social condition of borrowing nations. *Id.*

258. See Bartram S. Brown, *Developing Countries in the International Trade Order*, 14 N. ILL. U. L. REV. 347, 371 (1994).

259. Norman Girvan, *Empowerment for Development: From Conditionality to Partnership*, in *PROMOTING DEVELOPMENT: EFFECTIVE GLOBAL INSTITUTIONS FOR THE TWENTY-FIRST CENTURY* 23, 29 (Jo Marie Griesgraber & Bernhard G. Gunter eds., 1995).

260. See Orford, *supra* note 8, at 456-57.

261. Singer, *supra* note 25, at 7.

so-called "Washington Consensus"²⁶² represents a transgression of the IFIs' legal bounds, particularly with regard to their political activity prohibitions.

The third major criticism of conditionality, related to that above, has been the IFIs' perceived lack of concern for country specificity and failure to consult with host governments. Critics argue that profound differences between emerging economies are not adequately reflected in IFI conditionality plans, which assume a relatively standard, and often unrealistic, macroeconomic framework for nations.²⁶³ In addition, the IFIs are faulted for their failure to consult host governments, a fact that has several negative repercussions. This failure to consult host governments effectively disempowers national governments to take part in their country's peace-building and developmental process, a vital facet of a successful long-term program.²⁶⁴ Moreover, it reduces country specificity by failing to access an important source of local expertise and human capital.²⁶⁵ Finally, it engenders significant resentment and leads to the frequent accusation that conditionality represents a modern form of first-world extraterritorial governance.²⁶⁶

A fourth principal criticism of IFI conditionality programs has been their rigidity.²⁶⁷ Although economic and political situations can change rapidly in unstable nations, critics contend

262. The "Washington Consensus" is a term used wryly to refer to the broad-reaching policies imposed by IFIs. *Id.*

263. IFIs typically apply the so-called "neoclassical paradigm," which makes certain assumptions about economic governance that arguably do not hold in many emerging-world nations. See Girvan, *supra* note 259, at 29.

264. *Id.* at 30-31.

265. *Id.* at 24.

266. Jonathan Cahn asserts that "[t]he Bank holds that so long as governance issues are related to economic development, the Bank may impose conditions on governance. Bank critics complain that this policy allows the Bank to impose its economic agenda and political will on developing countries." Cahn, *supra* note 44, at 170. Conditionality is often resented by borrowing nations as a form of neo-colonialism. See Carreau, *supra* note 40, at 1997-98; PAUL B. STEPHAN III ET AL., *INTERNATIONAL BUSINESS AND ECONOMICS: LAW AND POLICY* 245-46 (1993). "Today much of the discussion about policy-based lending is subsumed under the new heading of 'governance'." Stremlau & Sagasti, *supra* note 3, ch. 3, ¶ 9. For a discussion of the concept of "good governance," under which the IFIs have advanced many of their conditionality programs in the 1990s, see generally *id.* ch. 3, ¶ 10-16.

267. IFI structural adjustment plans set rigorous and relatively inflexible macroeconomic policies in order for nations to draw down IFI facilities. See STEPHAN III ET AL., *supra* note 266, at 244-46; Brown, *supra* note 258, at 352.

that the IFIs do not allow for adequate flexibility in their programs. As a result, it is difficult for member countries to react to sudden developments without running afoul of their conditionality agreement. Stringent controls constrict a borrowing government and erode its capacity to manage the transition from conflict to peace.²⁶⁸

A final criticism of conditionality is that it does not effectively reduce the credit risk exposure to lending institutions. Although it is difficult accurately to determine the validity of such an argument, there is substantial evidence that IFI conditionality programs have had a high rate of failure.²⁶⁹ The failure of such programs can be largely attributed to the weaknesses discussed herein.

The result of the numerous problems with conditionality is that conditionality does not, at present, represent an ideal tool for the prevention of deadly conflict. Although the notion that IFIs should use their leverage toward peace-building is sound, the existing practice of conditionality is encumbered by too much emerging-world doubt and resentment to be feasibly advanced as a tool for peace. A suggestion for the revamping of conditionality, which would allow it to take on a greater function in peace operations, is provided below, along with other key proposals for IFI reform.

IV. CONCLUSIONS AND PROPOSALS FOR FUTURE GROWTH

As the foregoing discussions demonstrate, several obstacles continue to impede effective IFI involvement in peace operations. In order to overcome those barriers, this Article suggests several fundamental changes in IFI practice. First, the World Bank, IDA, and regional development banks must overcome their charter prohibitions on political involvement. Second, the IFIs must arrive at a novel conception of "reconstruction," moving from their ingrained focus on development to embrace the financial and operational requirements of post-conflict intervention. Third, the IFIs must dispense with conditionality, replac-

268. See WOODWARD, *supra* note 256, at 379.

269. According to a 1987 report prepared by the World Bank's Operations Evaluation Department, which performs audits of Bank-assisted projects, almost 60 percent of Bank projects were reported to have "serious shortcomings" or to be "complete failures." See OPERATIONS EVALUATION DEPARTMENT, WORLD BANK, THE TWELFTH ANNUAL REVIEW OF PROJECT PERFORMANCE RESULTS ¶¶ 1.16-1.19 (1987).

ing it with a less onerous, more cooperative means of economic and legal guidance. Finally, the IFIs must develop a lasting cooperation with the United Nations and other key agencies of the peace process. By carrying out the foregoing proposals, the IFIs would substantially improve their ability to provide timely, effective succor in international peace operations.

A. Amending the "Political" Activity Prohibition

One of the entrenched obstacles to IFI effectiveness in peace operations is their unwillingness, based on interpretations of their charters, to engage in activities deemed to be political.²⁷⁰ As discussed above, the political activity prohibitions have been interpreted in a manner that impedes IFI involvement in early-phase reconstruction and prevents the use of "peace conditionality."²⁷¹ In order for IFIs to increase their effectiveness in both *ex ante* and *ex post* peace-building measures, this legal obstacle to political action must be removed.

In this regard, it is appropriate to focus upon Article IV, § 10 of the World Bank's Articles of Agreement, the "political activity" provision that forms the template for similar prohibitions in the charters of the regional development banks and the IDA.²⁷² Article IV, § 10 has also influenced the IMF, which has no similar clause but remains apt to follow the IBRD's lead in future peace involvement. Therefore, the "political activity" prohibition represents the key legal barrier to IFI action in the peace-building arena.

The ideal way to avoid the constrictions of Article IV, § 10 would be to amend the Bank's charter. Elimination or substitution of the provision would render the Bank more analogous to the European Bank for Reconstruction and Development ("EBRD"), a post-Cold War financial institution whose charter explicitly authorizes some forms of political action, including the use of conditionality to achieve explicitly political objectives.²⁷³

270. See *supra* Part I.A.

271. Stremmlau and Sagasti note that "the Bank still lacks a firm legal basis to guide it in such undertakings." Stremmlau & Sagasti, *supra* note 3, ch. 1, ¶ 45.

272. Article IV, § 10 and the substantially identical charter provisions of the IDA and regional development banks are discussed *supra*, in Part I.A.

273. Article 1 of the European Bank for Reconstruction and Development ("EBRD") charter reads as follows: "In contributing to economic progress and reconstruction, the purpose of the Bank shall be to foster the transition towards open market-

Amending of the IBRD charter is possible but is not apt to occur in the near future. The charter amendment process is lengthy and would undoubtedly be subject to significant opposition.²⁷⁴ Thus, the more feasible alternative is a reinterpretation of the existing "political activity" provision.²⁷⁵

The traditional Bank definition of "political action" must become narrower for two reasons. First, a broad definition precludes effective action in the reconstruction sphere, thus conflicting with the explicit purpose set forth for the Bank in Article I.²⁷⁶ Secondly, a broad definition inhibits the Bank from making decisions based on valid economic concerns, which its Articles of Agreement explicitly requires.²⁷⁷

In order to pursue reconstruction effectively, the World Bank must become involved at an early stage in the peace process, negotiating with key parties to formulate a timely and workable program for demining, demobilization, refugee resettlement, and the rebuilding of vital infrastructure.²⁷⁸ If Article IV, § 10 is construed so as to preclude such involvement, its interpretation creates an internal incongruity in the Bank's charter.

The Bank is also specifically entitled to use "economic" factors in implementing policies such as conditionality arrangements. It is clear that sustainable peace is a monumental eco-

oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism, and market economics." Agreement Establishing the European Bank for Reconstruction and Development, *reprinted in* IBRAHIM F.I. SHIHATA, *THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT* 109 (1990).

The EBRD is explicitly permitted to use conditionality as a means to promote democracy and related political goals. See John Linarelli, *The European Bank for Reconstruction and Development and the Post-Cold War Era*, 16 U. PA. J. INT'L BUS. L. 373, 376-77 (1995). It therefore has the ability to participate much more directly in peace operations. See Linarelli, *supra* note 11, at 280.

274. Interview with Abram Chayes, Professor, Harvard Law School, in Cambridge, Mass. (Apr. 22, 1998).

275. As early as 1990, IBRD General Counsel Ibrahim Shihata acknowledged that the terms "political affairs," "political character," and "economic considerations" were legally nebulous and that executive Bank directors had the power to interpret them. Stremlau & Sagasti, *supra* note 3, ch. 3, ¶ 11.

276. For a discussion of Article I and the Bank's mandate for reconstruction, see *supra* Part I.A.

277. The IBRD charter explicitly requires that "[i]n making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower . . . will be in position to meet its obligations under the loan." *IBRD Articles of Agreement*, art. III, § 4(v).

278. See Ball, *supra* note 152.

conomic concern in many nations in which the Bank operates.²⁷⁹ Risks associated with political and military instability must therefore be addressable as economic concerns.²⁸⁰ In fact, the IFIs already do so, intruding heavily into the social and political spheres of many emerging nations.²⁸¹ As a result, one of the most frequent criticisms of the Bank and the IMF is that they intrude into legal and political affairs under the guise of economic considerations.²⁸²

That perceived guise has engendered distrust of IFIs, whose "economic" programs are often not taken as literal statements of their objectives. To acknowledge that some forms of political and legal intervention are valid as "economic considerations" would remove the guise and subject IFI programs to more appropriate levels of international accountability. The dearth of present accountability and transparency is another facet of IFI operations commonly criticized at present—it lowers both rapport and effectiveness.²⁸³

Thus, the definition of "political" used by the World Bank, its subsidiaries, and the IMF should preclude neither the means of effective reconstruction nor the IFIs' ability to address important economic considerations in an open and accountable manner. Although salient justifications for such a broad reading existed during the years of a bipolar political world, those justifications have lost their persuasiveness in the new geopolitical framework. A broad reading of "political" forces the IFIs to choose between two unfavorable alternatives: masking political considerations or ignoring them. The former brings disrepute to the organizations and diminishes their credibility in the international arena, especially among the nations of the emerging world. The latter results in inadequate programs for nations whose political fragility is the dominant source of its macroeconomic risk.

A precise definition of "political" is difficult to propose, as

279. "Political stability has always been recognized as an important precondition for economic development." Stremlau & Sagasti, *supra* note 3, ch. 3, ¶ 1.

280. *See id.* ch. 1, ¶ 43.

281. *Id.* ch. 1, ¶ 7, 19.

282. Carbonier, *supra* note 172, ch. 6.

283. IMF Director Michael Camdessus has acknowledged the importance of increasing transparency of IFI policies, asserting that transparency is the "top priority" at both national and international levels. Michael Camdessus, *The IMF and Its Critics*, WASH. POST, Nov. 10, 1998.

some restraint on IFI intervention is clearly valid. The definition should be operational, allowing for IFI participation in the endeavors prescribed herein. It is difficult however, to foresee what the proper scope of IFI action should be in many nations. Promotion of democracy may be fairly construed as a rightful economic consideration, but promoting the election of a particular candidate almost certainly constitutes excessive political intervention. Requiring nations to cooperate with regional peace accords may be reasonable, but demanding reform of certain social programs may not.

Ultimately, the best means to arrive at a definition is not through solitary academic reflection but through practice. Increasing the transparency and accountability of IFI programs, especially those in the peace-building context, will draw much-needed attention to the decisions made by the World Bank, the Fund, and others. That attention will result in the type of international debate and discussion necessary to achieve a more refined definition of "political."

B. *Reconsidering Roles in Reconstruction*

The second major change in IFI policy and practice must be a greater acceptance of their role in reconstruction.²⁸⁴ Again, the World Bank should take the lead in reform, as it is the only IFI with a specific mandate as a reconstruction agency. Bank action will likely be followed to varying degrees by regional development organizations, the IDA, and the IMF.

As discussed above, one of the World Bank's deepest obstacles to effectiveness in reconstruction is its insistence on the primacy of its development mandate.²⁸⁵ The *Framework* initiative highlights the Bank's improvement in the reconstruction field, but it adheres too tightly to the Bank's traditional self-perception as a development agency, an historically-based self-perception that is unsupported by the Bank's Articles of Agreement and by the demands of the post-Cold War world.²⁸⁶

284. Stremlau and Sagasti write: "the original vision of the founders of the Bretton Woods institutions should not be forgotten . . . keeping this original purpose in mind will be important as the [World Bank] broadens its role." Stremlau & Sagasti, *supra* note 3, ch. 1, ¶ 17.

285. See *supra* Part II.A.

286. Nicole Ball argues that there is "an urgent need for a paradigm shift within the development community to take account of the special conditions that exist follow-

As discussed in Part II above, the World Bank's proper acceptance of its dual role as a development and reconstruction agency will require deep institutional reform and the support of the IBRD's major shareholders.²⁸⁷ It will require that the Bank adopt an institutional base for reconstruction, developing the expertise, field presence, and operational procedures necessary to respond quickly to early-phase reconstruction needs.²⁸⁸ It will also demand a reconception of the Bank's traditional financial priorities and a greater acceptance of the inherent risks of reconstruction.²⁸⁹ Finally, the Bank must form stronger alliances with relief agencies, host governments, other IFIs, and the U.N. apparatus.²⁹⁰

To be certain, the proposals enumerated in Part II of this Article will be extremely costly, even for an large financial institution such as the World Bank. If the Bank does not take an effective lead in the reconstruction process and adapt to the new geopolitical order however, it is unlikely that any organization will.²⁹¹

C. *Replacing Conditionality with "Partnerships"*

The reform or replacement of conditionality programs is another essential IFI step to more effective peace-building operations. As discussed above, existing conditionality programs have been highly criticized and dubiously effective.²⁹² They have been too austere and too inflexible, failing to allow borrowing nations the fiscal flexibility often demanded in the peace-building process.²⁹³ They have also failed to incorporate sufficient participation from borrowing countries. As a result, they have engendered frustration with the international financial appara-

ing civil wars." Nicole Ball, *Lessons for the International Community in War-to-Peace Transitions, Remarks to the Opening Session*, reproduced in NICOLE BALL & TIMOTHY HALEVY, MAKING PEACE WORK: THE ROLE OF THE INTERNATIONAL DEVELOPMENT COMMUNITY (1996).

287. Carbonnier, *supra* note 172, ch. 6; Stremlau & Sagasti, *supra* note 3, ch. 2, ¶ 4, 5.

288. *See supra* Part II.A.2-4.

289. *See supra* Part II.A.5-7.

290. *See infra* Part IV.D.

291. "[I]f the UN family, which includes the World Bank at its outer edges, does not set about helping these countries, nobody will." *Reworking the U.N.*, *supra* note 14, at 18.

292. *See supra* Part III.B.

293. Carbonnier asserts that "economic adjustment is often in contradiction with political adjustment toward peace." Carbonnier, *supra* note 172, ch. 3, ¶ 1.

tus and are viewed as troublesome prospective additions to peace-building.²⁹⁴

Effective IFI peace-building and development requires that conditionality be replaced by a more flexible, realistic, participatory, and country-specific practice.²⁹⁵ It is not enough for the IFIs to make alterations to “conditionality”: the entire practice should be revamped and renamed to escape the negative associations that it carries. The new concept should be more akin to “partnership,” under which both IFIs and borrowing nations actively participate, sharing in responsibilities and rewards.²⁹⁶

“Partnership” plans would include detailed advice and set goals for borrowing nations, and a standard of good-faith efforts toward those goals would be relevant in determining future access to financing facilities. Goals would be set cooperatively between IFI representatives and national leaders, resulting in policies more accurately tailored to recipient nations.²⁹⁷ There is little doubt that post-conflict countries will be receptive to sound IFI advice, which can be extremely instrumental. What they would resent is the continued unilateral imposition of that advice due to unequal financial bargaining power.

IFI “partnership” programs would still have a conditional element, which is necessary at some level to insure repayment of loans.²⁹⁸ The conditions of assistance however, would be tied more to an evaluation of a nation’s efforts and less to its achievement of specified numerical goals. This more flexible approach

294. Stremlau and Sagasti assert that many borrowing states come to resent IFI intervention and cease to cooperate fully, citing lack of capacity for failure to observe agreements or repay loans. Stremlau & Sagasti, *supra* note 3, ch. 3, ¶ 3.

295. Henry Kissinger has criticized IMF conditionality practice, suggesting that it too often compounds political instability and weakens political structures in troubled nations by forcing rigid and overly ambitious reforms on them. Henry Kissinger, *WASH. POST*, Oct. 5, 1998.

296. The notion of replacing conditionality with “partnerships” is advanced by Norman Girvan as a means to empower developing nations. *See generally* Girvan, *supra* note 259, at 23-35.

297. Carbonnier, in his review of peace-building literature, asserts: “one of the most important findings relates to the necessity of adapting aid and its delivery to local circumstances and of involving domestic actors in the design and distribution of externally-funded assistance, with a strong emphasis on the strengthening of local capacities.” Carbonnier, *supra* note 172, ch. 6.

298. Clearly, a balance must be achieved between program flexibility and the legitimate need to ensure repayment of loans. *See id.*; *see also* Stremlau & Sagasti, *supra* note 3, ch. 1, ¶ 43.

would enable borrowing nations to adapt to country changes and to take a greater role in the peace-building or development process.²⁹⁹ As a result, countries would be more apt to view their relations with IFIs as constructive, and an increase in confidence and political support would enhance program effectiveness.

“Partnerships” would not eliminate the *ex ante* peace-building function captured in the idea of “peace conditionality.” As stated above, conditions of assistance would be tied less to numerical goals and more to general government behavior. Thus, adherence to peace accords, respect for human rights, and other political factors that bear on peace-building could rightfully be considerations in further financing arrangements. In such manner, the essence of “peace conditionality” would survive the creation of more flexible overall “partnerships.”

The country-specificity, flexibility, and increased participation of “partnership” programs would increase the overall rate of IFI successes, thus ensuring more timely and reliable repayment, the ultimate stated goal of conditionality programs. Although internal bureaucratic resistance in IFIs may initially be strong, and although some donor nations may be loath to relinquish the “neo-colonial” influence currently exercised by the Bretton Woods institutions, the substitution of “partnerships” for conditionality programs would drastically enhance IFI efficiency, both in peace-building and development.

D. *Enhancing Inter-Agency Coordination*

The final major reform demanded of IFIs in the peace-building process is an enhanced cooperation with the United Nations, its constituent organs, and other agencies involved in the peace process.³⁰⁰ Too often, IFI and U.N. leaders have failed to consult one another and implemented conflicting policies, each thwarting the other’s effort to build sustainable peace.³⁰¹

299. Carbonnier, *supra* note 172, ch. 6.

300. Enhanced inter-agency cooperation is increasingly viewed as central to successful peace-building efforts. See generally BALL & HALEVY, *supra* note 286, at 81-102; Stremlau & Sagasti, *supra* note 3, ch. 4, ¶ 1.

301. See Alvaro de Soto & Graciana del Castillo, *Obstacles to Peacebuilding*, FOR. POL’Y, Mar. 22, 1994, at 69 (focusing upon detrimental effect of conflicting U.N. and IFI policies in El Salvador); see also Louis J. Ross, *International Financial Institutions’ Response to Crises: Are International Institutions Doing Their Job?* 90 AM. SOC. INT’L L. PROC. 428, 431, 441 (1996) (emphasizing general importance of coordination in peace operations and related international crises).

To advance the peace properly, international efforts must be synergistic, not mutually inhibiting.³⁰²

U.N. Secretary-General Kofi Annan has recurrently asserted the importance of cooperation between the IFIs and the United Nations,³⁰³ and progress has been made. On April 20, 1998, a high-level conference between leaders of the U.N. Economic and Social Council, Mr. Annan, and executives from the Bretton Woods institutions was held to discuss greater inter-agency collaboration on matters of peace-building and development.³⁰⁴ The recently-implemented US\$25 billion U.N.-IFI program³⁰⁵ to support the needs of post-conflict African nations is evidence that the need for cooperation is being taken seriously. IFI coordination with regional organizations has also improved. The European Commission³⁰⁶ and Organization for African Unity³⁰⁷ have worked with the World Bank to alleviate post-war crises in the former Yugoslavia and Sub-Saharan Africa, respectively. Finally, in 1997, the Development Assistance Committee of the Organization for Economic Cooperation and Development ("OECD") issued a set of guidelines for international cooperation in the peace-building context.³⁰⁸ The guidelines, which were produced by representatives of the World Bank, the IMF, the UNDP, the European Commission, and eighteen OECD na-

302. *Id.*; see *Deputy Secretary-General Stresses Role of Post-Conflict Peace-Building*, M2 PRESSWIRE, May 13, 1998.

303. See, e.g., *Report by Annan Explores Causes, Cures of Africa Conflict*, *supra* note 20.

304. *Closer Cooperation Between UN and Bretton Woods Institutions Is Imperative*, M2 PRESSWIRE, Apr. 20, 1998. Francesco Paolo Fulci, acting president of the U.N. Economic and Social Council, voiced the hope that "this is just the beginning of a regular dialogue between members of the United Nations and of the Bretton Woods institutions." *Id.* Kofi Annan spoke, emphasizing the mutual support between the United Nations and IFIs in the peace-building context. *Id.*

305. See *supra* note 14.

306. See *Commission Presents Commission/World Bank Partnership Results*, THE REUTER EUR. COMMUNITY REP., Nov. 19, 1996 (describing coordination between World Bank and European Commission in implementing US\$5.1 billion reconstruction program in Bosnia).

307. See Gihon Hagos, *World Bank to Enhance Cooperation with O.A.U.*, AFR. NEWS SERVICE, Jan. 26, 1998.

308. The guidelines have six broad topics: (1) analysis of the links between conflict and development, (2) coordination within the international community and with the nation at war, (3) the transition from humanitarian relief to development, (4) building foundations for good governance, (5) post-conflict operations, and (6) regional approaches to reconstruction and peace-building. DEVELOPMENT ASSISTANCE COMMITTEE OF THE OECD, DAC GUIDELINES ON CONFLICT, PEACE, AND DEVELOPMENT CO-OPERATION (1997).

tions, represent a laudable effort but have yet to be effectively implemented.³⁰⁹

While the IFIs have begun the process of improved coordination, much more is clearly needed. The problems of overlapping mandates, donor coordination, operational efficiency on the ground, improved expertise, and myriad other aspects of the peace-building process depend on dialogue between institutions and the development of collective policies.³¹⁰ The type of meetings held between the Bretton Woods institutions and the United Nations, European Commission, and Organization for African Unity should be generalized to a much wider range of important participants including NGOs, relief agencies, and bilateral support groups. Only by so doing will the IFIs realize their potential as effective leaders in international peace operations of the coming century.

309. For a fuller description and discussion of the Organization for Economic Cooperation and Development's "DAC Guidelines," see generally Stremmlau & Sagasti, *supra* note 3, ch. 6.

310. See *Deputy Secretary-General Stresses Role of Post-Conflict Peace-Building*, *supra* note 302; Stremmlau & Sagasti, *supra* note 3, ch. 2, ¶ 14.