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International Disasters and Humanitarian Assistance: U.S. Governmental Response

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Summary

The President can provide emergency humanitarian assistance through several sources whose funding is authorized and appropriated by Congress. These are: funds appropriated to the Office of Foreign Disaster Administration (OFDA) in the Agency for International Development (USAID); U.S. Department of Agriculture food aid programs under P.L. 480 Food for Peace and section 416 (b) of the Agriculture Act of 1949; the State Department Emergency Refugee and Migration Account (ERMA) a contingency account which can contain as much as \$100 million for assistance to refugees fleeing persecution; and funds appropriated to the Department of Defense, Overseas Humanitarian and Disaster and Civic Aid (OHDACA). These funds are also available for some non-emergency programs.

In addition, the President has the authority to draw down defense equipment and direct military personnel to respond to disasters and provide space-available transportation on military aircraft and ships to private donors who wish to transport humanitarian goods and equipment in response to a disaster. Finally, the President can request other government agencies to assist within their capabilities. In FY2004 the United States contributed more than \$2.4 billion to disaster relief worldwide. This report will be updated as events warrant.

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Introduction¹

The United States has long been a leader in helping victims of foreign disasters. Congress has given the President broad authority in this area. The Foreign Assistance Act of 1961 (P.L. 87-195) authorized the United States to participate in disaster relief efforts and gave the President great flexibility to respond to disasters with a wide range of government-funded humanitarian assistance.² In 1993, President Clinton designated the Administrator of the U.S. Agency for International Development (USAID) as the Special Coordinator for International Disaster Assistance. In this capacity the Administrator coordinates the U.S. government's response to both natural disasters (such as floods) and man-made disasters (such as war, oil spills). He calls upon federal agencies to provide assistance; contracts with and funds private voluntary agencies to provide humanitarian assistance; and he coordinates the U.S. response with that of other countries.

Humanitarian assistance enjoys a strong measure of congressional bipartisan support and priority. Congress has consistently supported humanitarian efforts during natural or manmade disasters as a means of responding to crises in the short term, taking the lead and promoting a U.S. presence. U.S. private contributions and efforts are also part of the overall response.

Defining Humanitarian Assistance

While humanitarian assistance is assumed to provide for urgent food, shelter, and medical needs, the agencies within the U.S. government providing this support expand or contract the definition in response to circumstances. The very nature of humanitarian disasters — the need to respond quickly in order to save lives and provide relief — has resulted in an unrestricted definition of what this type of assistance consists of on both a policy and operational level.

Congress does not define what it considers to be humanitarian activities in an effort to keep it as broad as possible and flexible enough to adapt to humanitarian needs. The focus of humanitarian assistance may cover a broad range of issues, such as basic needs, child survival, and refugees, but in practice the provision of humanitarian assistance is typically case and time specific. Essentially, all the

¹ This report draws heavily on an earlier report on the same topic, now out of print, by Lois McHugh.

² Sec. 491-493 of P.L. 87-195, Foreign Assistance Act of 1961.

legislation governing humanitarian or disaster assistance leaves the definition of type of assistance up to the President. The U.S. role in humanitarian assistance is broad, far reaching and covers many elements directly concerned with the provision of relief and strategies for strengthening how people survive over time.³ What is less clear is when an activity might be described as humanitarian as differentiated from post-conflict transition, or reconstruction and to what degree this distinction needs to remain flexible to adapt to changes in policy or operations on the ground.

Exemptions for Humanitarian Assistance

In general, humanitarian assistance is exempt from the regulations imposed by sanctions.⁴ Historically, Congress has consistently exempted humanitarian assistance from restrictions placed on foreign assistance. The Foreign Assistance Act of 1961, as amended (P.L. 87-195), allows the President to provide disaster assistance, “notwithstanding any other provision of this or any other Act,” which would otherwise prohibit or restrict aid to selected countries, such as economic sanctions. Thus, humanitarian assistance is excluded from the potential restrictions of certain programs.

Sources of U.S. Governmental Humanitarian Aid

A response to a disaster generally begins with the U.S. ambassador responding to a request from that country’s government for assistance. The U.S. ambassador has use of up to \$100,000 available from USAID’s Office of Foreign Disaster Assistance (OFDA) to respond to the disaster. Generally, this money is released within 24 hours to the local Red Cross/ Red Crescent or a similar local disaster response organization or it may be used to buy relief supplies locally. The United States also begins working with the affected government through the Ambassador to determine what, if any, additional aid may be needed. Funds may be used to deliver the service required or provided as grants to international organizations (IOs), international governmental and non-governmental organizations (NGOs), and private or religious voluntary organizations (PVOs).

United States Agency for International Development

Office of Foreign Disaster Assistance (OFDA). OFDA is the office within USAID’s Bureau of Humanitarian Response that is responsible for providing non-food humanitarian assistance during international crises and disasters. OFDA was established in 1964 to coordinate what had previously been an *ad hoc* U.S.

³ A livelihood strategy considers the specific context and circumstances of the situation in designing effective programs that work with local capacities and abilities to cope with emergencies.

⁴ The decision as to what is considered humanitarian versus non-humanitarian is often made on a case-by-case basis. For example, in the India-Pakistan situation in 1998, sanctions were applied following India’s nuclear tests; under the Pressler Amendment, all aid was cut off except for specific relief assistance programs.

response to international disasters. OFDA provides some assistance through its own personnel, but the bulk of its activities are carried out through private voluntary organizations, non-governmental agencies and international organizations. Funding for USAID/OFDA is authorized and appropriated in the Foreign Operations legislation.

USAID/OFDA can respond immediately with cash, relief materials and personnel to any kind of disaster, whether man-made or natural. The President has the authority to set the terms and conditions of the aid provided. As a general rule, assistance provided by USAID/OFDA lasts about 90 days. Some USAID/OFDA personnel are located in various countries around the world and can move quickly to a disaster area. OFDA also has Disaster Assistance Response Teams (DARTS), experts who can be brought together quickly to respond to different types of disasters. These groups may be sent to the area in anticipation of a disaster, such as a tropical storm or flood which has been predicted by the weather service. USAID/OFDA can provide assistance through grants to governmental and non-governmental agencies in the disaster area. USAID/OFDA can also purchase food in the disaster area markets, rent equipment and hire personnel locally in order to respond quickly to disaster needs.

Under the legislation governing disaster assistance, the President is authorized to borrow up to \$50 million in any fiscal year from any other section of the economic assistance part of the foreign aid program if funding within the USAID/OFDA budget is inadequate. Generally, this money is borrowed from programs already planned for countries within the region. These borrowed funds may be repaid through passage by Congress of a supplemental appropriation. USAID regional bureaus may also reprogram their projects within the disaster region in response to local needs, or they may transfer funds to USAID/OFDA to carry out disaster related programs.

USAID/OFDA can also request the use of facilities, equipment, or personnel from other agencies as needed. For example, U.S. weather prediction facilities and satellites may be used to track storms, droughts, or floods. Centers for Disease Control and Prevention (HHS) specialists are relied upon for identifying and responding to outbreaks of disease.

Food for Peace (FFP). The USAID Administrator also administers Title II of P.L. 480, the Food For Peace program established in 1954.⁵ P.L. 480 is authorized and appropriated in the Department of Agriculture legislation and was most recently reauthorized and amended in the Federal Agriculture Improvement and Reform Act of 1996. Title II provides food as grant aid which does not need to be repaid. Title II is the primary disaster aid channel for food aid. A Food Security Trust (P.L.105-385) can be used to provide emergency humanitarian food aid if emergency needs exceed what could be provided under regular Title II programming. The Food Security Trust is composed of stocks of wheat, rice, corn or sorghum. Funds of the Commodity Credit Corporation may be used to replenish the Trust.

⁵ Authorized in section 201-207 of P.L. 83-480, the Agricultural Trade Development and Assistance Act of 1954, as amended.

The legislation gives the USAID Administrator wide authority to provide food aid and contains a “notwithstanding clause” which allows food aid to be provided despite prohibitions in other legislation. Commodities may be made available for direct distribution to the needy, or for sale, barter, or other disposition, according to the determination of the Administrator.

The United States is by far the largest international contributor of emergency food aid in disaster situations. In recent years, most emergency food aid has been provided to victims of complex humanitarian emergencies, that is people displaced by warfare and unable to grow or obtain food in their traditional way. Crisis conditions often last many years. Food aid programs generally target the most vulnerable populations, including children, pregnant and nursing mothers, the elderly, sick and handicapped, and those identified as malnourished. Title II aid is provided through governments, intergovernmental and private voluntary agencies.

As with other USAID/OFDA aid, food aid may be prepositioned in regions which are vulnerable to disaster, or diverted from a less pressing food aid program in a nearby country which would be replenished later. Food aid which is not prepositioned or diverted from nearby countries may take several months to reach a disaster site. At least 75% of U.S. food aid tonnage must be shipped on U.S. flagged vessels. Section 416 (b) of the Agricultural Act of 1949 provides for the donation of surplus U.S. agricultural commodities held by the Commodity Credit Corporation to needy countries, including those suffering from disasters. This program is managed by the Department of Agriculture.

Office of Transition Initiatives (OTI). OTI provides post-disaster transition assistance, which includes mainly short-term peace and democratization projects with some attention to humanitarian elements (e.g. community projects such as housing, electricity, water) but not emergency relief.⁶

Department of State

Emergency Refugee and Migration Account (ERMA). ERMA is a fund which remains available until spent and is replenished as needed by Congress. P.L. 103-236 sets the maximum amount of money which can be in this account at \$100 million although appropriations have been made which exceed this amount. Established in 1962⁷, ERMA gives the President wide latitude in responding to refugee emergencies. Refugees are defined as those fleeing their homeland due to persecution on account of their religion, race, political opinion or social or ethnic group. The law contains a “notwithstanding clause” which waives prohibitions against providing aid contained in any other legislation. The legislation establishing ERMA places certain requirements on the President. The President must publish a

⁶ Other departments within USAID may provide some form of humanitarian assistance but it is unclear how much because humanitarian activities may be a part but not the central focus of the program, such as women’s health, child survival, trauma counseling and social welfare, and demining, activities that may be considered by some to be humanitarian.

⁷ Authorized in sections 2 and 3 of PL 87-510, the Migration and Refugee Assistance Act of 1962.

Presidential Determination in the Federal Register and keep the appropriate Congressional committees informed of drawdowns. Refugee emergencies lasting more than a year are incorporated into the regular budget of the Migration and Refugee Account (MRA) through the Bureau of Population, Migration and Refugees (PRM). Both ERMA and MRA are authorized in the Department of State legislation and appropriated in the foreign operations legislation.

Bureau of Population, Refugees and Migration (PRM). PRM covers refugees worldwide, conflict victims, and populations of concern to the U.N. High Commissioner for Refugees (UNHCR), often extended to Internally Displaced Persons (IDPs). Humanitarian assistance includes a range of services from basic needs to community services to tolerance building and dialogue initiatives. Key issues include protection (refugee, asylum issues, identification, returns, tracing activities) and quick impact, small community projects.

Refugee funds are provided as cash grants to international governmental and non-governmental refugee agencies. These include U.N. agencies such as the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF), and international organizations such as the International Committee of the Red Cross, and private or religious voluntary organizations such as Care, Doctors without Borders, and Catholic Relief Services.

Department of Defense

The Department of Defense (DOD) provides emergency support to stabilize emergency situations, including the transport and provision of food, shelter and supplies, logistical support, search and rescue, medical evacuations, and refugee assistance. This includes the provision of 2,300 calorie low-cost humanitarian daily rations to alleviate hunger after foreign disasters. The incremental costs for all DOD humanitarian assistance for both natural and manmade disasters is funded through the Overseas Humanitarian, Disaster, and Civic Action (OHDACA) account in annual DOD appropriations.

DOD provides assistance in humanitarian emergencies under several provisions in law. The primary authority is Title 10, Section 2561 (formerly Section 2551) which allows the use of appropriated funds for humanitarian assistance "for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide."⁸ The Secretary of State determines that this provision should be used and requests DOD to respond to a disaster with specific assistance such as helicopter transport, provision of temporary water supplies, or road and bridge repair. DOD response time depends upon what is being requested and how long it takes to get personnel and equipment to the site of the emergency. If possible, military personnel join the USAID's OFDA assessment team to help determine the type of aid which can be provided by DOD. Under this provision, DOD generally limits its service activities which stabilize the emergency situation, such as road or bridge

⁸ Section 404 of Title 10 also authorizes DOD to provide foreign disaster assistance. It is not generally used because it requires an expensive report to Congress within 24 hours.

repair, but not rebuilding, for example. The law requires an annual report to Congress on the use of funds.

Title 10 also contains a section which helps private voluntary agencies transport donated humanitarian goods to disaster sites. Section 402, the Denton program, named after former Member of Congress Jeremiah Denton, authorizes shipment of privately donated humanitarian goods on U.S. military aircraft on a space-available basis. The donated goods must be certified as appropriate for the disaster by USAID's OFDA and can be bumped from the transport if other U.S. government aid must be transported. Donated goods can also be shipped on commercial vessels, using Section 2561 funds.

Section 506 (a) (1) of the Foreign Assistance Act of 1961 allows the draw down of military equipment to a limit of \$100 million in any fiscal year if the President determines that an unforeseen emergency exists which requires immediate military assistance and the requirement cannot be met under any other provision. Before this provision can be used the President must notify the Speaker of the House and the Senate Foreign Relations Committee in writing by issuing a Presidential Directive explaining and justifying the need for the equipment being used. This request is handled by the Department of State and the National Security Council.

Sources of Post-Disaster and Post-Conflict Assistance

After the emergency is over, reconstruction or recovery aid is provided through other channels, such as the regular bilateral country development programs of USAID or in some cases, through the USAID/OTI, funded as part of the disaster response account. USAID/OTI may be involved in providing assistance to countries that are in a stage of transition from man-made crisis to recovery. OTI focuses on areas such as demobilizing and reemploying military combatants, and furthering democratic governance such as supporting elections and building judicial systems. USAID/OFDA also includes disaster prevention within its budget. The Prevention, Mitigation, Preparedness, and Planning Division has helped countries and regions minimize the damage and loss of life in repeated natural disasters. USAID/FFP aid is also available for non-emergency humanitarian aid. Title II contains provisions for providing non-emergency development food aid. This program can be used in the transition period after a disaster for reconstruction purposes. Titles III and section 416 (b) of the 1949 Agriculture act support longer-term development aid.⁹

Title 10 includes two sections which are used to provide longer-term humanitarian assistance, but are not normally useful in fast moving emergencies. Section 401 allows the use of U.S. military personnel to carry out humanitarian and civic activities in conjunction with military operations (These are usually training exercises). These activities must complement, not duplicate, any other social or

⁹ Department of Defense humanitarian assistance for use in post-emergency disaster situations includes Sections 401 and 2547 of Title 10, which have already been discussed.

economic assistance provided, and must be approved by the Secretary of State. Services can include medical, dental, and veterinary care, construction and repair of rudimentary roads and rudimentary construction and repair of public facilities, and well-drilling and construction of basic sanitary facilities. There are conditions on assistance regarding land mines. This provision requires an annual report to Congress.

Section 2557 authorizes the donation of excess non-lethal excess property, such as trucks. It can include any item of excess property except weapons, ammunition, or other items designed to inflict harm. Both of these sections are used for later stage recovery programs or transition programs aimed at restoring a country to the development path.

The Role of Congress

Funding Sources

OFDA, ERMA, and P.L. 480 requests are generally approved by Congress at the requested level. At times, however, the amount of disaster assistance provided during a Fiscal Year exceeds the amount appropriated by Congress. Congress has provided the USAID Administrator with authority to borrow up to \$50 million from any other section of the economic assistance part of the foreign aid program. In some cases, particularly when disasters occur during the appropriations process, Congressional amendments reimbursing a particular agency for a specific disaster may become part of the next year's appropriation for that agency.

Congress is also generally supportive of supplemental appropriations which reimburse agencies for their expenditures, either to replenish the emergency accounts or other accounts which have been used to provide assistance. When there is difficulty in passing supplemental legislation, the debate is generally over non-disaster items, such as long-term reconstruction aid for the devastated area, or non-germane amendments added to the legislation rather than opposition to disaster assistance funding itself.

Debt relief, or at least a temporary moratorium on debt repayment has also become part of the U.S. and international response to disasters in heavily indebted developing countries. In 1997, industrialized countries participating in the Heavily Indebted Poor Country (HIPC) Trust Fund agreed to include special consideration for countries emerging from disaster.

Both Congress and the Administration also encourage other countries to provide disaster assistance. International recovery efforts are typically complex and involve many actors, including the host government, numerous U.N. agencies, bilateral and multilateral donors, international organizations, and NGOs. The United States

responds with varying amounts of relief and recovery assistance, typically in coordination with its international partners.¹⁰

¹⁰ As one of its functions, the U.N. Office for the Coordination of Humanitarian Affairs (OCHA) tracks worldwide contributions to disasters. See [<http://www.reliefweb.int>]. Also, see [http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/] for USAID's OFDA webpage.