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Special Project—Feast or Famine: Issues, Problems, and Procedures Relating to Massive Relief Efforts with a Focus on the African Crisis

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Special Project--Feast or Famine: Issues, Problems, and Procedures Relating to Massive Relief Efforts with a Focus on the African Crisis

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SPECIAL PROJECT

FEAST OR FAMINE: ISSUES, PROBLEMS, AND PROCEDURES RELATING TO MASSIVE RELIEF EFFORTS WITH A FOCUS ON THE AFRICAN CRISIS

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I. INTRODUCTION

Former Secretary of State Henry Kissinger, in his address to the World Food Conference in Rome in 1974, stated:

The profound promise of our era is that for the first time we may have the technical capacity to free mankind from the scourge of hunger. Therefore, today we must proclaim a bold objective — that within a decade no child will go to bed hungry, that no family will fear for its next day's bread, and that no human being's future and capacities will be stunted by malnutrition.¹

One decade later, the ongoing drought and famine in Ethiopia, Chad, Mozambique and other African countries cruelly portray the failure of that promise. Each year, millions of dollars worth of aid, much of it in the form of food, funnels through the international relief system — a network of individuals, corporations, voluntary organizations, governments, and intergovernmental organizations, which disburses relief throughout the world.² During the past year, the United States alone has supplied more than 1.5 million tons of agricultural commodities, approximately one-half of the total amount of food given to Africa.³

For those facing starvation, the provision of food meets an immediate need. But the donation of emergency aid without considering long-term food production requirements of the recipient nation is often an inappropriate response. Starvation in Africa is attributable to conditions that are both natural and man-made, deeply rooted and complex; emergency assistance alone will not remedy a disaster such as this one, engendered not only by drought but by politics and civil strife. To combat the results of such conditions, donors should supplement emergency relief with long-term development assistance. Many donors are taking this

1. Talbot, *Implications of the World Food Conference Resolutions: U.S. Government Policy, With Special Reference to the International Grain Reserve Issue*, in *THE ROLE OF U.S. AGRICULTURE IN FOREIGN POLICY* 110 (R. Fraenkel, Hadwiger & Browne eds. 1979) [hereinafter *THE ROLE OF U.S. AGRICULTURE*].

2. See *infra* notes 17-171 and accompanying text for a discussion of the international relief system.

3. See *Agriculture, Rural Development and Related Agencies Appropriations for 1986: Hearings Before a Subcomm. of the House Comm. on Appropriations*, 99th Cong., 1st Sess. 44 (1985) (statement of Melvin E. Sims, General Sales Manager, USDA) [hereinafter *Rural Development*].

step.⁴ Yet emergency assistance will continue to be necessary, whether in response to natural disasters, man-made catastrophes or other conditions, and thus should be examined and understood.

The famine relief system links donors⁵ to disaster relief recipients. Donors and intervenors⁶ constitute the relief system. The "international relief system" can be divided into five tiers: the first three represent the international level, the fourth the regional or country level, and the fifth the project level.⁷ The first tier consists of individuals and corporations, called primary donors, who donate funds or supplies. Primary donors are unable to deliver directly to disaster relief recipients and therefore contribute to community organizations.⁸ The second tier includes churches, governments, and foundations and also represents the organizations that receive the contributions of primary donors.⁹ To distribute, second tier organizations can (1) move donations to the voluntary organizations that comprise the third level of the distribution system; (2) furnish donations to intergovernmental organizations;¹⁰ or (3) donate directly to local government and private voluntary organizations (PVOs) constituting the fourth tier.¹¹ Customarily, churches give to voluntary organizations instead of to lower level network organizations. Foundations seldom donate to local governments; rather, they donate to international organizations, voluntary organizations, and occasionally to local

4. See generally, e.g., *Food Aid and the Role of the Private Voluntary Organizations: Hearing Before the Select Comm. on Hunger*, 99th Cong., 1st Sess. 87-96 (1985) (prepared statement of Colleen Westbrook, Public Policy and Research Coordinator, Oxfam America) [hereinafter *Food Aid and the Role of the PVOs*].

5. Donors gather and funnel resources to field workers. F. CUNY, *DISASTERS AND DEVELOPMENT* 107 (1983).

6. The organizations that implement the projects and operations in affected countries are called intervenors. *Id.*

7. *Id.*

8. *Id.* at 107-08.

9. *Id.* at 108.

10. The United Nations, the Organization of American States (OAS), the Organization of Petroleum Exporting Countries (OPEC), and the World Bank are some of the various intergovernmental organizations that collect and channel funds to relief operations worldwide through World Food Program (WFP), United Nations Children's Fund (UNICEF), U.N. High Commissioner for Refugees (UNHCR), and the U.N. Disaster Response Office (UNDRO).

11. See F. CUNY, *supra* note 5, at 108.

PVOs.¹² The third tier consists of voluntary organizations such as Cooperatives for American Relief Everywhere (CARE) and Catholic Relief Services (CRS).¹³ The fourth tier is comprised of the "host government, local nongovernmental organizations, and the offices or field representatives of the foreign [voluntary agencies]."¹⁴ The fifth tier is the project level, the ultimate level through which relief passes prior to reaching those persons facing famine.¹⁵

As the world's largest producer of food,¹⁶ the United States plays a major role in the international relief system. The United States not only donates aid directly through the federal government; it also funds and assists the relief endeavors of private voluntary organizations and is a member of the United Nations, the most extensively involved of all multilateral organizations in funnelling aid to relief operations around the globe. This Special Project examines the participation of the United States in the operation of the international relief system, using the provision of food aid to Africa during the past few years as its framework. The Project's second section discusses the enactment and utilization of United States laws, regulations, and agencies as well as United Nations relationships to facilitate the existence and operation of relief activities. Section Three focuses upon the administration of aid through various bodies, detailing the response of the United States government, private voluntary organizations and intergovernmental organizations to past and present catastrophes. This section also traces the development of private governmental organizations, noting their unique role in the disaster relief system. Section Four not only analyzes the political, legal, and logistical problems inherent in the disaster relief system but also presents recommendations for reform. Section Five examines the legal recourse available to parties which have disputes over aid agree-

12. *Id.*

13. Other voluntary agencies include: (1) Church World Service (CWS); (2) Lutheran World Relief (LWR); (3) American Joint Distribution Committee (AJDC); (4) World Vision (WV); (5) Oxford Committee for Famine Relief (OXFAM); (6) Seventh Day Adventist Welfare Service (SAWS); and (7) Save The Children.

14. F. CUNY, *supra* note 5, at 108.

15. *Id.* at 110.

16. In the 1970s, the United States provided 80% of the world's food aid. Hopkins, *Lessons of Food Diplomacy*, in *THE ROLE OF U.S. AGRICULTURE*, *supra* note 1, at 145.

ments, suggesting that the currently available arenas for dispute resolution, along with the privileges and immunities afforded to some parties, render satisfactory resolution unattainable. The final section considers the question of increased amounts of United States food donations and concludes that the abolition of suffering requires removal of aid from the political context as well as a linkage of emergency aid with developmental assistance.

II. ESTABLISHMENT OF LEGAL STRUCTURES TO FACILITATE INTERNATIONAL RELIEF SYSTEM

The major donors in the international relief system, the United States and the United Nations, have established legal structures such as laws and agencies to foster the execution of international relief operations. Through its Public Law 480 and section 416 programs, as well as through other laws, the United States Government authorizes the giving of aid to needy nations. The United States Government has enacted further provisions to encourage the creation of private voluntary relief organizations. The Agency for International Development (AID) administers government aid programs as well as cooperates with the private organizations. The United Nations also has offered its assistance and resources to private voluntary organizations; in 1985, it created the Office for Emergency Operations in Africa (OEOA), a widely-welcomed mechanism to coordinate the current relief operations of governmental, intergovernmental, and private voluntary organizations. This section discusses the role of these structures in the international relief system.

A. United States Legislative and Regulatory Structures

1. Primary Laws which Authorize Aid

a. Agricultural Trade and Adjustment Act of 1954

The agricultural price support programs of the Truman and Eisenhower administrations, coupled with rapid technological advancement in the agricultural production industry, caused farm production to outgrow consumption substantially, thereby resulting in large surpluses of agricultural commodities. Thus, United States officials sought a means to relieve political and economic pressures caused by the accumulating stockpiles of unmarketable

commodities.¹⁷ This was the historical backdrop to the passage of the Agricultural Trade and Adjustment Act of 1954¹⁸ ("Public Law 480").

Public Law 480 has been the primary food aid instrument of the United States since its passage 32 years ago.¹⁹ Under the law's four titles,²⁰ approximately 35 billion dollars in concessional and donative aid has been provided to more than one hundred countries throughout the world.²¹ The United States has contributed more food aid under Public Law 480 than have all other nations combined.²²

17. M. WALLERSTEIN, *FOOD FOR WAR - FOOD FOR PEACE* 4-6 (1980) [hereinafter *FOOD FOR WAR*].

18. 68 Stat. 469 (codified as amended in scattered sections of 7 U.S.C. (1982 & Supp. 1985)). "As the title of the PL 480 [A]ct suggests, the promotion of agricultural trade (and the disposal of existing surpluses) was the dominant motivation, overwhelming other humanitarian and . . . developmental purposes in the legislation." *FOOD FOR WAR*, *supra* note 17, at 6.

19. *Food Aid and the Role of the PVOs*, *supra* note 4, at 54 (prepared statement of Daniel G. Amstutz, Under Secretary, International Affairs and Commodity Programs, USDA).

20. Title I authorizes the sale of United States commodities to developing countries on a concessional loan basis. Recipients must agree to execute self-help measures intended to improve their own food production capabilities and to decrease their dependency on food assistance. Currencies earned through the sale of these commodities support self-help measures and other development-oriented efforts. 7 U.S.C. §§ 1701-1712 (1982).

Title III, known as the Food for Development Program, utilizes resources generated under Title I sales to strengthen food production, storage and distribution activities in countries receiving food aid. Participating countries are offered multiyear food commitments and "loan forgiveness" on Title I repayments to the extent that the food, or its dollar equivalent in local currencies, is programmed for agreed-upon development activities. Title IV contains miscellaneous administrative and reporting requirements.

21. *Food Aid and the Role of the PVOs*, *supra* note 4, at 54 (prepared statement of Daniel G. Amstutz, Under Secretary, International Affairs and Commodity Programs, USDA). Public Law 480 aid reached its greatest volume in fiscal year 1962, when 18,778,000 tons of commodities worth \$1,495,498,000 were distributed under Titles I and II. *FOOD FOR WAR*, *supra* note 17, at 53-54. The USDA budget request for fiscal year 1986 was \$1.68 billion (1.3 billion under Title I and 650 million under Title II) or about seven million tons of commodities. *Rural Development*, *supra* note 3, at 47 (statement of Melvin E. Sims, General Sales Manager, USDA).

22. *Food Aid and the Role of the PVOs*, *supra* note 4, at 54 (prepared statement of Daniel G. Amstutz, Under Secretary, International Affairs and Commodity Programs, USDA). Grains have comprised approximately 90% of the food aid provided under Public Law 480. HOUSE SELECT COMM. ON HUNGER, SPE-

i. Title I

Under Title I of Public Law 480,²³ the United States provides food assistance through concessional long-term financing for the purchase of United States agricultural commodities.²⁴ Public Law 480 directs the Commodity Credit Corporation (CCC)²⁵ to finance Title I activities,²⁶ but recipient countries actually use CCC concessional loans to purchase agricultural commodities in United States *commercial* markets.²⁷ Title I concessional aid may be made in two ways, either by credit for dollars, with a twenty-year repayment plan,²⁸ or by credit for convertible foreign currency, with a maximum maturity period of forty years.²⁹ Public Law 480

CIAL REPORT ON APPLYING UNITED STATES FOOD SURPLUSES TO THE PROBLEMS OF HUNGER, 99th Cong., 1st Sess. 15 (Comm. Print 1985) [hereinafter HOUSE SPECIAL REPORT].

23. 7 U.S.C. §§ 1701-1712 (1982). The total cumulative Commodity Credit Corporation (CCC) outlays for Title I through September 30, 1984, was \$13,177,222,000. U.S. DEPARTMENT OF AGRICULTURE, REPORT OF FINANCIAL CONDITION AND OPERATIONS OF THE COMMODITY CREDIT CORPORATION 23 (1985) [hereinafter FINANCIAL CONDITION].

24. See 7 U.S.C. § 1701. The concessional rate of interest charged in Title I agreements has been approximately 3%. See *id.*, § 1706(a); 22 U.S.C. § 2151t (1982). See also *Rural Development*, *supra* note 3, at 62.

25. 15 U.S.C. § 714 (1982). The CCC is an agency of the United States within the Department of Agriculture. Its purpose is to stabilize and support farm prices, to help maintain a balanced supply of agricultural commodities, and to facilitate their distribution. *Id.*

26. 7 U.S.C. § 1702. Title I commodities are subject to the Cargo Preference Act of 1954, 46 U.S.C. § 1241(b) (Supp. 1985). The Act requires that at least 50% of any government-generated cargo be transported on United States flag ships. Under most Title I agreements the corporation will pay the differential between U.S.-flag and foreign-flag rates. See 7 C.F.R. § 17.9(h)(1985).

27. See UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD FOR PEACE: 1983 ANNUAL REPORT ON PUBLIC LAW 480 at 7 [hereinafter 1983 ANNUAL REPORT]. Because Title I uses commercial markets to send food overseas, Title I concessional sales reach the hungry at a faster rate than Title II donations, which are delivered by the CCC directly. See *supra* notes 43-66 and accompanying text, requiring increased administrative supervision. *Effective Uses of Agricultural Abundance for Hunger Relief: Hearing before the House Select Comm. on Effective Hunger*, 98th Cong., 2d Sess. 27 (1984) [hereinafter *Uses of Agricultural Abundance*]. Compare Appendix A, P.L. 480 — Title I/III Program Flowchart, *infra*, with Appendix B, Title II Program Development and Implementation, *infra*.

28. 7 U.S.C. § 1706(a)(1) (Supp. 1985).

29. See 7 U.S.C. § 1706(a)(2) (Supp. 1985); 1983 ANNUAL REPORT, at 7.

requires a five percent down payment on concessional aid,³⁰ but this requirement may be relaxed depending on a recipient country's financial condition.³¹

Before any commodity is furnished through Public Law 480, the Secretary of Agriculture must consider the United States' agricultural capacity, domestic demand, consumer price levels, adequacy of carryover stocks, and anticipated exports.³² Additionally, the extent to which a recipient imports commodities through traditional commercial channels ("usual marketing requirements") must be considered before the United States gives food assistance, so as not to displace those commercial sales.³³

To receive Title I aid a foreign country must submit a request to the United States embassy located in that country.³⁴ The embassy sends this request to Washington with a recommendation and comments.³⁵ The United States Department of Agriculture (USDA) then makes an allocation based on "[United States] commodity availability, country needs, market development potential, foreign policy considerations and economic development criteria. . . ."³⁶ The USDA drafts negotiating instructions for a proposed agreement which are forwarded to the interagency "Working Group" of the Food Aid Subcommittee for comments and approval.³⁷ The plan is then sent to the United States embassy for negotiations with the foreign nation and consummation of the agreement.³⁸

30. 7 U.S.C. § 1703(k) (1982).

31. See *Rural Development*, *supra* note 3, at 62. In fiscal year 1984, Bangladesh, Bolivia, Costa Rica, Dominican Republic, El Salvador, Haiti, Honduras, Jamaica, Liberia, Madagascar, Morocco, Sierra-Leone, Somalia, Sri Lanka, Sudan, Yemen, Zaire, and Zambia all entered into Title I agreements with the United States without rendering any initial downpayment. *Id.* at 64.

32. 7 U.S.C. § 1731(a) (Supp. 1985).

33. 7 U.S.C. § 1703(c) (1982). See HOUSE SPECIAL REPORT, *supra* note 22, at 46.

34. *Rural Development*, *supra* note 3, at 57 (statement of Melvin E. Sims, General Sales Manager, USDA).

35. *Id.*

36. *Id.*

37. *Id.* The "Working Group" is comprised of the Agency for International Development (AID), Department of State, Department of Treasury, Department of Commerce, Department of Agriculture, and the Office of Management and Budget. *Id.*

38. *Id.* For a schematic of the Title I approval process, see Appendix A, P.L. 480 — Title I/III Program Flowchart.

Title I concessional aid is administered only to "friendly" countries,³⁹ and at least seventy-five percent of the countries receiving Title I assistance must be determined to be "poverty-stricken" by the Agency for International Development.⁴⁰ Further, Title I agreements may not be entered into with countries engaging in "a consistent pattern of gross violations of internationally recognized human rights. . . ."⁴¹ Every country receiving aid under Title I is required to take certain 'self-help' measures to increase [its] food security.⁴²

ii. Title II

Title II⁴³ of Public Law 480 authorizes the President:

to determine requirements and furnish agricultural commodities, on behalf of the people of the United States of America; to meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing areas; and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States.⁴⁴

The Commodity Credit Corporation supplies the food donated under Title II.⁴⁵ The CCC acquires stockpiles of agricultural com-

39. 7 U.S.C. § 1701 (1982 & Supp. 1985).

40. 7 U.S.C. § 1711 (Supp. 1985).

41. 7 U.S.C. § 1712 (Supp. 1985).

42. 7 U.S.C. § 1709 (1982 & Supp. 1985).

43. 7 U.S.C. § 1721 (1982 & Supp. 1985). The amount of food provided under Title II is negligible in comparison to Title I shipments. *Accord* FOOD FOR WAR, *supra* note 17, at 55. Between 1955 and 1976, Title II donated 44,654 millions of tons of grain, while Title I concessional aid facilitated the shipment of 214,930 millions of tons of grain. *Id.* at 54.

44. 7 U.S.C. § 1721(a) (1982 & Supp. 1985). Wallerstein distinguishes "program" food aid from "project" food aid. FOOD FOR WAR, *supra* note 7, at 25. Title I aid is program aid, or food aid sold on a concessional basis. *Id.* The recipient sells the food to support development programs. *Id.* Title II aid is project aid and is provided on a grant basis; thus repayment is not required. *Id.* The recipient may not sell the food but must use it directly as a supplement to other available food supplies, except in exceptional circumstances. *Id.* The purpose of project aid is to get the food to those who need it while also facilitating some development project, *id.* at 25-26, and to respond to concerns about agricultural disincentive. *Id.* at 26.

45. Section 203 of Title II, 7 U.S.C. § 1723, allows the CCC to pay nonacquisition costs as well, including costs for packaging, enrichment, preservation, fortification, processing, handling, ocean freight to designated points of entry

modities through the price support program of the Agricultural Act of 1949.⁴⁶ Under the program, the CCC is empowered to make loans to producers of various commodities through its borrowing authority.⁴⁷ Producers can repay the loan with interest or forfeit a commodity which had been placed as collateral for the loan.⁴⁸ The forfeited commodities become assets of the Corporation.⁴⁹ The CCC stocks can either be sold in the commercial market⁵⁰ or used for donative purposes.⁵¹ In fiscal year 1984 the CCC donated \$460,913,000 worth of commodities under Title II.⁵² Including transportation costs, CCC expenditures under the program totalled \$655,782,000.⁵³ Through September 30, 1984, cumulative total allocations by the CCC under the Title II program exceeded \$10 billion.⁵⁴

and overland transport to landlocked countries. Originally, only ocean transportation costs were covered by the Act, but it was amended in 1977 by Public Law 95-88 because food was being sold to pay for overland transport costs.

46. 7 U.S.C. §§ 1421, 1425. As of September 30, 1985, the total value of the CCC commodity inventory equalled \$7,358,172,000. UNITED STATES DEPARTMENT OF AGRICULTURE, REPORT OF THE PRESIDENT OF THE COMMODITY CREDIT CORPORATION 5 (1985). Some of the CCC stock at that time included: two billion pounds of dairy products, 71 million pounds of honey, 325 million bushels of wheat, 200 million bushels of corn, 90 million bushels of sorghum, and 19 million hundredweights of rice. HOUSE SPECIAL REPORT, *supra* note 22, at iii.

47. See *Food Aid and the Role of the PVOs*, *supra* note 4, at 16 (testimony of Daniel G. Amstutz, Under Secretary, International Affairs and Commodity Programs, USDA).

48. *Id.*

49. *Id.*

50. 7 U.S.C. § 1427 (1982).

51. 7 U.S.C. § 1721. When the CCC donates a commodity, the Corporation sustains a loss equal to the cost of acquisition, packaging, fortifying, and transporting the good. See *Food Aid and the Role of the PVOs*, *supra* note 4, at 16-17 (statements by Daniel G. Amstutz, Under Secretary, USDA and by Cooper Evans, Congressman from the State of Iowa).

Losses also accrue to the CCC for storage when the food is stockpiled. *Id.* at 17. The cost of storage, however, is minimal as compared to the expense of donating. *Id.* at 12. For example, one ton of grain costs the CCC approximately \$13 per year to store. To ship one ton of grain to Africa costs the CCC from \$49 to \$123. *Id.*

52. FINANCIAL CONDITION, *supra* note 23, at 24.

53. *Id.*

54. *Id.* In fiscal year 1985, \$650 million was allocated for Title II, which was increased by supplemental appropriations totaling \$585 million. *Rural Development*, *supra* note 3, at 94. For fiscal year 1986, the Reagan administration requested only \$650 million for Title II programming. *Id.*

Title II authorizes the President to distribute these commodities "through . . . friendly governments and . . . agencies, private or public, including intergovernmental organizations . . ." ⁵⁵ Intergovernmental organizations include the World Food Program, under the auspices of the United Nations and the Food and Agriculture Organization, and the United Nations International Children's Emergency Fund (UNICEF). ⁵⁶ The President is required to utilize nonprofit voluntary agencies registered with and approved by the Agency for International Development or, if no such agencies are available, foreign nonprofit voluntary agency registered with and approved by AID. ⁵⁷ Private voluntary agencies include Catholic Relief Services, Cooperative for American Relief Everywhere, Church World Service, Lutheran World Relief, American Jewish Joint Distribution Committee, Seventh Day Adventist World Service, and the Cooperative League for the USA. ⁵⁸ Furthermore, the President must take "reasonable precaution" that donations under this title will not "displace or interfere with sales which might otherwise be made," although an exception is made for emergency cases. ⁵⁹

The minimum quantity of commodities that the Act makes available for distribution is 1,700,000 metric tons. Of this amount, not less than 1,200,000 metric tons is targeted for nonemergency programs, distributed through nonprofit voluntary agencies and the World Food Program. ⁶⁰ The unprogrammed reserve of a minimum of 500,000 metric tons allows the United States to respond to emergency requests and to supplement regular programs. ⁶¹ Grains held by the CCC as well as dairy products used directly or as a component in blended foods are the major surplus commodi-

55. 7 U.S.C. § 1722(a) (1982 & Supp. 1985).

56. See *infra* note 330 and accompanying text for a discussion of intergovernmental organizations and their relief efforts.

57. 7 U.S.C. § 1722(a) (1982 & Supp. 1985).

58. See *infra* notes 248-419 and accompanying text for a discussion of private voluntary organizations and their relief efforts.

59. The Act does not specify the meaning of "emergency."

60. 7 U.S.C. § 1721 (1982 & Supp. 1985). These programs primarily support maternal child health projects, school feeding programs, and food for work programs. See HOUSE SPECIAL REPORT, *supra* note 22, at 48-50.

61. HOUSE SPECIAL REPORT, *supra* note 22, at 48. Resources for § 206 of Title II are currently taken from this unallocated reserve. *Id.* Section 206 permits sales of Title II aid under certain conditions set forth in 7 U.S.C. § 1725 (1982 & Supp. 1985).

ties used in Title II of Public Law 480.⁶² Special marketing and surplus conditions have occasionally resulted in the use of Title II funds to purchase raisins, instant potatoes, beans and other "unusual" commodities.⁶³ Title II donations received an increased share of overall Public Law 480 funding during the 1974-84 decade.⁶⁴ In 1984, the United States provided an additional \$150 million in Public Law 480 funds in response to the international appeal for emergency food relief for Africa following a noticeable BBC broadcast⁶⁵ in October of that year.⁶⁶

iii. Titles III & IV

Title III,⁶⁷ known as the Food for Development Program, utilizes resources generated under Title I sales to strengthen food production, storage, and distribution activities in countries receiving food aid. Participating countries are offered multiyear food commitments and "loan forgiveness" on Title I repayments to the extent that the food or its dollar equivalent in local currencies is programmed for agreed-upon development activities. Title IV contains miscellaneous administrative and reporting requirements.⁶⁸

62. HOUSE SPECIAL REPORT, *supra* note 22, at 16.

63. *Id.* These commodities have not come from CCC stock, but the Secretary of Agriculture has determined them to be eligible for purchase with Public Law 480 funds. Such docket determinations are usually the result of high supply/low price conditions in the United States and tend to follow strong expressions of concern by affected trade interests and their congressional representation. *Id.* at 16-17.

64. *Feeding the World's Population: Developments in the Decade Following the World Food Conference of 1974: Foreign Affairs and National Defense Div. of Cong. Research Service* 345 [hereinafter *Feeding the World's Population*].

65. NBC, October 23, 1984 (a copy of this broadcast is available in the Vanderbilt University Television News Archives).

66. *Feeding the World's Population*, *supra* note 64, at 346. In 1966, Public Law 480 was amended to place an emphasis on nutrition in the program. 80 Stat. 1526 (1966) (codified at 7 U.S.C. §§ 1691, 1721 (1982)).

The CCC was given the authority to fortify raw agricultural commodities to be donated under Title II. 7 U.S.C. § 1721. Fortified commodities not only have a higher nutritional value than raw commodities, but also require only minimal preparation by the recipient. *Uses of Agricultural Abundance*, *supra* note 27, at 37. The percentage of processed foods donated under Title II has declined. *Id.* at 34. In fiscal year 1982, 67% of commodities donated under Title II were processed, as compared to 49% in fiscal year 1984. *Id.*

67. See 7 U.S.C. §§ 1721-1727g (1982).

68. See 7 U.S.C. §§ 1731-1736n (1982).

b. Section 416 of the Agricultural Adjustment Act of 1949

Section 416 of the Agricultural Adjustment Act of 1949⁶⁹ (section 416), as amended by the Omnibus Budget Reconciliation Act of 1982,⁷⁰ authorizes the Secretary of Agriculture and the CCC to donate commodities to needy nations. The Agricultural Programs Adjustment Act of 1984⁷¹ further amended section 416 to provide that the Secretary could supply CCC-owned dairy products and wheat to effectuate Title II of Public Law 480:⁷²

In order to prevent the waste of commodities . . . acquired through price-support operations by the [CCC] before they can be disposed of in normal domestic channels without impairment of the price-support program or sold abroad at competitive world prices, the [CCC] is authorized . . . to donate such [food] commodities . . . to such State, Federal, or private agency . . . for use in . . . the assistance of needy persons. . . .⁷³

69. Pub. L. No. 81-439, 63 Stat. 1058 (1949) (codified as amended at 7 U.S.C. § 1431 (1982 & Supp. 1985)).

70. Pub. L. No. 97-253, 96 Stat. 763 (codified at 42 U.S.C. § 3001 (1982 & Supp. 1985)).

71. Pub. L. No. 98-258, 98 Stat. 130 (codified at 7 U.S.C. § 1721 (1982 & Supp. 1985)).

72. Originally, section 416 regulated only food commodities. In 1954, it was amended to include other nonfood commodities by section 302 of Public Law 480, 7 U.S.C. § 1431 (1982). In 1966, section 416 again was amended to remove the international disposal of commodities because lawmakers believed that Title II of Public Law 480 adequately covered international food donations. *Feeding the World's Population*, *supra* note 64, at 347. When surplus dairy stocks increased significantly in the early 1980s, however, Congress once again amended section 416 to permit foreign as well as domestic donation. *Id.* The Agricultural Programs Adjustment Act of 1984, *supra* note 71, authorizes section 416 to include surplus wheat, as well as dairy products, for foreign donation, sale or barter. The provision for donation, however, applies only to food commodities. Disposal of other types of commodities to prevent waste is achieved by making them available to any federal agency as payment for commodities not produced in the United States or "to barter or exchange such commodities for strategic or other materials as authorized by law." 7 U.S.C. § 1431(a) (1982 & Supp. 1985).

73. 7 U.S.C. § 1431 (1982 & Supp. 1985). See *Food Aid and the Role of the PVOs*, *supra* note 4, at 55; HOUSE SPECIAL REPORT, *supra* note 22, at 22. The Secretary must be satisfied that recipients "will not diminish their normal expenditures for food by reason of such donation." 7 U.S.C. § 1431(a). This market precaution is probably less applicable to a situation such as the African famine than to situations such as donations to charitable institutions, nonprofit school lunch programs or nonprofit summer camps, which are also authorized by this section.

To qualify for participation in the section 416 foreign donation program, a private organization, except under special circumstances, must be registered with the Agency for International Development; any organization already receiving dairy products for overseas distribution prior to this registration requirement, however, is still eligible to continue in the program.⁷⁴

The Agency for International Development, with the assistance of the CCC, carries out the administration of section 416.⁷⁵ Because commodities donated under section 416 come directly from CCC stocks,⁷⁶ specific appropriations are not required for their donation.⁷⁷ Although the quantity of dairy products donated overseas under section 416 has been increasing, thus far no wheat has been donated under the program.⁷⁸

In fiscal year 1983, the section 416 program provided 89,600 tons of dairy products, whereas in fiscal year 1984, 171,000 tons were donated.⁷⁹ The 1984 donations had a market value of \$150,000,000.⁸⁰ The countries receiving the largest shares of this

74. 22 C.F.R. § 210.3(a)-(d) (1985).

75. 22 C.F.R. §§ 210.1-.15 (1985).

76. 22 C.F.R. § 210.1(b) (1985).

77. HOUSE SPECIAL REPORT, *supra* note 22, at iii. Although section 416 commodities do not require a budget allocation before releasing food from CCC stocks, this program does affect the federal budget. The dairy products are assets of the CCC and when donated become "net realized losses" to the Corporation. *Food Aid and the Role of the PVOs*, *supra* note 4, at 4 (statement of Daniel G. Amstutz, Under Secretary, International Affairs and Commodity Programs, USDA). Under 7 U.S.C. § 1431, the CCC is required to pay for reprocessing, packaging and transportation of commodities donated under section 416, which are also losses to the CCC. These net realized losses must be reduced by a subsequent congressional appropriation to the Corporation. *Id.*

78. The USDA has been hesitant to donate wheat through section 416 because current wheat surplus is potentially marketable at a future date, while dairy is a surplus commodity which is difficult to sell at a future date. *See Uses of Agricultural Abundance*, *supra* note 27, at 23. Some interest in donating wheat nevertheless exists. For example, the National Association of Wheat Growers urged that section 416 be amended to require the Secretary of Agriculture to "make available to needy nations no less than 5% of CCC-owned commodities," including wheat. *Food Aid and the Role of the PVOs*, *supra* note 4, at 85 (prepared statement of Henry Hesham, President, National Assoc. of Wheat Growers).

79. *Rural Development*, *supra* note 3, at 47 (statement of Melvin E. Sims, General Sales Manager, USDA).

80. *See Uses of Agricultural Abundance*, *supra* note 27, at 10-11 (statement of Richard Goldberg, Deputy Under Secretary, International Affairs and Commodity Programs, USDA). Goldberg based his estimate on 165,000 tons of dona-

aid were Mexico, Brazil, and Poland.⁸¹ Agricultural products donated under section 416 are for direct aid purposes only and may not be monetized⁸² unless the commodities are damaged.⁸³ The reluctance to allow monetization of section 416 donations results from a concern over displacement of United States export markets by commodities which were originally donated.⁸⁴

c. The Foreign Assistance Act of 1961

The Foreign Assistance Act of 1961⁸⁵ authorizes the use of public funds to supplement the development efforts of private agencies and to pay transportation charges on shipments by the American National Red Cross and United States voluntary agencies registered with the Agency for International Development.⁸⁶ After affirming that private and voluntary organizations embody "the American spirit of self-help and assistance to others. . .," Congress declared that "in the interest of the United States . . . such organizations [should]. . . expand their overseas development efforts without compromising their private and independent nature."⁸⁷ Under the Act, Congress also empowers the President to provide aid for international disaster relief and rehabilitation to any international organization or private voluntary organization.⁸⁸

d. Food Security Wheat Reserve

Congress established the Food Security Wheat Reserve in the Food Security Wheat Reserve Act of 1980.⁸⁹ The Act authorizes four million metric tons of government-owned wheat to provide, on a donation or sale basis, emergency food assistance to developing countries.⁹⁰ The Reserve may be drawn upon under either of two conditions: (1) when "the domestic supply of wheat is so lim-

tions. *See id.* Compare *id.* with *supra* note 79, at 47.

81. *See Uses of Agricultural Abundance, supra* note 27, at 11.

82. 22 C.F.R. § 210.6(b)(6) (1985).

83. 22 C.F.R. § 210.9 (1985).

84. *See* HOUSE SPECIAL REPORT, *supra* note 22, at 24. For a discussion of monetization, see *infra* notes 655-61 and accompanying text.

85. 22 U.S.C. §§ 2151-2443 (1982) (amended 1981).

86. 22 U.S.C. § 2151u(b). For a discussion of these registration procedures, see *infra* 134-51 notes and accompanying text.

87. 22 U.S.C. § 2151u(a).

88. 22 U.S.C. § 2292(b).

89. Title III, 7 U.S.C. § 1736(f)-1 (Supp. 1985).

90. *Id.*, § 1736(f)-1(a).

ited that quantities cannot be made available for disposition under [Public Law 480]";⁹¹ or (2) when any developing country suffers a major disaster, in which case 300,000 metric tons may be released, without regard to the domestic supply, for use under Title II of Public Law 480.⁹² The latter provision allows for the immediate release of food when the emergency is unanticipated and when regular Public Law 480 procedures, such as the appropriations process required by the Act, might preclude a quick response.⁹³

The Secretary of Agriculture is required to use CCC funds and facilities to carry out the Reserve's purposes,⁹⁴ and the CCC is reimbursed from Public Law 480 funds.⁹⁵ President Reagan authorized the release of 300,000 tons of wheat from the Reserve for the first time in November 1984.⁹⁶ The President's action was in response to exceptional food needs in the developing countries of Africa and South Asia.⁹⁷

e. The President's Emergency Food Assistance Act of 1984

After noting that "acute food crises continue to cause loss of life, severe malnutrition, and general human suffering in many areas of the Third World, especially in sub-Saharan Africa,"⁹⁸ the President's Emergency Food Assistant Act of 1984⁹⁹ establishes a fund of \$50 million each year for fiscal year 1985 and fiscal year 1986 to provide assistance utilizing private voluntary organizations (PVOs), public agencies or governments designated by the President.¹⁰⁰

91. *Id.*, § 1736(f)-1(c).

92. *Id.* While authority for the Reserve is continuing, HOUSE SPECIAL REPORT, *supra* note 22, at 21, authority to replace wheat stocks expires September 30, 1990. 7 U.S.C. § 1736(f)-1(i)(Supp. 1985).

93. HOUSE SPECIAL REPORT, *supra* note 22, at 21.

94. 7 U.S.C. § 1736(f)-1(g)(1)(Supp. 1985).

95. *Id.*, § 1736(f)-1.

96. President's Statement, WEEKLY COMP. PRES. DOC. (Dec. 5, 1984), reprinted in 85 DEP'T ST. BULL. 26-27 (Jan. 1985).

97. *Id.*

98. 7 U.S.C. § 1728(1) (Supp. 1985).

99. 7 U.S.C. § 1728.

100. *Id.*, § 1728(a), (c).

2. Other Laws and Regulations which Facilitate Origin and Operation of PVOs

In addition to financing programs of and furnishing commodities to private voluntary groups, the United States has established a framework of statutes and regulations which assist the organization and operation of these PVOs.

a. Federal Tax Liability of PVOs

Whether or not a PVO participates in United States government donation programs, it will be eligible for favorable tax treatment under the Internal Revenue Code.¹⁰¹ A voluntary organization can assure its tax-exempt status by organizing as either a private foundation or a public charity under section 501(c)(3).¹⁰² This section creates an exemption¹⁰³ for "[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . .,"¹⁰⁴ provided that (1) the organization does not substantially engage in dissemination of propaganda, attempt to influence legislation, or participate in a political campaign on behalf of any candidate; and that (2) no part of the organization's net earnings inure to the benefit of an individual,¹⁰⁵ except as an object of charity.¹⁰⁶

To apply for section 501(c)(3) status, an organization must submit an Application for Recognition of Exemption within fifteen months from the end of the month in which it was organized.¹⁰⁷ If the organization chooses to incorporate, it must include a copy of its state charter and bylaws. The organization formed as a fund or foundation must include a copy of the appropriate organizational

101. 26 U.S.C. § 501(c)(3) (1982).

102. See *infra* notes 107-18 and accompanying text.

103. Section 501(c)(3) status not only provides a substantial tax exemption to the organization, but allows individual donors to deduct the value of their contributions or gifts, within certain limitations, on their individual income tax forms. 7 U.S.C. §§ 170(a)(1), 2522 (Supp. 1986). See *supra* notes 113-15 and accompanying text for a discussion of limitations on individual deductions.

104. 26 U.S.C. § 501(c)(3).

105. *Id.*

106. *Id.*

107. I.R.S. Form 1023, p.1 (Rev. 1981). If the organization files the Application within this period, the exemption, upon approval, will be recognized retroactively to the date of its first organizational meeting.

papers. A trust is a fund or foundation and may qualify for exemption. An individual or a partnership, however, cannot qualify. An organization subordinate to a central organization may already be covered under a group exemption letter. If so, the new chapter need not file a separate application for exemption.

The organizing instrument, either expressly or by operation of state law, must limit the organization's activities to those permitted under section 501(c)(3) and must contain a proper dissolution clause.¹⁰⁸ This clause must permanently dedicate the organization's assets to some other exempt purpose in the event of dissolution. Therefore, a section 501(c)(3) organization may not dissolve itself and simply divide the remaining assets among its members or employees. Sufficient financial data must also accompany the application, indicating the means of financing the organization.

Section 501(c)(3) effectively divides eligible organizations into two classes: private foundations and public charities. A private foundation is generally established by a large donation from an individual or a family. Earnings from this investment fund are then used to award grants and to finance humanitarian causes. Every organization qualifying for tax exemption under section 501(c)(3) is considered a private foundation unless it falls into one of four categories specifically excluded from the definition.¹⁰⁹ Thus, organizations such as churches, educational groups, and hospitals,¹¹⁰ as well as those receiving more than one-third of their annual support from members and the general public,¹¹¹ are public charities. Nonetheless, even if an organization falls within one of the categories excluded from the definition of private foundation, the Internal Revenue Service (IRS) presumes that it is a

108. 26 C.F.R. § 1.501(c)(3)-1(b)(4) (1985).

109. The four excluded categories are listed in 26 U.S.C. § 509(a)(1)-(4) (1982).

110. The first category excluded from the definition includes churches, educational organizations, hospitals, governmental units, and publicly-supported organizations. 26 U.S.C. § 509(a)(1).

111. Category two consists of organizations normally receiving more than one-third of their annual support from members and the general public and not more than one-third from investment income. Organizations in category three are those operated for the benefit of or in common with an organization listed in category one or two. The fourth category comprises organizations operated exclusively for public safety testing. *Id.*, § 509(a)(2).

private foundation, with limited exceptions,¹¹² unless it gives the IRS timely notice¹¹³ to the contrary.

There are significant differences between the tax status of a private foundation and that of a public charity. Contributions to a private foundation are deductible until they exceed thirty percent of an individual's adjusted gross income.¹¹⁴ By contrast, an individual may deduct donations to a public charity so long as they do not exceed 50 percent of his adjusted gross income.¹¹⁵ A domestic private foundation also must pay a two percent excise tax annually on its net investment income.¹¹⁶

In addition, a private foundation is not tax-exempt nor are contributions to it deductible as charitable contributions unless its governing instrument contains special provisions in addition to those applicable to all organizations described in section 501(c)(3).¹¹⁷ The rationale underlying these special provisions is to insure that the foundation utilizes its resources for charitable purposes.¹¹⁸ The IRS may assess taxes and penalties for any violation of these provisions. A private foundation's governing instrument meets these charter requirements if valid provisions of state law: (1) require it to act or refrain from acting so as not to subject the foundation to taxes imposed on prohibited transactions, or (2) treat the required provisions as contained in the foundation's governing instrument.¹¹⁹

112. See 26 U.S.C. § 508(b)-(c) (1982).

113. *Id.*, § 508(a). An organization can give timely notice by filing a Form 1023. See *supra* note 107 and accompanying text.

114. 26 U.S.C.A. § 170(b)(1)(B)(i) (Supp. 1985).

115. *Id.*, § 170(b)(1)(A). Special rules for calculating this percentage apply to individuals making donations to both types of organizations in a single year. *Id.*, § 170(b)(1)(B)(ii).

116. INTERNAL REVENUE SERVICE, TAX-EXEMPT STATUS FOR YOUR ORGANIZATION, Publication 557, at 15 (Rev. Feb. 1984).

117. These provisions include: (1) restrictions on self-dealing between the private foundation and its substantial contributors which would benefit an individual at the expense of the organization's goals; (2) requirements that the foundation annually distribute income for charitable purposes; (3) limitations on foundation holdings in private business; (4) provisions that the foundation's investments do not conflict with its exempt purposes; and (5) provisions to assure that the foundation's expenditures actually further its exempt purposes. *Id.*

118. *Id.* For a detailed discussion of restrictions, definitions, excise taxes, and other items relating to private foundations, see INTERNAL REVENUE SERVICE, TAX INFORMATION FOR PRIVATE FOUNDATIONS AND FOUNDATION MANAGERS, Publication 578 (Rev. Oct. 1984).

119. I.R.S. Pub. 557, *supra* note 115, at 15.

b. Postal Privileges

Several statutory and regulatory postal privileges exist which facilitate appeals for donations through the mail. Regular bulk mailing privileges are available to all mailers, nonprofit or otherwise, or third-class material, including advertising, circulars, flyers, announcements, and general newsletters.¹²⁰ Mailers must file a separate application for these privileges at each post office from which bulk mailings will be made. Each mailing must contain at least 200 pieces and all pieces must be identical in size, weight, number of enclosures, and wording.¹²¹

In addition to regular bulk rates, the Postal Service offers special reduced rates to nonprofit groups. For mailings which are similar in every other respect, eligible nonprofit organizations pay approximately one-half the rate charged to holders of a regular bulk mail permit, and for a one-ounce mailing, approximately one-quarter the rate charged for a first-class mailing. This advantage over first-class rates becomes even greater as the size of the individual mailing increases (up to one pound).¹²²

The Postal Service also offers Business Reply Mail (BRM) service,¹²³ enabling participants to receive first-class mail replies from customers or donors by paying postage only on actual returns from any given distribution of materials.¹²⁴ Unlike the bulk

120. Completion of PS Form 3624 (1980) constitutes an application for privileges.

121. No postscripts or notes are allowed, although the Postal Service does permit individualized references to each recipient's name, so long as such references are made within an otherwise standardized message or form letter.

122. To send mail at special bulk third-class rates, an organization must submit Postal Service (PS) Form 3624 and pay a \$50 annual bulk mailing fee. The application must include copies of documents, such as a charter, articles of incorporation, bylaws, or bulletins, which describe the purpose of the corporation. It must also include an attachment, if possible, which summarizes the activities of the organization over the previous 12 months.

Although an organization may receive a regular bulk mail permit on the day of application, processing PS Form 3624 takes longer. After an organization submits this application for special rates it may mail temporarily at regular bulk rates. Upon approval of the application, however, it is entitled to a refund for the difference between the regular and special bulk rates for all mailings made while the application was pending.

123. Postal Bulletin 21489, Dec. 13, 1984, contains a description of this service and further includes PS Form 3614, the application for BRM privileges.

124. A business or nonprofit organization typically distributes a return card or envelope bearing the familiar words in the upper right hand corner, "No

mail program, BRM does not provide a special rate for nonprofit organizations; however, it is particularly well-suited to mass appeals for support which may generate only a five or ten percent response.¹²⁵ Another statutory postal privilege for charitable groups creates two exceptions to the general prohibition against the mailing of unordered merchandise: (1) free samples clearly and conspicuously marked as such, and (2) merchandise mailed by a charitable organization soliciting contributions.¹²⁶

B. Agencies and Agency Relationships with Relief Organizations

1. Agency for International Development

a. Role in United States Foreign Assistance

All foreign assistance programs of the United States are administered by the Agency for International Development (AID).¹²⁷ Established during the Kennedy Administration as a part of the State Department by the Foreign Assistance Act of 1961,¹²⁸ the policy of AID is "to concentrate assistance on the poorest countries; prevent and combat disease and help provide health services for the great majority in health, disease prevention, and environmental sanitation; reduce human malnutrition and to increase opportunities and motivation for family planning and reduce the rate of population growth."¹²⁹ Along with the Department of State, field missions or representatives located in Africa, Asia, Latin America and the Near East execute AID programs.¹³⁰ AID, in conjunction with the USDA, administers Public Law 480

Postage Necessary If Mailed In The United States." The permit holder guarantees payment of the appropriate first-class postage plus a handling charge per piece on all returned BRM cards or envelopes. To qualify, an organization must submit a PS Form 3614 and an annual permit fee of \$50 to the post office issuing the permit.

125. The Postal Service has also established a BRM program for international mail.

126. 39 U.S.C. § 3009 (1982) (such mailings violate 15 U.S.C. § 45(a)(1) (1982)).

127. Field, *Nutrition Programs for Children in Developing Countries*, Report to the Presidential Comm. on World Hunger, Feb. 1980, at 4.

128. Exec. Order No. 10,973, 26 Fed. Reg. 10,469 (1961), reprinted in 1961 U.S. CODE CONG. & ADMIN. NEWS 1340, 1340-41.

129. Field, *supra* note 127, at 4.

130. *Id.*

programs. The USDA informs AID field representatives of the availability of and arranges for the transportation of surplus commodities for Title II programs.¹³¹

b. AID/PVO Cooperation

Although the AID partnership with PVOs dates back to the Agency's founding, Congress specified a minimum support level for the first time in 1981, when AID was instructed to make available to PVOs between twelve and sixteen percent of its development and disaster assistance funding.¹³² AID defines a PVO as a nonprofit organization which receives some portion of its revenue from the private sector and which receives voluntary contributions of money, staff time, or in-kind support from the general public.¹³³

The Agency primarily interacts with PVOs in two ways. First, PVOs serve as intermediaries in carrying out programs developed by the United States government. Private agencies wishing to participate in any of the Acts listed above must register, except under special circumstances,¹³⁴ with AID headquarters pursuant to the procedure described below. AID also supports programs initiated by PVOs. AID missions may approve Operational Program Grants (OPGs) in response to certain private efforts.¹³⁵ These provide federal funding of up to seventy-five percent of a privately initiated relief or development project. Financial support is also available under a matching grant program for PVOs of recognized standing, which provides AID funds for up to fifty percent of program costs in a private initiative.¹³⁶ Again, registration is a prerequisite to participation in this AID-administered PVO Grant Program.¹³⁷

131. TOMA, *THE POLITICS OF FOOD FOR PEACE* 45, 47-48 (1976). See *supra* notes 43-66 and accompanying text.

132. 22 U.S.C. § 2151u(f) (1982).

133. U.S.A.I.D. OFFICE OF PRIVATE AND VOLUNTARY DEVELOPMENT, *THE AID-PVO PARTNERSHIP 2* (1984) [hereinafter *THE AID-PVO PARTNERSHIP*].

134. Unregistered PVOs which do not meet the AID conditions of registration may apply to The Office of Food for Peace for participation in the Section 416 program. In emergency situations, local PVOs may be sponsors when no U.S. PVO is available to assist.

135. *THE AID-PVO PARTNERSHIP*, *supra* note 133, at 3-4.

136. *Id.*

137. *Id.* Although registration is a condition of eligibility for assistance under the PVO grant program, it is only one of several such requirements. Others in-

AID maintains two registries of PVOs engaged in, or intending to engage in, voluntary foreign aid operations - one for United States organizations and one for foreign organizations.¹³⁸ As of December 31, 1984, 161 PVOs were registered with AID, reporting a total of \$1.2 billion in private contributions received for the previous fiscal year. During fiscal year 1984, the United States Government provided PVOs with an additional \$687 million in grants, contracts, excess government property, ocean freight subsidies, and donated food.¹³⁹ The expenditures of registered PVOs for this period equalled 99.6 percent of their income, over ninety percent of which went directly into program costs, six percent into administrative/management costs, and three percent for publicity and fund raising costs.¹⁴⁰

Registration provides the information necessary to determine whether a PVO meets the funding requirements of the Foreign Assistance Act: a PVO participating in the AID Grant Program must obtain at least twenty percent of its total annual financial support for its international activities from private (nongovernmental) sources.¹⁴¹ This information is also used to confer a preference ranking for assistance under section 202 of P.L. 480.¹⁴² Within AID, the twenty percent requirement applies only to programs which support PVOs as independent entities. Those programs which deal with PVOs as intermediaries are excluded from the twenty percent nongovernmental funding requirement.¹⁴³

clude program review and a pre-grant award review. 22 C.F.R. 203.1 (1985). The purpose of the latter is to evaluate the financial management systems of grant applicants according to requirements established by the Office of Management and Budget (OMB). Applicable OMB circulars are A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations"; Attachment F, "Standards for Financial Management Systems"; and by reference, OMB circular A-122, "Cost Principles for Nonprofit Organizations."

138. 22 C.F.R. §§ 203.1(a), 203.6 (1985).

139. U.S.A.I.D. BUREAU FOR FOOD FOR PEACE AND VOLUNTARY ASSISTANCE, VOLUNTARY AID PROGRAMS 3 (1984) [hereinafter VOLUNTARY AID PROGRAMS].

140. These are independent calculations based on data provided by AID. See *id.* at 22, 29.

141. 22 U.S.C. § 2151u(g) (1981). Known as the International Security and Development Cooperation Act of 1981, this statute established January 1, 1985 as the date by which compliance with the 20% standard would be required.

142. See *supra* note 19 and accompanying text.

143. VOLUNTARY FOREIGN AID PROGRAMS, *supra* note 139, at 35.

The conditions of registration for domestic PVOs¹⁴⁴ require that the applicant: (1) be a private nongovernmental structure organized under United States law; (2) maintain its principal place of business in the United States; and (3) not be a university, college, accredited degree-granting institution of education, private foundation, organization engaged exclusively in research or scientific activities, church or organization engaged exclusively in religious activities. It must also receive funds from private sources and have a tax exemption under the Internal Revenue Code.¹⁴⁵

Foreign PVOs are registered in accordance with guidelines similar to those for domestic PVOs, but these guidelines are adjusted to reflect differing legal, business or cultural practices. Four categories of foreign PVOs are recognized by AID: (1) indigenous PVOs, which conduct operations in the country under whose laws they are organized; (2) regional PVOs, which are organized under the laws of one country and conduct operations in more than one country, but not in more than one AID geographic region; (3) third-country PVOs, which are not organized under the laws of any country in the AID geographic region in which they operate; and (4) international PVOs, which receive funds from two or more countries, have an international governing body, and conduct operations in one or more AID geographic regions.¹⁴⁶

For a variety of reasons, some PVOs choose to operate independently of AID and statutory donative provisions. The complex reporting mechanisms, both prior to and during a project, can prove too burdensome and time-consuming for groups which value highly the freedom to choose their own projects and move

144. These registration requirements are listed at 22 C.F.R. § 203.2 (1985).

145. The PVO must be tax-exempt under any one of the following provisions: (1) I.R.C. § 501(c)(3) (Supp. 1985), except private foundations under I.R.C. § 509(a)(2); (2) as a social welfare organization under I.R.C. § 501(c)(4); (3) as a labor, agricultural and horticultural organization under I.R.C. § 501(c)(5); or (4) as a business league, chamber of commerce, real estate board, board of trade or professional football league, if not organized for profit, under I.R.C. § 501(c)(6). In addition, AID may require the applicant to submit its articles of incorporation, bylaws, documents establishing legal status, a statement of location, a statement of tax exemption, tax forms, annual reports, and an audited financial statement.

146. THE AID-PVO PARTNERSHIP, *supra* note 133, at 13. Registration guidelines for non-United States PVOs were approved by the Deputy Administrator of AID on March 15, 1978 and are subject to AID policies, regulations and procedures as amended or supplemented from time to time. 22 C.F.R. § 203.6 (1985).

swiftly.¹⁴⁷ Other groups such as Oxfam America have policy objections both to bulk aid, which is sold locally on the open market, and to project aid, which is distributed directly to select recipients.¹⁴⁸ In a recent statement to the House Select Committee on Hunger,¹⁴⁹ an Oxfam America representative explained her group's decision not to accept government funds or food offered under the provisions of P.L. 480. While acknowledging that food aid is effective in an emergency relief situation, Oxfam argues that the "false sense of food security" and the disincentive to local agricultural production which food aid may induce often become obstacles to the long-term goal of eliminating poverty through the promotion of local agricultural self-reliance.¹⁵⁰ In short, "[l]ack of food is not the real problem, poverty is."¹⁵¹

2. United Nations

a. United Nations - Private Voluntary Organizations

The United Nations maintains official relationships with private voluntary organizations in two capacities. PVOs may qualify for official listing with the U.N. Department of Public Information (DPI),¹⁵² which includes them in the vast U.N. information-

147. Cooper, *International Relief Agencies*, EDITORIAL RESEARCH REP., Jan. 25, 1985, at 72.

148. Dawson, *In Defence of Food Aid*, INT'L LAB. REV., Jan.-Feb. 1985, at 18-19.

149. *Food Aid and the Role of the PVOs*, *supra* note 4, at 87-96.

150. *Id.* at 88.

151. *Id.* at 90-91. This statement is echoed in a status report issued in September 1985, by the U.N. Office for Emergency Operations in Africa: "[I]t must be remembered, [however,] that emergency relief is not a cure but merely a temporary palliative. The disease is poverty. Drought does not produce famine when the affected population is affluent." U.N. Report No. OEOA/3/3, p. 3 (Sept. 1, 1985).

152. Since its creation in 1946, the Public Information division of the U.N. has been known as both an "Office" (OPI) and a "Department" (DPI). It is officially a department, but both terms are still in use. See P. CHIANG, *NON-GOVERNMENTAL ORGANIZATIONS AT THE UNITED NATIONS: IDENTITY, ROLE AND FUNCTION* 146-47 (1981).

NGO relations with the DPI are regulated by the DPI/NGO Section, "principally for the purposes of re-disseminating information about the United Nations and to promote the widest possible public understanding of the United Nations' aims and activities." *Id.* at 153 (quoting from U.N. OPI/NGO Section, *Explanation and Requirements for Listing NGOs with the Office of Public Information at United Nations Headquarters* (74-47611), at 1, n.d.).

sharing network. PVOs listed solely with the DPI do not participate in U.N. deliberations. The U.N. also may grant select PVOs consultative status¹⁵³ with the U.N. Economic and Social Council (ECOSOC), which allows them to participate in Council proceedings.

Only those PVOs of "recognized national or international standing," which conduct "active information program[s] in the field of international affairs, part of which they are willing to devote to their interest in the United Nations," may list with the DPI.¹⁵⁴ Although they do not have the privilege of presenting written or oral statements to U.N. bodies, DPI-listed PVOs do have access to the U.N. buildings where, in addition to attending meetings and collecting documents, they have the opportunity to confer with delegates and officials of the Secretariat.¹⁵⁵ PVO applications for DPI listing may be made directly to the DPI/PVO section, where they receive staff review.

In contrast to DPI listing, PVO consultative status creates an official two-way relationship between the PVO and the ECOSOC.¹⁵⁶ As authorized by Article 71 of the U.N. Charter,¹⁵⁷ Resolution No. 1296¹⁵⁸ defines this relationship:

[C]onsultative arrangements are to be made, on the one hand, for the purpose of enabling the Council or one of its bodies to secure expert information or advice from organizations having special competence in the subjects for which consultative arrangements are made, and, on the other hand, to enable organizations which represent important elements of public opinion in a large number of countries to express their views.¹⁵⁹

153. See *infra* notes 156-66 and accompanying text.

154. P. CHIANG, *supra* note 152, at 153 (quoting from U.N. Press Release NGO/16, pp. 2-3).

155. *Id.* at 157. This allows a degree of informal but direct communication between NGO representatives and U.N. delegates.

156. NGO applications for Consultative Status with ECOSOC are considered by the Council Committee on NGOs. This committee consists of representatives from member governments, and its recommendations must receive final approval from the full council.

157. "The Economic and Social Council [ECOSOC] may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence." U.N. CHARTER art. 71, para. 1.

158. ECOSOC adopted the Resolution in 1968.

159. U.N. ECOSOC Res. 1296 (XLIV) at para. 14 (1968), *reprinted in* P. CHIANG, *supra* note 152, at 295, 298.

PVOs with consultative status fall into one of three categories: (1) those groups with "general" consultative status;¹⁶⁰ (2) those groups with "special" consultative status;¹⁶¹ and (3) those groups which can make occasional and useful contributions to the work of the Council and its subsidiary bodies.¹⁶² The Council may call upon groups in this third category at times it deems appropriate.¹⁶³

The privileges afforded PVOs with consultative status vary according to each group's categorization. Organizations in category I may make agenda proposals for ECOSOC meetings and may address the Council directly if such proposals are accepted or upon recommendation of an appropriate Council committee.¹⁶⁴ Category II organizations may occasionally address the Council, although their opportunities to make direct contributions is generally limited to meetings of commissions and other subsidiary bodies of ECOSOC. Representatives from category I and II organizations may observe public meetings of the Council and its subsidiary bodies, whereas category III groups may send representatives only to meetings which concern their particular fields of competence.¹⁶⁵ Category I and II organizations may also submit written statements to Council members.¹⁶⁶

i. Office for Emergency Operations in Africa

Against the diverse backdrop of private and intergovernmental humanitarian relief agencies, in 1985 a single U.N. office emerged which has managed to coordinate effectively and to focus the net-

160. Category I organizations have "general" consultative status based upon: (1) concern with most of the activities of the Council; (2) demonstrated contributions to the objectives of the U.N.; (3) close involvement with the economic and social life of the areas they represent; and (4) broad representation of major segments of population in a large number of countries. *Id.* at para. 16(a), reprinted at 298-99. See also, P. CHIANG at 91.

161. Category II organizations have "special" consultative status based upon: (1) their special competence and specific concern with only a few of the fields of activity covered by ECOSOC; and (2) their international reputation within those fields for which they have or seek consultative status. U.N. ECOSOC Res. 1296 (XLIV) at para. 16(b) (1968), reprinted in P. CHIANG, *supra* note 152, at 295, 299.

162. *Id.* at para. 19, reprinted at 299.

163. *Id.*

164. *Id.* at para. 21, reprinted at 300.

165. *Id.* at para. 22, reprinted at 300.

166. *Id.* at para. 23, reprinted at 300.

work of PVO, IGO, and even governmental efforts responding to the African emergency. On December 17, 1984, faced with what he described as a challenge "without precedent in history,"¹⁶⁷ and following the U.N. General Assembly's adoption by consensus of the "Critical Economic Situation in Africa,"¹⁶⁸ Secretary General Javier Perez de Cuellar announced the establishment of the Office for Emergency Operations in Africa (OEOA). The scope of the OEOA mandate was massive:

to ensure that all elements of the United Nations collaborate with maximum coherence, harmony and effectiveness, in close cooperation with the African countries affected, the specialized agencies of the United Nations system, donor Governments and organizations and non-governmental organizations, to help to ensure that the external assistance required to meet the emergency needs of the affected countries is provided in the most timely, holistic and effective manner possible.¹⁶⁹

To head this new office the Secretary General chose Bradford Morse, Administrator of the United Nations Development Program (UNDP), who immediately concurred with Javier de Cuellar's assessment by describing the African drought as "the greatest human disaster in history."¹⁷⁰

Though vested with broad responsibilities, the OEOA was designed as a temporary office, limited to the duration and recovery stages of the African crisis. It is staffed by representatives from virtually every major U.N. humanitarian agency and simultaneously works in close cooperation with any private organizations having the capacity to deliver immediate and effective relief aid in Africa. Its PVO relations range from emerging groups such as Live Aid and USA For Africa, to umbrella groups such as Interaction, which represents 110 United States PVOs. Its funding comes from private donations, governments, industry and independent relief agencies. On a daily basis, it has taken over the job of coordinating the field efforts of PVOs, donor governments, and

167. Lone, *Generous World Response to Challenge in Africa*, AFRICA EMERGENCY REPORT 1 (Apr.-May 1985).

168. G.A. Res. 39/29, U.N. Press Release GA/7095, at 22 (Jan. 21, 1985).

169. United Nations Report on the Emergency Situation in Africa at 2, U.N. Doc. SG/CONF.2/1 (1985).

170. Lone, *Famine Continues Unabated*, AFRICA EMERGENCY REPORT 3 (June 1985).

recipient African governments.¹⁷¹

III. ADMINISTRATION OF AID THROUGH VARIOUS BODIES

This section examines some of the operations of the international relief system by focusing on the response of the United States Government, private voluntary organizations and intergovernmental organizations to past and present crises. It also discusses the attempts of recipient countries to assist these donors in the execution of their activities.

A. United States Government

1. Beginnings of United States Activities

Due to the recent African drought, famine and food aid have captured the attention of the media and consequently thrust foreign assistance to the forefront of the political arena. But American overseas food assistance has not been a recent government undertaking. For example, as long ago as 1812, Congress provided about \$50,000 in food aid to earthquake victims in Venezuela.¹⁷² The following discussion details two major relief operations initiated earlier this century.

a. American Relief Administration

The first major disaster relief operations of the United States government began after World War I. After signing the Armistice, President Woodrow Wilson directed Herbert Hoover to form the American Relief Administration (ARA) to coordinate official United States postwar aid to Europe.¹⁷³ Congressional appropriations¹⁷⁴ and United States Treasury loans to newly established

171. Telephone interview with Keith Walton, Chief of the OEOA (Oct. 20, 1985).

172. FOOD FOR WAR, *supra* note 17, at 26.

173: F. SURFACE & R. BLAND, AMERICAN FOOD IN THE WORLD WAR AND RECONSTRUCTION PERIOD 3-4 (1931). Prior to his ARA appointment, Hoover served in Europe as Chairman of the Commission for Relief in Belgium, an organization which purchased and shipped relief supplies to German-occupied Belgium and Northern France. *Id.* at 5. In 1917, Hoover returned to the United States to serve as United States Food Administrator, a position created by Executive Order of President Wilson under authority of the Food Control Act of August 10, 1917. *Id.* The Food Administrator coordinated conservation and distribution of the United States food supply. *Id.* at 15.

174. See Act of Feb. 25, 1919, Pub. L. No. 65-274, 40 Stat. 1161. Congress

governments funded the ARA,¹⁷⁵ and the President's National Security and Defense Fund provided additional supplies. During the nine months after Armistice and until the signing of the Treaty of Versailles on June 28, 1919, Hoover directed the delivery of over four million tons of food to Europe.¹⁷⁶ After the Armistice period, official distribution of relief from the United States ceased and the ARA began liquidation.¹⁷⁷

The ARA, however, continued to facilitate relief efforts. Using the money remaining in its relief fund, Hoover established the American Relief Administration European Children's Fund (ECF), a private charitable organization. Though not part of the official ARA of the Armistice period,¹⁷⁸ the ECF from 1919 to 1921 facilitated the feeding of millions of European children.¹⁷⁹

In early 1921, a severe drought afflicted the Volga region of Russia. Not until July, however, did the Soviet government permit Maxim Gorky to appeal for foreign aid,¹⁸⁰ whereupon Hoover immediately offered the assistance of the ARA European Children's Fund.¹⁸¹ The ARA, however, had insufficient funds and many prior commitments in other countries, so Hoover asked President Harding to provide federal aid.¹⁸² In response to Har-

appropriated \$100 million for relief in Europe.

175. See Act of April 24, 1917, Pub. L. No. 65-3, 40 Stat. 35; Act of September 24, 1917, Pub. L. No. 65-45, 40 Stat. 258; Act of April 4, 1918, Pub. L. No. 65-120, 40 Stat. 502; and Act of July 9, 1918, Pub. L. No. 65-192, 40 Stat. 844. Czechoslovakia, Romania and Yugoslavia received such loans. The loans totaled over \$87 million. F. SURFACE & R. BLAND, *supra* note 173, at 34.

176. F. SURFACE & R. BLAND, *supra* note 173, at 4. Also, the American Red Cross contributed \$200 million to European relief during the Armistice period. See generally THE AMERICAN NATIONAL RED CROSS ANNUAL REPORT (1919-1923). Other United States charitable organizations which donated food and money include American Friends Service Committee; American Jewish Joint Distribution Committee; American Committee for Relief of the Near East; and the Commission for Relief in Belgium. British charities also contributed: Friends' Emergency Relief Committee in Vienna; Friends' War Victims Relief Committee in Poland; the British Red Cross; Lady Muriel Paget's Mission in Czechoslovakia; "Save the Children" Fund; Scottish Women's Hospitals; and the Vienna Emergency Relief Fund in London. F. SURFACE & R. BLAND, *supra* note 173, at 35.

177. F. SURFACE & R. BLAND, *supra* note 173.

178. *Id.*

179. *Id.*

180. *Id.* at 244. See B. WEISSMAN, HERBERT HOOVER AND FAMINE RELIEF TO SOVIET RUSSIA: 1921-23 46-47 (1974).

181. F. SURFACE & R. BLAND, *supra* note 173, at 244-45.

182. See B. WEISSMAN, *supra* note 180, at 46-47.

ding's recommendation, Congress passed a bill¹⁸³ that authorized the expenditure of \$20 million for corn, seed grain and milk¹⁸⁴ by the United States Grain Corporation.¹⁸⁵ In return, the Russian Government gave the ARA \$10 million, chiefly in gold rubles, to purchase food for the Russian people.¹⁸⁶ Russia and the United States finalized their agreement on August 20, 1921, by signing a formal treaty at Riga.¹⁸⁷

The ARA operations in Russia continued from August 1921 until 1923. During this period, the ARA delivered a total of 741,572.7 metric tons of relief supplies to Russia.¹⁸⁸ The total value of aid, including contributions by other European governments, exceeded \$63 million.¹⁸⁹ On May 14, 1923, the United

183. Act of December 22, 1921, Pub. L. No. 67-116, 42 Stat. 351.

184. F. SURFACE & R. BLAND, *supra* note 173, at 245. Other relief organizations which worked in cooperation with the ARA were the Volga Relief Society, National Lutheran Council, American Mennonite Relief, Southern Baptist Convention, the American Friends Service Committee, American Red Cross, Federal Council of Churches, American Jewish Joint Distribution Committee, National Catholic Welfare Association, Knights of Columbus, Y.M.C.A. and Y.W.C.A. *Id.* at 246.

185. The United States Grain Corporation was established during World War I to coordinate the conservation and distribution of grain in the United States and Allied Countries.

186. F. SURFACE & R. BLAND, *supra* note 173, at 246. The Soviet government had several million dollars in gold coins in reserve in their treasury.

187. See Agreement between the American Relief Administration and the Russian Socialist Federative Soviet Republic, Aug. 20, 1921, United States-U.S.S.R., reprinted in F. SURFACE & R. BLAND, *supra* note 173, at 926-27. Maxim Litvinov signed on behalf of Russia and Walter Lyman Brown signed on behalf of the American Relief Administration. In general, the agreement provided that

[T]he Soviet authorities agreed to fully protect supplies imported by the A.R.A. and affiliated organizations and to replace or pay for any supplies lost or stolen; to permit full control by the A.R.A. of distribution up to the time of consumption; to bear the entire cost of unloading, storage, and inland transportation of commodities, as well as the overhead expenses. . . ; to furnish necessary office space and living quarters for American personnel; to allow full freedom of movement to the American personnel in Russia, as well as freedom from search. . . . [T]he A.R.A. agreed to feed children and adults in the famine area to the extent of their capability and gave formal assurances regarding the nonparticipation of American personnel in political questions.

F. SURFACE & R. BLAND, *supra* note 173, at 245.

188. F. SURFACE & R. BLAND, *supra* note 173, at 247.

189. *Id.* The ARA/ECF delivered medical and hospital supplies, as well as foodstuffs. Russia received 8,291.9 metric tons of medical supplies worth \$8,072,256.03. *Id.* at 252.

States determined that Russia would realize a surplus of grain and other foods after the next harvest. Thus, on June 15, 1923, ARA officials and Russian officials agreed to terminate the ARA relief efforts in Russia. By July 4, 1923, the ARA's last district headquarters closed.¹⁹⁰ The ARA totally ceased operations in 1924. A final report showed that the United States had supplied 33,841,307 metric tons of food, clothes and medicine during World War I, the Armistice Period, and the Reconstruction Period.¹⁹¹

b. The Marshall Plan

After the devastation of World War II, the frigid winter of 1946-47 followed by a summer drought resulted in a severe food shortage in Europe.¹⁹² Once again, Europe relied upon both trade with and aid from the United States to secure the food, capital goods and investment funds necessary for recovery.¹⁹³ In contrast, by 1945 the United States economy was strong and not dependent on imports for its survival.¹⁹⁴ Still, the United States feared the threat of communism and the destruction of trade if Europe's economy failed.¹⁹⁵ The United States, therefore, decided to aid recovery by establishing the European Recovery Program (ERP), known as the Marshall Plan.

The Marshall Plan was named for Secretary of State George C. Marshall who, in a speech at the Harvard University commencement ceremony on June 5, 1947, invited the European countries to plan a program of reconstruction, to which the United States would contribute.

It is logical that the United States should do whatever it is able to do to assist in the return of normal economic health in the world,

190. *Id.* at 264.

191. *Id.* at 9.

192. See generally Newton, *How Successful Was the Marshall Plan?*, HIST. TODAY, Nov. 1983, at 11.

193. THE EUROPEAN RECOVERY PROGRAM, S. DOC. NO. 935, 80th Cong., 2d Sess. 2, 5 (1948).

194. Newton, *supra* note 192, at 11. The United States estimated that in 1947 it would export \$16 billion of goods but import only \$8 billion in return. *Id.* at 12.

195. Another objective of the United States was to aid the complete restoration of West Germany's highly industrialized areas without facilitating its accumulation of great military power. H. Doc. No. 478, 80th Cong., 1st Sess. 3, 12 (1947).

without which there can be no political stability and no assured peace. Our policy is directed not against any country or doctrine but against hunger, poverty, desperation and chaos. . . .

It is already evident that, before the United States Government can proceed much further in its efforts to alleviate the situation and help start the European world on its way to recovery, there must be some agreement among the countries of Europe as to the requirements of the situation and the part those countries themselves will take in order to give proper effect to whatever action may be undertaken by this Government. It would be neither fitting nor efficacious for this Government to undertake to draw up unilaterally a program designed to place Europe on its feet economically. . . . The initiative, I think, must come from Europe. The role of this country should consist of friendly aid in the drafting of a European program and of later support of such a program so far as it may be practical for us to do so.¹⁹⁶

Following Marshall's speech, French Foreign Minister George Bidault invited British Foreign Minister Ernest Bevin and Soviet Foreign Secretary Vyacheslav Molotov to discuss aid proposals in Paris on June 27.¹⁹⁷ The French and British ministers invited twenty-two European nations to send representatives to Paris to help develop a comprehensive aid program; sixteen of the nations accepted.¹⁹⁸ At the conference the countries created the Commit-

196. THE EUROPEAN RECOVERY PROGRAM, S. Doc. No. 111, 80th Cong., 1st Sess. 74-75 (1947). Undersecretary of State Dean Acheson made a similar address on May 8, 1947 at the Delta Council in Cleveland, Mississippi and again on June 16, 1947, at Princeton University, Princeton, New Jersey. *Id.* at 2.

197. *See id.* at 4. Molotov attended the Paris conference but left after a few days because the United States would not specify the exact amount of aid to be provided and because Russia disliked the idea of a central committee to coordinate the work of the ERP. Russia believed that such a committee would interfere in domestic affairs of independent nations. The Russians attacked the Marshall Plan as "an instrument of American Imperialism designed to enslave the economies of the European nations in order to save the United States from economic collapse." Smith, *The Marshall Plan*, 2 ENCYCLOPEDIA AM. FOR. POL'Y 535, 540 (1978).

198. Russia and other members of the Communist bloc refused to participate. Sanford, *The Marshall Plan: Origins and Implementation*, DEP'T ST. BULL. 17 (June 1982). The countries represented were Austria, Belgium, Denmark, France, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey, and the United Kingdom. Not represented were Finland, Poland, Hungary, Rumania, Bulgaria, Yugoslavia, Czechoslovakia, and Russia. S. Doc. No. 111, *supra* note 196, at 5.

tee for European Economic Cooperation (CEEC)¹⁹⁹ to distribute the United States appropriations for European relief.²⁰⁰

The plans, negotiations and investigations of the United States and the European Countries required time. A comprehensive program for long-term recovery would not be feasible until the spring of 1948.²⁰¹ Thus, during the initial two and one-half years of the program, Congress had to provide interim emergency aid to meet the food and fuel needs of Europe.²⁰² Most emergency assistance was in the form of repayable loans, although some assistance consisted of grants and relief, including a \$2.7 billion contribution to the United Nations Relief and Rehabilitation Administration, an authorization of \$332 million in July 1947, and a donation of \$15 million to the International Children's Emergency Fund.²⁰³

The emergency relief program provided only basic necessities such as food and medical supplies. Relief was granted to specific nations pursuant to agreements in which the United States reserved the right "to select the recipients, to determine the amounts, and to apply its own administrative standards and pro-

199. S. Doc. No. 111, *supra* note 196, at 5.

200. H. Doc. No. 478, *supra* note 195, at 8. Meanwhile, President Truman appointed three committees to examine the proposed aid to Europe. Secretary of the Interior Julius Krug's committee studied the United States' ability to provide aid and the resulting impact on United States natural resources. See *Official Summary of "National Resources and Foreign Aid" by the Krug Committee*, released Oct. 19, 1947, reprinted in S. Doc. No. 111, *supra* note 196, at 89. The Council of European Advisors studied the impact of foreign aid on the United States economy. See *Official Summary of "The Impact of Foreign Aid Upon the Domestic Economy" by the Council of Economic Advisors ("Nourse Report")*, released Nov. 1, 1947, reprinted in S. Doc. No. 111, *supra* note 196, at 97. The President's Committee on Foreign Aid, chaired by Secretary of Commerce W. Averell Harriman analyzed Europe's commodity needs on a regional basis and the limits of United States assistance. See *Official Summary of "European Recovery and American Aid" by the President's Committee on Foreign Aid (Harriman Report)*, released Nov. 8, 1947, reprinted in S. Doc. No. 111, *supra* note 196, at 103.

201. Smith, *supra* note 197, at 542.

202. *Id.*

203. Other grants and relief included \$522 million interim aid to Austria, France, and Italy in December 1947; Greek-Turkish aid worth \$400 million; and not-repayable lend-lease aid. S. Doc. No. 935, *supra* note 193, at 9. These figures do not include donations from private individuals and voluntary agencies in the United States, which equaled more than \$500 million in 1946 and again in 1947. *Id.*

cedures."²⁰⁴ Total loans, credits, grants, and relief extended from July 1, 1945, to December 31, 1947, exceeded \$11 billion.²⁰⁵

After several years of study and debate, in December 1947 President Truman submitted a proposal for a \$17 billion European Recovery Program to Congress. Congress subsequently passed the Economic Cooperation Act of 1948, appropriating \$4.3 billion for the first year of the program. Congress also established the Economic Cooperation Administration to administer the program.²⁰⁶ By 1952, when the program ended, the United States had contributed over \$13 billion to the ERP, less than half the amount originally requested by the Paris Conference countries.²⁰⁷

2. Execution of Aid Activities During Recent Years

a. Utilization of Agreements for Assistance

In recent years, the United States generally has taken two approaches to establish structures for food aid assistance to countries in times of disaster or need: (1) the institution of international agreements delineating the terms of economic assistance and cooperation among nations and (2) the implementation of bureaucratic committees to coordinate the efforts of nations in the event of a disaster.

204. *The 1947 Foreign Relief Program*, DEP'T ST. BULL. 95 (July 25, 1948). The Department of State negotiated the agreements with the recipient countries concerning distribution and usage of relief supplies. The United States concluded its first agreement with Austria; it was signed on June 25, 1947. The United States also signed agreements with Italy and Greece on July 4, 1947, and July 8, 1947, respectively. *Id.* at 100-01.

The relief agreements were divided into ten articles which regulated the following: distribution of supplies; utilization of funds accruing from sales of United States supplies; effective production, food collections and use of resources to reduce relief needs; United States representatives; freedom of the United States press and radio representatives to observe and report; reports, statistics and information; publicity regarding United States assistance; termination of relief assistance; and date of agreement. Each agreement became effective on the date it was signed and continued in force until a date determined by both governments. *Id.*

205. S. Doc. No. 935, *supra* note 193, at 9.

206. Smith, *supra* note 197, at 542. Paul G. Hoffman, President of the Studebaker Corporation and a member of the Harriman Committee, headed the organization.

207. *Id.* at 543.

i. Measures Enacted in Anticipation of Disaster

In the mid-1970s, the United States entered into agreements with Ethiopia,²⁰⁸ Mali,²⁰⁹ and Senegal,²¹⁰ setting up programs to try to avert the disastrous effects of an impending drought.²¹¹ The Ethiopia Agreement established a national food and nutrition surveillance system to warn of problems in Ethiopia and compile data on drought conditions.²¹² This Agreement also provided funding to construct unpaved roads in Ethiopia to facilitate ground transportation of relief to drought-affected areas.²¹³ In addition, the Ethiopian government assented to report the progress of the project on request and to cooperate fully in the execution of the project.²¹⁴ The agreements with Mali and Senegal established programs for relief as well as for the rehabilitation of agricultural production, animal health and management, and storage and transportation of food.²¹⁵ Both agreements further provided that each recipient government would be responsible for import taxes and duties on commodities used in connection with relief operations.²¹⁶ These three agreements reflected a recognition of

208. Ethiopia Recovery and Rehabilitation Grant Agreement, June 30, 1976, United States-Ethiopia, 27 U.S.T. 2658, T.I.A.S. No. 8337 [hereinafter Ethiopia Agreement].

209. Sahel Drought Recovery Program Grant Agreement, Jan. 28, 1974, United States-Mali, 28 U.S.T. 1, T.I.A.S. No. 8461 [hereinafter Mali Agreement].

210. Drought Recovery and Rehabilitation Program, Mar. 23, 1974, United States-Senegal, 27 U.S.T. 2672, T.I.A.S. No. 8339 [hereinafter Senegal Agreement].

211. See Ethiopia Agreement, *supra* note 208, art. I, § 1.2; Mali Agreement, *supra* note 209, art. I, § 1.2; Senegal Agreement, *supra* note 210, art. I, § 1.2.

212. See Ethiopia Agreement, *supra* note 208, art. I, § 1.2(a). These activities will be combined with other similar activities funded by the Swedish Development Association, the United Nations Children's Emergency Fund (UNICEF), and other organizations. *Id.*

213. *Id.*, art. I, § 1.2(b). The unpaved roads were to be constructed in the southern Gemu Gofa Province. *Id.* The agreement further set forth the procedures required to establish these programs. *Id.*, arts. II-VII.

214. *Id.*, art. III, § 3.1(a)-(c).

215. See Mali Agreement, *supra* note 209, art. I, § 1.2; Senegal Agreement, *supra* note 210, art. I, § 1.2. The agreements also set forth the conditions that must be met in order to receive this aid, and how the aid is to be disbursed. See Mali Agreement, *supra* note 209, arts. II-VII; Senegal Agreement, *supra* note 210, arts. II-VII.

216. See Mali Agreement, *supra* note 209, art. III, § 3.1(d); Senegal Agreement, *supra* note 210, art. III, § 3.1(d).

the impending disaster and attempted to establish programs before the drought was at its peak.

In 1958, Ethiopia and the United States executed an agreement under which the United States "will furnish to the Imperial Ethiopian Government such economic or authorized related assistance as may be requested by [Ethiopia] and approved by the Government of the United States."²¹⁷ Another section of the agreement provided for exemptions from taxes, currency controls, deposit requirements, tariffs, or customs duties in Ethiopia on any supplies, materials, funds, or equipment used in an approved project.²¹⁸ Last, the agreement exempted all personnel, other than citizens and permanent residents of Ethiopia, from Ethiopian income taxes if they paid United States income and social security taxes and they were working on an approved project under the agreement. The personal property of the workers and their families was also exempt from all taxes, tariffs and customs duties.²¹⁹ This type of agreement assists disaster relief by establishing procedures for the approval and use of aid, and it authorizes tax exemptions for personnel and property that will ease the flow of aid

217. Economic Assistance, Apr. 25, 1957, United States-Ethiopia, 8 U.S.T. 627, T.I.A.S. No. 3813 [hereinafter Ethiopia Economic Assistance Agreement].

Such assistance will be furnished in such form, on such terms and for such purposes as may be provided for in such additional arrangements as may be agreed upon between appropriate representatives of the agency designated by the Government of the United States to discharge its responsibilities under this Agreement and representatives of any agency or agencies designated by the Imperial Ethiopian Government, or between other designated representatives of the two governments.

Id. at 627-28.

218. *Id.* The section stated:

Any supplies, materials, equipment or funds introduced into or acquired in Ethiopia by the government of the United States of America, or any contractor financed by that Government, for purposes of any program or project conducted pursuant to this Agreement shall, while such supplies, materials, equipment or funds are used in connection with such a program or project, be exempt from any taxes on ownership or use of property, and any other taxes, investment or deposit requirements and currency controls in Ethiopia, and the import, export, purchase, use or disposition of any such supplies, materials, equipment or funds in connection with such a program or project shall be exempt from any tariffs, customs duties, import and export taxes, taxes on purchase or disposition of property, and any other taxes or similar charges in Ethiopia.

Id., § 4(c).

219. *Id.*, § 4(d).

into the country during the time of disaster.²²⁰

Some measures require the government of the recipient country to pay its fair share of the costs of the relief program. According to an agreement between the United States and Guinea, for example,

[i]t is understood that the Government of the Republic of Guinea, in conformity with its principle sovereign responsibility in the economic development of Guinea, will assume a significant portion of the cost of this joint program determined by agreement . . . and the aid envisaged by the Government of the United States of America will be used to supplement rather than replace the costs assumed by the Government of the Republic of Guinea.²²¹

Another provision that aids in the flow of relief is the grant of privileges and immunities for the personnel who are participating in relief projects.²²² Although such preventative measures may be helpful, they are not always available to a nation when a disaster occurs.

ii. Measures Enacted in Response to Disasters

Although preexisting measures are helpful in guiding disaster relief efforts, frequently there are no such measures and nations are forced to respond quickly. In 1956, the United States and

220. This type of agreement, exempting the aid from internal taxation and entry duties by the recipient country, is fairly common. In 1959, the United States entered into an agreement with Ghana exempting relief supplies and packages from internal taxation and entry duties. Relief Supplies and Packages: Duty-Free Entry and Exemption From Internal Taxation, Apr. 9, 1959, United States-Ghana, 10 U.S.T. 720, T.I.A.S. No. 4203. Under this agreement, also the cost of transportation within Ghana for relief supplies was to be borne by Ghana. *Id.*, § 4. The United States, however, was to furnish an ocean freight subsidy for basic necessities supplied by the United States. *Id.*, § 2.

Similar provisions were also included in agreements between the United States and Tanzania, Drought Assistance in Arusha Region, Aug. 13, 1975, United States-Tanzania, art. IX(d), 29 U.S.T. 9, T.I.A.S. No. 8786; Sudan, Economic, Technical, and Related Assistance, Mar. 31, 1958, United States-Sudan, § 7, 9 U.S.T. 343, T.I.A.S. No. 4014; Guinea, Economic, Technical, and Related Assistance, Sept. 30, 1960, United States-Guinea, § 5(a), 11 U.S.T. 2258, T.I.A.S. No. 4603; and Egypt, Relief Supplies and Equipment, United States-Egypt, Oct. 30, 1954, §§ 1, 3, 5 U.S.T. 2551, T.I.A.S. No. 3119.

221. Economic, Technical and Related Assistance, Sept. 30, 1960, United States-Guinea, 11 U.S.T. 2258, T.I.A.S. No. 4603.

222. See Drought Assistance in Arusha Region, Aug. 13, 1975, United States-Tanzania, § IX(c), 29 U.S.T. 9, 18, T.I.A.S. No. 8786.

Peru entered into an agreement through an exchange of letters whereby the United States would supply the drought-stricken Puno and Cuzco departments of Peru with food.²²³ After several communications, the countries agreed that the United States would give Peru 47,000 tons of grain and dried milk, and sell an additional 90,000 tons of grain to Peru on a favorable loan basis.²²⁴ In response to disasters in Chile, the United States in 1960 entered into a pact with the Chilean government, sanctioning a maximum grant of \$4.8 million in aid.²²⁵

Other responses to disasters have been agreements that reduce the bureaucratic obstacles that impede relief. Examples of this type of response are agreements which bestowed the same privileges and immunities accorded to diplomatic, administrative and technical staffs upon United States military personnel who assist relief efforts.²²⁶ In an agreement supplying aid to Italian earthquake victims, the United States included a clause that all supplies, materials, or equipment furnished by the United States will be exempt *in toto* from taxes, duties or other levies imposed by either Italy or the European Community.²²⁷

Some agreements both govern the immediate supply of aid and attempt to institute preventative measures to stay further disaster. An agreement of this type was undertaken in an effort to assist Libya²²⁸ when the United States promised up to 24,000 tons of grain and \$7 million in economic aid for immediate assistance.²²⁹ The agreement provided further assistance for Libya until 1971: \$4 million per year for the first six years and \$1 million per year for the next eleven years.²³⁰

In contrast, other nations have exhibited increased reluctance

223. Surplus Agricultural Commodities: Drought Relief Assistance, May 8, 1956, United States-Peru, 7 U.S.T. 2529, T.I.A.S. No. 3645.

224. *Id.*, 7 U.S.T. at 2537.

225. Emergency Relief Assistance, June 29, 1960, United States-Chile, 11 U.S.T. 1777, T.I.A.S. No. 4517.

226. See Privileges and Immunities, Dec. 18, 1979, United States-Nicaragua, 32 U.S.T. 514, T.I.A.S. No. 9720; Privileges and Immunities for Emergency Repairs Personnel, Sept. 17, 1979, United States-Dominica, 31 U.S.T. 5056, T.I.A.S. No. 9655.

227. Earthquake Assistance, June 9, 1976, United States-Italy, § 5, 27 U.S.T. 3988, T.I.A.S. No. 8416.

228. Economic Assistance, Sept. 9, 1954, United States-Libya, 5 U.S.T. 2435, T.I.A.S. No. 3105, terminated Feb. 5, 1972.

229. *Id.*

230. *Id.*

to initiate bilateral agreements delineating procedures for the request and acceptance of disaster relief. In 1985, for instance, the Mexican government did not "formally [request] assistance" when Mexico experienced a sudden rash of traumatic earthquakes.²³¹ Mexican officials initially wanted to determine both the extent of damage and the nation's needs in order to conduct its own emergency relief operation without outside help.²³² Subsequently, government officials in Mexico claimed that although the nation had not requested relief, it would not reject incoming aid.²³³

b. Aid Operations During African Crisis

Under Public Law 480, Title II, the United States channels food commodities to voluntary relief agencies,²³⁴ international organizations²³⁵ and "friendly governments"²³⁶ for distribution abroad. Additionally, the United States subsidizes the cost of ocean freight transportation of food aid to a recipient country's port, or to a point of entry in the case of landlocked countries, where targeted populations participate in the following mass-feeding programs: (1) mother/child feeding; (2) school lunch programs; (3) preschool feeding; (4) food for work; and (5) emergency feeding.²³⁷ In October 1984, however, new legislation was enacted²³⁸ which permits the use of P.L. 480 Title II appropriations to pay the cost of internal transportation of donated commodities. To further facilitate the flow of aid, other statutory provi-

231. Wash. Post, Sept. 21, 1985, at A18, col. 1.

232. *Id.* See also *Mexico/Earthquake*, NBC, Sept. 21, 1985 (President of Mexico asserted that the country could solve its own problems).

233. See Wash. Post, Sept. 22, 1985, at A18, col. 3.

234. See *supra* note 57 and accompanying text.

235. See *supra* note 13 and accompanying text.

236. See *supra* notes 39-40 and accompanying text.

237. The U.S. in 1984 transported over 1.3 million metric tons of food aid to Africa at a cost of more than \$44 million, *U.S. Response to Africa's Food Needs*, 84 DEP'T ST. BULL. 44 (Nov. 1984) [hereinafter *U.S. Response*].

238. President's Emergency Food Assistance Act of 1984, Pub. L. No. 98-473, § 305, 98 Stat. 2194, 2195 (1984) provides in pertinent part:

Section 203 of the Agricultural Trade Development and Assistance Act of 1954 is amended by inserting after the semicolon at the end of clause (4) the following: "in the case of commodities for urgent and extraordinary relief requirements, including prepositioned commodities, transportation costs from designated points of entry or points of entry abroad to storage and distribution sites and associated storage and distribution costs;"

sions call for common carriers to transport charitable property and persons participating in charitable work at no charge or at a reduced fare.²³⁹ Similarly, a freight forwarding service, also administered without cost or at a lowered rate, is available to acknowledged charitable or relief agencies.²⁴⁰

The United States in its relief efforts has undertaken to channel food aid through Sudan border crossings to two war-torn northern provinces of Marxist Ethiopia—Tigray and Eritrea.²⁴¹ Mercy Corps International and Lutheran World Relief have principally aided the United States in its efforts,²⁴² although CARE is currently responsible for the delivery of United States food relief from Port Sudan to the Ethiopian border.²⁴³ The International Red Cross is also involved in channeling some emergency aid for the Agency for International Development.²⁴⁴ Until recently the United States had been using private relief agencies as a conduit for food aid distribution instead of shipping food directly to the Ethiopian government, since the regime agreed not to impede the relief efforts of private organizations in the country's two rebel-held areas; such operations, however, have been discontinued.²⁴⁵

239. 49 U.S.C.A. § 10723 (West Supp. 1985).

240. 46 C.F.R. § 510.22 (1984). Furthermore, U.S. donors' contributions of gift parcels to a donee such as a charitable organization must be without cost to the donee. 15 C.F.R. § 371.18 (1985).

241. Wash. Post, Apr. 14, 1985, at A1, col. 3. The U.S. initial participation in the cross-border feeding began in early 1984. *Id.* Other donor nations and aid organizations have been supplying Eritrea and Tigray through what has become known as the "back door." See Cooper, *supra* note 147, at 69-70. That route is through the Sudan, which borders Ethiopia on the west. *Id.* The supplies are then turned over to relief organizations affiliated with the main rebel groups for distribution. *Id.* See also *supra* notes 57-59 and accompanying text.

242. N.Y. Times, Apr. 14, 1985, at A32, col. 1. The two paramount private groups that assist the Lutheran and Mercy Corps are (1) the Eritrean Relief Committee (ERA) and (2) the Relief Society of Tigray (REST). These two groups transport food supplies to the contested regions at night to prevent their exposure to the Ethiopian military. *Id.*

243. *Id.* at A32, col. 1. Western Relief Agencies also move food supplies from the Sudan by plane into Ethiopia with implicit consent of the Ethiopian government. Schwab, *Political Change and Famine in Ethiopia*, CURRENT HIST., May 1985, at 221, 223. In addition, food relief to the two rebellious provinces is channeled through Ethiopia and is delivered to feeding centers on the Wollo-Tigre border. *Id.*

244. N.Y. Times, Apr. 14, 1985, at A32, col. 1.

245. *Millions Starve in Ethiopia as Drought Intensifies*, 1984 FACTS ON FILE 889-90. Peter McPherson, Administrator of AID, announced his intention of set-

In 1984, when the United States commenced the cross-border feeding program, AID lawyers fretted over its legal ramifications;²⁴⁶ "today they are satisfied that it is within the international understanding of what is acceptable in helping people in an emergency situation."²⁴⁷

B. Private Voluntary Organizations

1. The Significance of Private Voluntary Organizations in the International Disaster Relief System

Private voluntary organizations (PVOs), occasionally referred to as nongovernmental organizations (NGOs), perform several unique functions within the international relief community. Disasters such as the African famine may develop slowly, so PVOs already operating in the afflicted region frequently are in a position to perceive the increased urgency of a deteriorating situation before it comes to the attention of the outside world. They have no political incentive to discount the seriousness of a growing problem.²⁴⁸ PVOs therefore are often the first to alert the public, functioning as international pressure groups by exposing regional problems.²⁴⁹

Moreover, most government-and United Nations-sponsored relief efforts require time to organize and to execute. Political considerations usually accompany the decision to render aid. Thus, private organizations, motivated by humanitarian or religious impulses, often are able to provide aid more rapidly and more impartially. PVOs also provide a distinct channel for both public and governmental disaster aid, offering alternate or additional distribution systems for relief supplies, as well as trained personnel to administer assistance.²⁵⁰ This latter contribution may prove invaluable to the typically understaffed agencies of a disaster-stricken government. In addition, PVOs can monitor the distribution of governmental aid when the recipient government would

ting up 14 food distribution centers in Eritrea to supply food aid to 180,000 drought victims. Wash. Post, June 1, 1985, at A14, col. 1.

246. N.Y. Times, Apr. 14, 1985, at A32, col. 3.

247. *Id.*

248. See P. MACALISTER-SMITH, INTERNATIONAL HUMANITARIAN ASSISTANCE 119 (1985) [hereinafter MACALISTER-SMITH].

249. *Id.*; UNITED NATIONS ASSOCIATION OF THE U.S.A., DISASTER ASSISTANCE 12 (L. Stephens & S. Green eds. 1979) [hereinafter DISASTER ASSISTANCE].

250. DISASTER ASSISTANCE, *supra* note 248, at 12.

view the donor government's presence as an encroachment on its sovereignty.²⁵¹

Many private organizations have provided relief during past and present crises. The purpose, development, and activity of several major actors is discussed below.

2. The Administration of Relief During Past Crises Through Various Organizations

a. Catholic Relief Services

Catholic Relief Services (CRS), founded in 1943, is the aid agency of the United States Catholic Conference. "The main purpose of the organization is to draw upon the American sources—both financial and material—and to make those readily available to local social welfare and development agencies throughout the world."²⁵² CRS attempted to accomplish this goal during World War II by aiding German and Polish refugees, homeless Portuguese and Spanish persons, and other Allied needy. In China, CRS established medical stations and day nurseries for civilians and war orphans.²⁵³ By 1945, the agency had organized 245 welfare centers worldwide for Polish and Jewish refugees.²⁵⁴

In 1950, CRS expanded the scope of its relief efforts by becoming one of the first voluntary agencies to distribute American surplus food.²⁵⁵ During this decade, CRS founded the Institute of Rural Education in Chile to train rural leaders in agriculture and also established CARITAS, a social service organization in Columbia.²⁵⁶ By the 1970s, CRS mainly conducted development projects; nonetheless, CRS still responded to emergency needs

251. Strained relations between the United States and the Marxist Ethiopian government would have made distribution of U.S. relief supplies less feasible without a strong PVO presence in Africa. *Review the World Hunger Problem: Hearings Before the House Committee on Agriculture*, 98th Cong., 2d Sess. 38 (1983) (statement of Mr. Gladson, Agency for International Development).

252. See AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE: TECHNICAL ASSISTANCE INFORMATION CLEARING HOUSE, U.S. NONPROFIT ORGANIZATIONS IN DEVELOPMENT ASSISTANCE ABROAD: TAICH DIRECTORY 1983 88-89 (F. Lowenstein & R. McClanahan eds. 1983).

253. 1 GREENWOOD ENCYCLOPEDIA OF AMERICAN INSTITUTIONS, Social Service Organizations 213 (P. Romanofsky ed. 1978).

254. *Id.*

255. *Id.* at 214.

256. *Id.*

such as those of refugees in Pakistan and drought victims in the African Sahel.²⁵⁷ CRS facilitated the mobilization of such emergency aid by maintaining a "disaster response reserve unit" located near John F. Kennedy International Airport.²⁵⁸

Currently, Catholic Relief Services programs emphasize feeding and nutrition education and the operation of mother/child health centers. Catholic Relief Services classifies the many countries it assists into four different regions: Africa, East Asia and the Pacific, Latin America, and Near East-South Asia.²⁵⁹

b. Church World Service

Founded in 1946 "to serve as the development, refugee, relief and rehabilitation agency of the National Council of Churches,"²⁶⁰ Church World Service (CWS), along with the World Council of Churches, Regional Councils of Churches and National Christian Councils or other cooperative bodies,²⁶¹ assists local church councils or ecumenical and community organizations in their efforts to alleviate poverty and foster basic human development.²⁶² Church World Service has sponsored programs which have provided food, clothing, and medicine to meet immediate needs and also has implemented other programs such as disease control programs, public health and nutrition education, and family planning clinics.²⁶³ CWS furnishes the funds and ships the

257. *Id.* at 215.

258. *Id.*

259. *See* Field, *supra* note 127, at 18. Countries assisted by CRS include those found in the following four regions of the world: (1) Africa: Angola, Benin, Burundi, Cameroon, Cape Verde, Chad, Comoro Islands, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Tunisia, Uganda, Upper Volta, and Zaire; (2) East Asia and the Pacific: Fiji, Hong Kong, Indonesia, Korea, Macao, Malaysia, Papua New Guinea, Philippines, Solomon Islands, Taiwan, Thailand, and Western Samoa; (3) Latin America: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela; and (4) Near East-South Asia: Bangladesh, Cyprus, Egypt, Greece, India, Iraq, Jordan, Lebanon, Pakistan, Sri Lanka, Turkey, West Bank (administered territory) and Yemen (San'a). *Id.*

260. *Id.* at 25.

261. *Id.*

262. *Id.*

263. *Id.*

government surplus commodities necessary to support these programs. Each year CWS ships government surplus grain and dried milk overseas to needy countries.²⁶⁴ Food is also purchased from CROP, the Constituency Education and Fund Raising unit of CWS, which raises grain donations from United States farmers and monetary donations from various sources to aid development.²⁶⁵

c. Lutheran World Relief

Lutheran World Relief, Inc. (LWR), founded in 1945 and located in New York City, represents the aid efforts of the American Lutheran Church, the Association of Evangelical Lutheran Churches and other Lutheran denominations in the United States. LWR provides funds, supplies and personnel assistance, often through correspondent church-related agencies, to persons afflicted by disasters or other emergencies in the poorer regions of Asia, Africa and Latin America.²⁶⁶ Like CWS, LWR initiates programs to improve living conditions, such as agriculture, sanitation, nutrition education, family planning and health care projects. For example, the Calcutta Mobile Milk Canteen in India

264. *Id.* Countries that CWS assists include these found in the following four regions of the world: (1) Africa: Algeria, Angola, Botswana, Burundi, Cameroon, Cape Verde, Chad, Comoro Islands, Congo, Ethiopia, Gabon, Gambia, Ghana, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia (South-West Africa), Niger, Nigeria, Rhodesia (Zimbabwe), Rwanda, Senegal, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zaire, and Zambia; (2) East Africa and the Pacific: Burma, Fiji, Hong Kong, Indonesia, Korea, Laos, Papua New Guinea, Philippines, Singapore, Taiwan, Thailand, Tonga, Vietnam, and Western Samoa; (3) Latin America: Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Peru, Trinidad and Tobago, Uruguay, and Venezuela; and (4) Near East-South Asia: Bangladesh, Cyprus, Egypt, Greece, India, Israel, Jordan, Lebanon, Pakistan, Sri Lanka, Syria, and Turkey. *Id.*

265. *Id.*

266. *Id.* at 28. Countries assisted by LWR include these found in the following four regions of the world: (1) Africa: Angola, Botswana, Central African Empire, Ethiopia, Ghana, Kenya, Liberia, Madagascar, Mauritania, Mozambique, Niger, Nigeria, Sudan, Tanzania, Togo, and Zambia; (2) East Asia and the Pacific: Hong Kong, Papua New Guinea, Philippines, Taiwan, and Vietnam; (3) Latin America: Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Nicaragua, and Uruguay; and (4) Near East: India, Iran, Jordan, and Lebanon. *Id.*

provided milk to children. Also, 35,000 children in fifteen poverty-stricken areas of Calcutta received additional feeding rations.²⁶⁷

d. Save the Children Federation

Save the Children Federation, Inc.²⁶⁸ is an international consortium of Austrian, Canadian, Danish, Norwegian and British child assistance agencies, founded in 1932 "to improve the quality of life and defend the rights of children—particularly children in underprivileged communities—without regard to race, religion or place of origin."²⁶⁹ The Federation attempts to achieve its objectives through the use of a child sponsorship program. Under this program, a donor may make contributions either in the name of a particular child or to a group of children; often several donors act as project partners who make donations regularly. In 1978, approximately 25,000 individuals sponsored more than 28,000 children, their families and their communities.²⁷⁰

The Federation also provides emergency supplies to refugees. For example, in the late 1970s, it sent tons of rice, milk, sugar, oil and high-protein fish meal to the Cambodian refugees. The Federation also provided food, medicines and English language training to the Vietnamese boat people.²⁷¹ The Federation currently is spending over \$3 million in health and nutrition services, primarily for development purposes rather than emergency assistance. For example, in Bangladesh and Indonesia, village health workers are being trained in health care and nutrition. In Colombia, Korea and Israel, children receive nutritious meals in local day care centers.²⁷² The Federation supports its programs with funds from private citizens, school and church groups, public and private employee groups, corporations, service organizations, foundations,

267. *Id.*

268. The Federation is located in Westport, Ct. and at the United Nations Plaza in New York City.

269. Field, *supra* note 127, at 32.

270. *Id.*

271. *Id.* Countries which are assisted by Save the Children include these found in the following four regions of the world: (1) Africa: Cameroon, Tunisia, and Upper Volta; (2) East Africa and the Pacific: Indonesia and Korea; (3) Latin America: Colombia, Dominica, Dominican Republic, Guatemala, Honduras and Mexico; and (4) Near East-South Asia: Bangladesh, Greece, India, Israel, Lebanon and Yemen (San'a). *Id.*

272. *Id.* at 33.

and government agencies.²⁷³

3. Administration of Aid During African Crisis

The development of public response to the African famine illustrates the many distinctive features of private aid. For several months during mid-1984, PVO reports of a growing crisis trickled into the international media.²⁷⁴ The response to these accounts was very limited until African cameraman Mohammed Amin of VisNews, a European television news agency, visited Ethiopia with Michael Buerk, a correspondent for the BBC. Their report aired on BBC television and, in the United States, on the NBC Nightly News on October 23, 1984.²⁷⁵ The footage and commentary developed into a week-long story on NBC and was picked up by other networks.²⁷⁶ By October 31, the New York Times listed five PVOs as accepting donations for Ethiopian famine relief;²⁷⁷ the number had doubled by November 4.²⁷⁸ By the end of the year the Times listed the names and local addresses of fifteen PVOs who would convert donations into Ethiopian disaster assistance.²⁷⁹ The widespread desire to contribute in large and small ways became news in itself. In New York City, a sixty-one year old regulation banning solicitation in public schools was set aside so the city's 920,000 school children could raise money for starving Ethiopian children.²⁸⁰ Within these first two months, the American public responded to the crisis by donating \$40 million

273. *Id.* Other humanitarian groups include the Peace Corp and Food for the Hungry International.

274. For example, CBS Evening News on Aug. 2, 1984, and NBC Nightly News on Aug. 11, 1984, each carried a warning by Oxfam field personnel in Ethiopia that a crisis of extreme proportions was developing.

275. N.Y. Times, Nov. 22, 1984, at 25, col. 4.

276. The first such account on another major network was carried by the CBS Evening News on Oct. 29, 1984.

277. N.Y. Times, Oct. 31, 1984, at 4, col. 6. The agencies listed were the Red Cross, Catholic Relief Services, Church World Service, Lutheran World Relief, and Save the Children.

278. *Id.* at 3, col. 1. The new agencies listed were U.S. Committee for UNICEF, Oxfam America, World Vision USA, American Jewish Joint Distribution Committee, and Grassroots International.

279. *Id.* at 5, col. 1. The five groups added at this time were Adventist Development and Relief Agency, Africare, American Council for Voluntary Agencies for Foreign Service, American Friends Service Committee, and CARE.

280. *Id.*

to PVOs.²⁸¹

Response to the current African crisis has been characterized by both traditional and innovative approaches to the provision of private relief aid. Agencies that the world has relied upon for decades, such as the International Red Cross and CARE, now have been joined in their efforts by emerging groups with impressive fund-raising capabilities, such as the USA for Africa Foundation.

a. The International Red Cross

The International Red Cross (IRC) is the foremost voluntary assistance organization in the world. Based in Geneva, this organization has earned preferential treatment from governments and other international bodies. It enjoys consultative status with the United Nations despite the fact that Switzerland is not a member of that body. Its agents act on their own initiative both in making direct appeals and in negotiating agreements with governments.²⁸² The American Red Cross has a congressional charter²⁸³ and participates in the benefits of AID registration by statutory authority.

The International Red Cross consists of the National Red Cross and Red Crescent Societies of various countries, the International Committee of the Red Cross (ICRC) and the League of Red Cross Societies.²⁸⁴ The ICRC, comprised entirely of Swiss citizens, coordinates relief mainly to victims of armed conflict.²⁸⁵ The 125 national societies share general Red Cross principles and values but focus primarily on disaster relief, health, and welfare, particularly in their own countries.²⁸⁶ The League of Red Cross Societies

281. *Id.* at 1, col. 1.

282. MACALISTER-SMITH, *supra* note 248, at 76.

283. 36 U.S.C. § 1-17(b) (1982). Section 3 defines the purposes of the American Red Cross, including a mandate "to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities, and to devise and carry on measures for preventing the same." *Id.*, § 3.

284. MACALISTER-SMITH, *supra* note 248, at 75. *See also* THE RED CROSS HANDBOOK, *cited in* MACALISTER-SMITH, *supra* note 248, at 185, n.1. The ICRC's supreme governing body is the International Conference of the Red Cross which consists of delegates from the various Red Cross organizations and meets every four years. *Id.* at 76.

285. *Id.*

286. *See* DISASTER ASSISTANCE, *supra* note 249, at 13.

(LORCS) is a federating body for the national societies, assisting them in the development and coordination of international disaster relief efforts. LORCS circulates assessments of relief needs among the national societies and interested private voluntary agencies.²⁸⁷

The concept of the IRC originated with the efforts of Henry Dunant, a Swiss citizen who "advocated rules for the protection of victims of international war as well as the establishment of voluntary relief organizations."²⁸⁸ Dunant promoted this idea at the adoption proceedings of the Geneva Convention, a treaty to establish measures for providing neutral aid to the wounded.²⁸⁹ The Convention's Standing Committee for Aid to Wounded Soldiers thereafter founded the International Committee of the Red Cross.²⁹⁰ Subsequently, National Red Cross and Red Crescent Societies were formed in many countries.²⁹¹

The IRC does not recognize a national society until the country in which it is located adopts the Geneva Convention. Because the United States' isolationist policy prevented it from signing the Convention at its inception,²⁹² the American Red Cross was not formed until May 21, 1881, shortly before the United States adopted the Convention.²⁹³

National societies have provided aid to those afflicted by an earthquake in Turkey in 1939,²⁹⁴ floods in Yugoslavia in 1940,²⁹⁵ earthquakes in Romania and Peru in 1940, hurricanes in Portugal in 1941, earthquakes in Persia and Argentina in 1944,²⁹⁶ and

287. The National Red Cross and Red Crescent Societies are private organizations governed by the laws of their own states. *Id.* at 77.

288. MACALISTER-SMITH, *supra* note 248, at 9.

289. DULLES, *THE AMERICAN RED CROSS* 8 (1950). The signatory countries were Baden, Belgium, Denmark, France, Italy, Portugal, Prussia, Saxony, Spain, Switzerland, Württemberg. They were joined within two years by such countries as Great Britain, Greece, the Netherlands, Norway, Russia, Sweden and Turkey. *Id.* at 8-9. The Treaty "was open to accession by non-signatories and quickly gained world-wide acceptance." MACALISTER-SMITH *supra* note 248, at 10.

290. MACALISTER-SMITH, *supra* note 248, at 9.

291. *Id.* at 76.

292. DULLES, *supra* note 289, at 9.

293. *Id.* at 2.

294. INTERNATIONAL COMM. OF THE RED CROSS, *REPORT OF THE INTERNATIONAL COMM. OF THE RED CROSS ON ITS ACTIVITIES DURING THE SECOND WORLD WAR: SEPT. 1, 1939 - JUNE 30, 1947* 179 (1948).

295. *Id.* at 180.

296. *Id.*

floods in Bolivia in 1947.²⁹⁷ The American Red Cross also has aided the needy abroad. Between 1881 and 1955, this organization contributed \$34 million for disaster preparedness and relief overseas.²⁹⁸ Among the larger expenditures were \$11.8 million to victims of an earthquake in Japan in 1923 and \$6 million to victims of a hurricane in the West Indies in 1928.²⁹⁹

Not only have the various Red Cross organizations contributed funds; they also have supplied foodstuffs to needy nations. For example, in 1979, the League of Red Cross Societies contributed 6,819 tons of cereal, 2,322.5 tons of dairy products and 1,644.9 tons of other foodstuffs to various countries.³⁰⁰ In 1980, the ICRC contributed 8,320 tons of cereal, 1,190.5 tons of milk powder and 453 tons of other dairy products including 5 tons of animal fat shipped to Angola and 3 tons to Ethiopia.³⁰¹

As during previous times of disaster, the Red Cross has been in the forefront of the African crisis. When media reports of famine in Ethiopia incited the American public in October 1984, the American Red Cross was among the first of the voluntary agencies to announce to the public its willingness to channel private contributions into African relief.³⁰² Within two weeks, LORCS appealed for \$18 million to provide special aid to 200,000 of the most vulnerable drought victims.³⁰³ Throughout the African crisis, Red Cross staff, food and medicine have represented a major source of relief aid.

b. Cooperative for American Relief Everywhere

Formerly the Cooperative for American Remittances to Europe, CARE was founded in 1945 by twenty-two American organizations to aid European recovery after World War II. CARE's primary objective is to assist low income persons in using their material and human resources to improve the local community.³⁰⁴ For

297. *Id.* at 181.

298. THE AMERICAN NATIONAL RED CROSS, THE RED CROSS ACTIVITIES OF THE AMERICAN PEOPLE DURING 75 YEARS, 1881 THROUGH 1955 22 (1955).

299. *Id.*

300. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, FOOD AID IN FIGURES 88 (1984) [hereinafter FOOD AID IN FIGURES].

301. *Id.* at 89.

302. One week after the first network reports of African famine, the Red Cross publicized its intent to channel private donations into African relief.

303. N.Y. Times, Nov. 7, 1984, at 3, col. 3.

304. Cooper, *supra* note 147, at 71.

example, CARE has supplied seeds and farming equipment and has established school kitchens and food preservation plants.³⁰⁵ CARE has also distributed food furnished by the United States Government under Title II via both continuous and emergency relief feeding programs.³⁰⁶ In Mother/Child Health projects, women of child-bearing age and their children receive instructions on health care and food; in Child Feeding projects, children ages six through fourteen receive food in hospitals, orphanages and schools.³⁰⁷ In 1978, CARE funds exceeded \$270 million: \$269 million financed the distribution of food through established feeding projects while over \$4 million funded emergency food aid endeavors.³⁰⁸

Currently, CARE is distributing food aid, tents, blankets and medical supplies throughout nine drought-stricken African countries. In the Ethiopian region of Hararge, CARE distributed 50,000 tons of food relief through the use of thirty trailers and trucks.³⁰⁹ CARE has delivered 26,000 tons of food to 370,000 famine victims in Kenya.³¹⁰ In Chad, with the use of twenty trucks, CARE has disbursed more than 5,000 metric tons of food.³¹¹ CARE also has set up a logistical unit in Mauritania to enhance emergency food delivery and is also disbursing approximately 15,000 tons of food relief.³¹² In Niger, CARE is dispensing both the United States' donation of 9,000 tons of sorghum and Canadian medical supplies.³¹³ In the Sudan, CARE has instituted the largest single emergency feeding operation undertaken to combat the African famine and drought. The operation consists of delivering 160,000 tons of sorghum and other grains from Port Sudan to twenty-one disbursement sites in the Kordofun province of Sudan.³¹⁴ From these sites the food is transported in private trucks

305. Field, *supra* note 127, at 16.

306. *CARE Fact Sheet* (CARE, N.Y.) (available from CARE World Headquarters, 660 First Avenue, New York, New York 10016). Most of the food CARE distributes is contributed under Title II. *Id.*

307. Field, *supra* note 127, at 17.

308. *Id.*

309. CARE, *Campaign for Africa* (May 1985).

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. CARE, *CARE Primary Feeding Program Kordofan Province, Sudan* (Sept. 17, 1985) [hereinafter cited as *Feeding Program*].

to 1,436 end points at the village level, and village councils then distribute it to both villages and families.³¹⁵

CARE programs are operated under contracts with the Ministries of Education, Health and Social Affairs of the host government.³¹⁶ The delivery of food to village end points is contractually arranged between CARE and local transporters.³¹⁷ CARE is also responsible for the storage of food and supplies.³¹⁸ In addition, CARE and regional governments closely coordinate allotment of foods, designation of the most needy areas, movement of the population, schedules for delivery, and use of food reserves.³¹⁹ CARE's programs are supported by one of three methods: (1) the host government and CARE share costs, supplemented by funds from public donations; (2) the host government totally finances the program; or (3) CARE totally finances the program.³²⁰

c. The USA for Africa Foundation

The USA for Africa Foundation (the "Foundation")³²¹ joined the international relief community when it released its recording "We Are the World" in March 1985. Performed by more than forty American pop and rock musicians, the song soon became the most popular single in the United States. Four million albums, three million singles, 400,000 posters and 140,000 copies of a "We Are the World" book sold within one month, generating \$20 million. The project was inspired by a gathering of British pop stars, recording as "Band-Aid," whose record "Do They Know It's Christmas?" topped the music charts in Great Britain and raised

315. *Id.*

316. Field, *supra* note 127, at 16.

317. *See Feeding Program, supra* note 314, at 5.

318. *Id.* at 6.

319. *Id.*

320. Field, *supra* note 127, at 16. Those countries which totally fund the CARE programs include Chile, Dominican Republic, Gaza, Guatemala, Honduras, India, Panama, Philippines, and Sri Lanka. CARE assists these countries found in the following four regions of the world: (1) Africa: Chad, Kenya, Lesotho, Liberia, Mali, Niger, Sierre Leone, and Tunisia; (2) East Asia and the Pacific: Hong Kong, Indonesia, Korea, Macao, and Philippines; (3) Latin America: Belize, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, and Peru; and (4) Near East-South Asia: Afghanistan, Bangladesh, Egypt, India, Israel, Jordan, Maldives, Nepal, Pakistan, Sri Lanka, Turkey, and West Bank (administered territory).

321. United Support of Artists for Africa Foundation.

millions of pounds for African famine victims.³²² By June 11, 1985, when its first chartered 747 jumbo cargo jet containing 120 tons of supplies arrived in the Sudan and Ethiopia, the USA for Africa project had raised \$45 million,³²³ a figure which would continue to rise.

Established as a section 501(c)(3) public foundation, USA for Africa generated income through both sales and contributions. In contrast to the Red Cross and other more established agencies, it had no preexisting relief network in operation. Instead of trying to develop one, it has worked with existing private groups and U.N. agencies to develop channels of distribution for Foundation money which would provide effective relief. "After receiving extensive field information on urgent needs" from the United Nations, InterAction, which is the United States umbrella group representing 110 PVOs, and the United States Government, the Foundation's board of directors decided to allocate the first thirty-five percent of the funds for emergency "in the areas of transportation, logistics and communication, storage, medical and nutritional supplies, shelter and welldrilling equipment."³²⁴ It also chose to combine long-term programs with the emergency operations, allocating the second thirty-five percent of its funds to agricultural aid and another twenty percent for long-term economic development; the Foundation designated the final ten percent of its money for aid to the hungry and homeless in the United States.³²⁵

The idea of a major rock music event to raise money for famine relief is not new, but promoters have had to learn from mistakes of the past. George Harrison of The Beatles staged a 1971 Madison Square Garden benefit for the starving population of Bangladesh featuring more than two dozen contemporary pop stars, but because proceeds from the concert were channeled through the Beatles' Apple Corporation rather than through a specially created tax-exempt charity, more than \$8.8 million remained in escrow for eleven years. Lawyers for Apple, UNICEF,

322. N.Y. Times, Apr. 21, 1985, at 60, col. 1.

323. N.Y. Times, June 11, 1985, at A7, cols. 5-6. See also N.Y. Times, June 12, 1985, at A5, col. 4.

324. Hoeffel, *Music Groups Make Allocations*, 4 AFRICA EMERGENCY 4, 4 (Sept. - Oct. 1985); N.Y. Times, Apr. 21, 1985, at 60, col. 2 (statement by Martin Rogol, the Foundation's executive director).

325. N.Y. Times, Apr. 21, 1985, at 60, col. 2 (statement by Martin Rogol, the Foundation's executive director).

and the IRS finally reached an "administrative settlement," and sales of the concert album and other sources have continued to bring in royalties approaching \$1 million annually as recently as 1984.³²⁶

The promotional expertise to be found within the contemporary music industry has proven to be particularly applicable to charitable fundraising. Ken Kragen, executive producer of the "We Are the World" recording and president of USA for Africa, is a southern California promoter and manager who claims to treat the African situation like any other client. "When something is [as] big as Africa is right now," says Kragen, "it can cool off quickly. The way I am going to keep that from happening - it's the same thing I do with careers. . . ."³²⁷ While veteran relief workers share this concern with fading public interest, Kragen's show business approach has proven astonishingly successful. He is credited with directing initial efforts away from the idea of a benefit concert toward production of the extremely profitable record and video. He assisted in the production of a related HBO television special and the organization of a highly-publicized whirlwind tour of Africa. He coordinated a simultaneous broadcast of "We Are the World" on Good Friday by thousands of radio stations, including Voice of America and Muzak. Additionally, in June of 1985, he announced arrangements for full-page USA for Africa advertisements to be run free of charge in such diverse publications as Reader's Digest, Life magazine, the Los Angeles Times, and the Bloomingdale's catalog.³²⁸ The record itself proved to be the fastest climbing single of the decade, the biggest seller in the history of Columbia records,³²⁹ and the winner of the 1985 Grammy Award for Record of the Year.

C. Intergovernmental Organizations

Other than individual governments and private voluntary organizations, the third major source of international humanitarian assistance is the network of Intergovernmental Organizations (IGOs). The United Nations is the most extensively involved of all multilateral organizations in gathering and channeling dona-

326. *Some Concerts That Worked and Some That Didn't*, PEOPLE WEEKLY, Feb. 25, 1985, at 33.

327. Harden, *Taking Relief on Tour*, Wash. Post, June 19, 1985, at B1.

328. Wash. Post, June 19, 1985, at B1, col. 1.

329. Cocks, *Strike Up the Bandwagon*, TIME, Apr. 22, 1985, at 66.

tions to relief operations around the world. Thus, most of the major IGOs are either U.N. agencies or have substantial ties with the U.N., although the nature of their relationship varies from organization to organization. The following are brief background summaries of several U.N.-related IGOs prominent in current African relief operations.³³⁰

1. United Nations Humanitarian Agencies

a. The U.N. High Commissioner for Refugees

UNHCR has primary responsibility for providing and coordinating international assistance for displaced persons, especially in the event of man-made disaster. The office fulfills this mandate by providing international legal protection for refugees, extending material assistance and working toward voluntary repatriation or resettlement into other countries.³³¹ The General Assembly established UNHCR in 1950 and still draws upon the regular U.N. budget for its administrative expenses, although material assistance and program costs are financed entirely by voluntary contributions.³³²

b. The U.N. Disaster Relief Coordinator

The UNDRO directs and organizes the relief activities of the various organizations of the U.N. system in response to a request for emergency assistance from a disaster-stricken country.³³³ UNDRO mobilizes and coordinates U.N. assistance with aid from other organizations, assists governments in the assessment of their relief needs, and supplies information necessary for the efficient execution of relief efforts.³³⁴ It also attempts to promote dis-

330. These summaries were compiled from the following sources: D.C. COYLE, *THE UNITED NATIONS AND HOW IT WORKS* 22-65 (1969); G. SCHIAVONE, *INTERNATIONAL ORGANIZATIONS: A DICTIONARY AND DIRECTORY* 111-280 (1983); *United Nations Office for Emergency Operations in Africa, Status Report on the Emergency Situation in Africa*, Report Nos. OEOA/3/1, 3/2, 3/3, 3/4 (July - Oct. 1985).

331. G. SCHIAVONE, *supra* note 330, at 196; D.C. COYLE, *supra* note 330, at 88-89.

332. G. SCHIAVONE, *supra* note 330, at 197.

333. MACALISTER-SMITH, *supra* note 248, at 132-33; G.A. Res. 2816, 26 U.N. GAOR Supp. (No. 29) at 86, U.N. Doc. A/8429 (1971).

334. MACALISTER-SMITH, *supra* note 248, at 132-33.

aster preparedness and prevention.³³⁵ Established in 1974 by General Assembly Resolution 2816 (XXVI),³³⁶ UNDRO is an independent entity within the U.N. Secretariat; it is empowered to maintain independent contact with U.N. bodies, donor and recipient governments, and NGOs. According to the UNDRO, there were at least seventeen NGOs, as of March 1, 1985, operating in fifty African countries.³³⁷

c. United Nations Children's Fund

Created³³⁸ in 1946³³⁹ to extend emergency aid to children in Europe following World War II,³⁴⁰ UNICEF in recent years primarily has attempted to meet the essential needs of children living in developing countries.³⁴¹ In countries most frequently afflicted by disasters, approximately one-half of the population consists of children under the age of fifteen; such children usually suffer some form of malnutrition and are more susceptible to disease than adults.³⁴² Moreover, most developing countries lack the amount of protein foods and milk necessary to feed their children.³⁴³ To meet these particular needs of children, UNICEF has instituted both developmental and emergency relief projects.³⁴⁴

UNICEF's developmental projects focus on the provision of primary health care, education, nutritional assistance, clean water and sanitation, and other family welfare programs.³⁴⁵ UNICEF

335. G. SCHIAVONE, *supra* note 330, at 195.

336. G.A. Res. 2816, 26 U.N. GAOR Supp. (No. 29) at 85, U.N. Doc. A/8429 (1971).

337. *See* UNDRO *Africa Emergency: An Overview* (March 1, 1985).

338. MACALISTER-SMITH, *supra* note 248, at 100. The General Assembly established UNICEF under Article 55 of the U.N. Charter.

339. In 1953, the United Nations decided that UNICEF should operate on a permanent basis. MACALISTER-SMITH, *supra* note 248, at 99. *See* G.A. Res. 802, 8 U.N. GAOR Supp. (No. 17) at 53, U.N. Doc. A/2630 (1953). *See also* G.A. Res. 1038, 11 U.N. GAOR Supp. (No. 17) at 17, U.N. Doc. A/3572 (1956).

340. G. SCHIAVONE, *supra* note 330, at 245.

341. *See id.*

342. MACALISTER-SMITH, *supra* note 248, at 100.

343. *Id.*

344. "In many recent cases UNICEF relief actions have been part of wider international operations, but have concentrated on meeting the special needs of children which are not always understood or are neglected in the provision of basic relief." *Id.*

345. Family welfare programs include responsible parenthood and family planning, child mental health, and improvement in the lives of women and girls.

has also provided equipment both to produce and to process food, such as machinery to pasteurize milk and apparatus to manufacture soya, peanut flour, and fish-protein concentrate.³⁴⁶

UNICEF's emergency relief activities have included the donation of money, supplies, and foodstuffs. For example, UNICEF contributed \$95,000 to Thailand for flood rehabilitation and \$404,000 in supplies to Mexico for health and nutrition services for children.³⁴⁷ Between 1972 and 1981, UNICEF donated 36,223 tons of wheat and wheat flour, 6,477 tons of rice, 57,196 tons of milk powder, and 185,869 tons of other foodstuffs to countries such as Ethiopia, India, Lebanon, Romania, Somalia, Thailand, Turkey, Upper Volta, and Vietnam.³⁴⁸ UNICEF recently has channeled millions of dollars worth of food and medical assistance for children into the African relief effort.³⁴⁹

An Executive Board of representatives from thirty nations govern UNICEF; the Secretary-General appoints the Executive Director of the Board. The Economic and Social Council supervises the Board.³⁵⁰ UNICEF is not supported by the U.N. budget but by voluntary contributions from governments, private organizations, and individuals.³⁵¹

d. The United Nations Development Program

UNDP is the world's largest organization providing multilateral technical assistance.³⁵² It has a basic mandate to help developing countries increase the wealth-producing capabilities of their human and natural resources. Its operation has been characterized as "pre-investment" work: the exploration of natural resources and the training of local people to handle resource development.³⁵³ UNDP supports projects in the areas of agriculture, industry, education, power production, transport, communications, health, public administration, housing, trade, and related

See G. SCHIAVONE, *supra* note 330, at 245-46. See D. C. COYLE, *supra* note 330, at 29.

346. D. C. COYLE, *supra* note 330, at 29. UNICEF has also provided hatchery fish for stocking fishponds, vegetable garden seeds and poultry. *Id.*

347. Field, *supra* note 127, at 8.

348. FOOD AID IN FIGURES, *supra* note 300, at 84-85.

349. *See id.*

350. MACALISTER-SMITH, *supra* note 248, at 99-100.

351. D. C. COYLE, *supra* note 330, at 27.

352. G. SCHIAVONE, *supra* note 330, at 249.

353. D. C. COYLE, *supra* note 330, at 65.

fields.³⁵⁴ The Program works with local authorities at the request of host governments, which pay over half of the total cost of its work. Voluntary contributions from U.N. member countries and other participating agencies cover remaining UNDP costs. As a part of the African relief effort, UNDP has funded emergency air-lifts and provided agricultural equipment, fuel, fertilizer, water supply materials, and logistical support.

2. United Nations-Related Agencies

a. The Food and Agriculture Organization

Created in 1943 at the United Nations Conference on Food and Agriculture,³⁵⁵ the Food and Agriculture Organization (FAO) has three primary objectives:³⁵⁶ “[to raise] levels of nutrition and standards of living, [to secure] improvements in the efficiency of the production and distribution of food and agricultural products, and [to improve] the conditions of rural populations.”³⁵⁷ Based in Rome with a present membership of over 150 countries, the FAO is an independent agency, affiliated with the United Nations by agreement with the Economic and Social Council.³⁵⁸ The FAO Conference, its governing body, meets every two years.³⁵⁹ The FAO finances its program budget from dues paid by its members.³⁶⁰

The FAO has at times provided emergency aid. In 1947, for example, the Organization imported powdered milk to Polish children.³⁶¹ More recently, the FAO in 1973 founded the Office for

354. G. SCHIAVONE, *supra* note 330, at 250.

355. The Conference was held in Hot Springs, Virginia. Its Constitution became effective in 1945. *Id.* at 111. The original FAO Constitution is printed in 23 Y.B. INT'L L. COMM. 416 (1946). See also BASIC TEXTS OF THE FAO OF THE UN (1980). To execute its programs, FAO has ten principal divisions, including Land and Water Development, Plant Production and Protection, Animal Production and Health, Forestry, Fisheries, Nutrition, and various economic branches. D. C. COYLE, *supra* note 330, at 23.

356. The purposes are set forth in the preamble to the Constitution of the FAO.

357. MACALISTER-SMITH, *supra* note 248, at 101-102. See G.A. Res. 626, 7 U.N. GAOR Supp. (No. 20) at 106, U.N. Doc. A/2119 (1952).

358. D. C. COYLE, *supra* note 330, at 22.

359. *Id.*

360. *Id.*

361. Second Annual Report of the Director General of the FAO Conference, in THE WORK OF THE FAO 36 (1946) [hereinafter Second Annual Report].

Sahelian Relief Operations (OSRO) to provide emergency relief to the drought-stricken Sahel.³⁶² But the primary role of the FAO in the U.N. aid network is to study and report on the world food situation. In 1947 and 1948, the FAO conducted a study of the water supplies and of forest conservation in Siam.³⁶³ The Organization also prints publications annually on nutrition education, dietary surveys, fishing, agriculture, forestry, and marketing.³⁶⁴ OSRO as well has abandoned its emergency aid function; renamed in October 1975 the "Office for Special Relief Operations," OSRO currently is investigating prospects for local food production and the extent of food aid required.³⁶⁵ In Africa, FAO has played a major role in identifying and assisting those areas in greatest need of food and agricultural inputs.

b. The World Food Programme

In 1963, the FAO, in conjunction with the U.N., sponsored the experimental World Food Programme (WFP) to supply basic foodstuffs to needy countries and to institute procedures to meet emergency food needs.³⁶⁶ Emergency needs were defined as "food needs arising from sudden and unexpected natural disasters, such as earthquakes, floods, droughts, pests and epidemic diseases . . . and man-made emergency situations, including political conditions rendering persons homeless."³⁶⁷ Twenty-five percent of the Programme's total resources were used in emergencies. Voluntary cash contributions supplemented these resources.³⁶⁸

In 1965, the U.N. decided that WFP should function as a permanent entity.³⁶⁹ After one decade of operations, WFP had utilized fifteen percent of its total expenditure, \$110 million, to support 159 emergency operations in seventy-six countries. Of its total emergency allocations, it applied forty-four percent to remedy the effects of drought, thirty-three percent to aid the victims

362. The Sahel is a region on the southern perimeter of the Sahara desert.

363. Second Annual Report, *supra* note 361, at 34.

364. *Id.*

365. *Id.* See generally G.A. Res. 3348, 29 U.N. GAOR Supp. (No. 31) at 75, U.N. Doc. A/9631 (1974).

366. MACALISTER-SMITH, *supra* note 248, at 104.

367. WFP CONST., para. 10(a). See G.A. Res. 1714, 16 U.N. GAOR Supp. (No. 17) at 20, U.N. Doc. A/5100 (1961).

368. 39 U.N. ESCOR Annex 1 (Agenda Item 16) at 5, U.N. Doc. E/4015 (1965).

369. MACALISTER-SMITH, *supra* note 248, at 104.

of natural disasters, and twenty-three percent to alleviate the consequences of man-made emergencies.³⁷⁰

The WFP coordinated food relief operations to aid the victims of the Sahelian drought in the late 1970s, contributing 65,000 tons of cereals.³⁷¹ The WFP also provided 97,000 tons of wheat flour to Vietnam for emergency food assistance,³⁷² and it maintains an International Emergency Food Reserve which donates food yearly to various needy countries. Other activities have included aiding victims of floods, droughts, typhoons, and volcanic eruptions,³⁷³ as well as refugees and war victims.

The WFP between 1963 and 1982 contributed over \$1.1 billion to emergency operations:³⁷⁴ \$195.4 million financed natural disaster operations³⁷⁵ and \$347.6 million facilitated drought and crop failure operations.³⁷⁶ Regions receiving aid were Latin America, the Caribbean, North Africa, the Near East, Sub-Saharan Africa, Southern Europe, Asia, and the Pacific.³⁷⁷

Within the U.N. system, the WFP contributes a substantial amount of emergency food aid and coordinates the logistics of emergency operations. In the past two decades, the WFP has provided Sub-Saharan Africa with over \$1.5 billion in assistance and currently has increased its efforts not only to meet the new massive food needs, but also to improve the continent's food producing capability.³⁷⁸ WFP's current efforts include the provision of more than 350,000 tons of food relief to stricken African populations. It also supplies these nations with mobile and fixed food storage facilities to expand food storage capacity, charters landing crafts to unload food into smaller ports, and mobilizes truck

370. *Id.* at 104-05. See G.A. Res. 2095, 20 U.N. GAOR Supp. (No. 14) at 32, U.N. Doc. A/6014 (1965); E.S.C. Res. 1080, U.N. ESCOR Supp. (No. 1) at 32, U.N. Doc. E/4117 (1965).

371. WORLD FOOD PROGRAMME, REPORT OF THE FIFTH SESSION OF THE UNITED NATIONS/FAO COMMITTEE ON FOOD AID POLICIES AND PROGRAMMES 11 (Rome, Apr. 21, 1978).

372. *Id.* at 12. Total cost of aid in 1977-78 was \$24 million.

373. WORLD FOOD PROGRAMME, REPORT OF THE SEVENTH SESSION OF THE UNITED NATIONS/FAO COMMITTEE ON FOOD AID POLICIES AND PROGRAMMES 9 (Rome, May 14-24, 1978).

374. FOOD AID IN FIGURES, *supra* note 300, at 79.

375. *Id.*

376. *Id.*

377. *Id.* at 78.

378. *Id.*

transport fleets with vehicle maintenance facilities.³⁷⁹ In addition to its own direct contributions, WFP provides various services to bilateral food aid donors,³⁸⁰ including the purchase, transportation and monitoring of food aid donations. In 1984 it handled, on behalf of donors, an additional 350,000 tons of food aid for Africa.³⁸¹

The size and prominence of the WFP has been increasing. Some commentators believe that food aid efforts should be coordinated through the WFP on an international basis rather than through bilateral agreements between nations.³⁸² If all food aid were coordinated through the WFP, food aid could be more efficiently distributed and more effectively used to aid development.³⁸³ A large international organization involved in development rather than emergency relief, however, would severely impact current channels of commercial trade. Already the WFP is considering shipping food through commercial channels and selling food for local currency; this would be similar to United States P.L. 480 operations.³⁸⁴ Moreover, the WFP also has executed large-scale projects, such as the establishment of wheat reserves in Turkey, which have affected commercial trade.³⁸⁵

c. World Food Conference

In 1974, the World Food Conference (WFC) in Rome adopted the Declaration on the Eradication of Hunger and Malnutrition which created the World Food Council.³⁸⁶ Some 130 countries and many nongovernmental agencies adopted the Declaration that

379. *WFP Moves Food, Tackles Bottlenecks*, AFRICA EMERGENCY, June 1985, at 10.

380. *Id.*

381. The WFP implements immense and rigorous logistical activities and employs such transport means as planes, trucks, and ships to facilitate its operations. *Id.* In Mozambique, for example, "to improve off-take of bulk-shipped cereals, WFP Coastal Operations has chartered landing craft with four steel barges which will shuttle food from a coastal vessel to the tiny fishing villages at Inhasoro and Vilanculos." *Id.*

382. The term "bilateral aid" generally refers to donations made directly from one country to another.

383. *WFP Moves Food, Tackles Bottlenecks*, AFRICA EMERGENCY, June 1985, at 1.

384. BARD, FOOD AID AND INTERNATIONAL AGRICULTURAL TRADE 27 (1972).

385. *Id.*

386. *Id.*

“[e]very man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain [his or her] physical and mental facilities. . . . [T]he eradication of hunger is a common objective of all the countries of the international community. . . .”³⁸⁷ The World Food Council, charged to implement the WFC goals, consists of 36 states nominated by the Economic and Social Council and elected by the General Assembly. The Council is the highest-ranking U.N. organ which addresses only world food problems, including emergency food aid.³⁸⁸

WFC resolutions concern food production, food security, food aid, and food trade.³⁸⁹ Resolution 17 contains a voluntary agreement by governments to ensure adequate supplies of basic food-stuffs if widespread crop failures or natural disasters should occur.³⁹⁰

d. World Health Organization

Following the International Health Conference in New York on July 22, 1946, 61 governments adopted the Constitution of the newly-created World Health Organization (WHO) under Article 59 of the U.N. Charter.³⁹¹ Although independently established, WHO entered into a formal relationship with the U.N. in 1948³⁹² that authorized WHO to propose conventions, agreements, and regulations. According to Article 1 of its Constitution, WHO’s objective is the attainment of the highest possible level of health for all persons.³⁹³ Article 2(d) permits WHO to supply necessary emergency aid either to those governments that request it or to those that will accept it.³⁹⁴

387. *Id.* The Turkish Wheat Reserve cost the WFP \$35 million.

388. MACALISTER-SMITH, *supra* note 248, at 103.

389. *Id.* at 103. See generally SUBCOMM. ON FOREIGN AGRICULTURAL POLICY OF THE SENATE COMM. ON AGRICULTURE AND FORESTRY, HUNGER & DIPLOMACY: A PERSPECTIVE ON THE U.S. ROLE AT THE WORLD FOOD CONFERENCE, 94th Cong., 1st Sess. 60-62 (Comm. Print 1975) [hereinafter HUNGER & DIPLOMACY].

390. HUNGER & DIPLOMACY, *supra* note 389, at 84-85; MACALISTER-SMITH, *supra* note 248, at 103.

391. MACALISTER-SMITH, *supra* note 248, at 105.

392. *Id.*

393. WHO CONST., art. 1, *reprinted in* WORLD HEALTH ORGANIZATION, BASIC DOCUMENTS 2 (1976); G. SCHIAVONE, *supra* note 330, at 277.

394. WHO CONST. art. 2(d), *reprinted in* WORLD HEALTH ORGANIZATION, BASIC DOCUMENTS 2 (1976); G. SCHIAVONE, *supra* note 330, at 277.

Originally, WHO directed and coordinated relief efforts, having only a limited capacity to provide direct relief. In 1954, however, the U.N. Executive Board established a special emergency fund that enabled field teams to assist directly in relief operations. In 1974, the U.N. Executive Board and the Assembly further augmented WHO's ability to provide emergency relief by creating (1) the Responsible Officer for WHO Emergency Relief Operations, the liaison between countries in emergency situations and the U.N. Director-General; and (2) a special disaster fund enabling WHO to channel independent funds to meet emergency needs.³⁹⁵

The Organization currently directs its efforts toward disease control, environmental health, family health, mental health, training health workers, strengthening national health systems, formulating international health regulations, promoting medical research, and processing statistical data.³⁹⁶ In addition, the U.N. has empowered WHO to establish and promote international standards concerning food, biological, pharmaceutical and similar products. As part of the African relief effort it has worked closely with UNICEF in Africa to fight the spread of cholera, tuberculosis, and measles.³⁹⁷

3. OEOA at Work

The Office for Emergency Operations in Africa's (OEOA) first act was to target twenty African countries³⁹⁸ with the most critical immediate problems and specifically assess their food and nonfood needs.³⁹⁹ The OEOA then endeavored to mobilize the resources needed to meet these needs. To consolidate the OEOA effort and explain its emergency assessment to the international donor community, representatives from 125 countries and thirty nongovernmental organizations met in Geneva on March 11-12,

395. MACALISTER-SMITH, *supra* note 248, at 105.

396. See G. SCHIAVONE, *supra* note 330, at 280.

397. *United Nations Office for Emergency Operations in Africa Status Report on the Emergency Situation in Africa*, Report No. OEOA/3/3 at 67, 77 (Sept. 1, 1985) [hereinafter OEOA Report 3/3].

398. Angola, Burkina Faso, Chad, Mali, Mauritania, Mozambique, Niger, Sudan, Ethiopia, Botswana, Burundi, Cape Verde, Kenya, Lesotho, Rwanda, Senegal, Somalia, Tanzania, Zambia and Zimbabwe were the targeted nations.

399. This initial assessment was compiled in Report on the Emergency Situation in Africa, U.N. Conference on the Emergency Situation in Africa, U.N. Doc. SG/CONF.2 (1985). Shelter, health, and sanitation are examples of non-food needs.

1985.⁴⁰⁰ At this conference, the Secretary General conferred on the OEOA the responsibility to:

- (a) Monitor the emergency situation and co-ordinate the flow of assistance;
- (b) Identify emergency needs and facilitate the mobilization and delivery of resources;
- (c) Identify weaknesses in response capacity and deal with them urgently;
- (d) Help to develop, upon request, the capacity of African Governments to handle the growing burden of emergency-related activities themselves;
- (e) Facilitate communication, consultation and co-operation among all organizations and institutions, governmental, inter-governmental, and non-governmental, involved with the crisis;
- (f) Ensure that full account continues to be taken of the linkages between emergency, development and environmental dimensions;
- (g) Evaluate the experience acquired in this emergency to provide lessons for the future.⁴⁰¹

The scope of the OEOA effort following this conference to coordinate governmental, intergovernmental, and nongovernmental assistance is illustrated by an excerpt from an OEOA monthly status report on the African emergency listing pledges and contributions to the crisis for September 1985:

Italy: 35 trucks, 1 mobile workshop and 1 technician for one year.

USA for Africa: \$120,000 (through CARE) for 4,000 kits for village health workers and midwives; \$25,000 (through CARE) for vitamins (A and D); \$45,000 (through CARE) for ORS and/or basic medicines; \$10,000 (through CARE) for fuel; \$225,000 (through CARE) for four 8- to 10-ton trucks; \$50,000 (through Africare or UNDP/UNICEF) for well-deepening of village wells; \$359,355 (through UNDP/UNICEF) for well-deepening in Tahoua; \$165,000 (through WFP) for ten 500-ton silos.

Sweden: \$224,719 for water supply rehabilitation.

FAO: \$160,000 for dry-season farming and livestock assistance.

400. In this conference called by the Secretary General, the OEOA reported that \$1.6 billion was needed immediately to assist 30 million men, women and children who were facing extreme malnutrition, starvation, and death on a daily basis. See OEOA Report 3/3, *supra* note 397, at 5. Ethiopia alone accounted for almost eight million of this total. *Id.* at 61.

401. *Id.* at 3.

Band-Aid: \$1.6 million for emergency and recovery projects (details are awaited).

France: 100 mt of special milk for calves.

Islamic Bank: 6,000 mt of fodder concentrate.

UNICEF: \$139,904 for child nutrition and drugs.

EEC: \$15,580 [for] services of a logistician.

Federal Republic of Germany/CARITAS: \$417,937 cash.

Netherlands: \$50,000 [for] services of a logistician for four months.

Switzerland/CARITAS: \$200,000 cash.⁴⁰²

By late October 1985, the OEOA had added more than half a million dollars to its earlier needs assessment, but its other projections for 1986 were evidence of the progress made. Of the original twenty targeted countries, only eleven were expected to remain on the critical list for both food and nonfood needs. Three countries were still targeted for critical nonfood assistance, and the remaining nine were expected to be removed from the critical list altogether.⁴⁰³

D. Recipient States' Efforts

Frequently, the government of the recipient state will facilitate the relief operations of donor governments, IGOs or PVOs by assisting in the delivery and/or distribution of aid. For example, some African governments have provided facilities and personnel for unloading, handling, transporting, and warehousing commodities and project materials without cost to voluntary organizations.⁴⁰⁴ African aircraft,⁴⁰⁵ as well as aircraft donated or supplied

402. *United Nations Office for Emergency Operations in Africa Status Report on the Emergency Situation in Africa*, Report No. OEOA/3/4 at 72 (Oct. 1985).

403. *Id.* at 8.

404. See Letter from Shawn McCutcheon, Jr., Senior Writer in CARE Comm. Dep't. of New York, to Sharon Janarek, at 1 (Sept. 18, 1985) (discussing Sudan and Somalia) (a copy of this letter may be obtained from the VAND. J. TRANSNAT'L L.). The fundamental relationship between CARE and a particular African government is outlined in a basic Country Agreement signed by both parties. *Id.*

405. For the first time in March 1985, the Ethiopian military became directly involved in the famine relief effort. N.Y. Times, Mar. 9, 1985, at A5, col. 4.

by other nations,⁴⁰⁶ have engaged in massive airlifts to carry food and supplies to millions facing starvation.⁴⁰⁷ Trucks,⁴⁰⁸ helicopters,⁴⁰⁹ and trains are also participants in food transportation, but planes and helicopters are essential in food distribution because of their ability to deliver aid to areas so remote that they are either difficult or impossible to reach by truck. Furthermore, in some situations, African governments have found it more expedient and cheaper to have victims come to the food, rather than moving food aid to those facing starvation.⁴¹⁰

406. The U.S. has utilized commercial aircraft to assist in food distribution. *Africa's Need for Food Tests: Limits of U.S. Emergency Aid*, CHRISTIANITY TODAY, Feb. 1, 1985, at 53. In addition, the U.S. has also used military aircraft in famine relief efforts. See *International Affairs-African Famine*, 1985 FACTS ON FILE 44. Soviet and British military planes deliver supplies to remote areas in East Africa along with planes from Czechoslovakia, East Germany and other planes from around the world. N.Y. Times, Nov. 4, 1984, at A3, col. 4. Two British transport planes scheduled to remain in Ethiopia for three months were expected to make three round trips a day transporting relief aid. *Id.* The Soviets have also pledged their transport planes to Ethiopia to help in food distribution. Wash. Post, Nov. 4, 1984, at A26, col. 1. Likewise, the British Red Cross has chartered Boeing 707's to airlift supplies to Ethiopia. *Id.*

407. Airdrops have also gained increased popularity in food aid distribution. On February 13, 1985, the governments of Ethiopia, Poland, Great Britain, West Germany, the United States, Italy, Sweden and medical volunteers from the private French organization—Doctors without Borders—participated in an airdrop called Operation Tesfa. Wash. Post, Apr. 23, 1985, at A17, col. 1. The Ethiopian government has not yet announced whether it would allow such airdrops in sites not compatible with government rule. N.Y. Times, Feb. 2, 1985, at A4, col. 4. See also N.Y. Times, Jan. 29, 1985, at A6, col. 1. In January 1985, another airdrop (Operation St. Bernard) took place and delivered 32 tons of grain to inaccessible areas in Ethiopia. N.Y. Times, Jan. 29, 1985, at A6, col. 1. The governments of Belgium, Sweden, Italy, France and Canada assisted in the operation. *Id.* Airlifts also have aided earthquake victims in Mexico. *Mexico/Earthquake*, ABC, Sept. 20, 1985.

408. Various countries have recognized the importance of machinery in food aid distribution. The U.S. pledged "\$1 million to . . . [purchase] trucks and spare parts to speed [the] distribution of [the] supplies." Wash. Post, May 8, 1985, at A26, col. 5. The Soviets pledged \$992,200 for trucks and airplanes. *Millions Starve in Ethiopia as Drought Intensifies*, 1984 FACTS ON FILE 889. OPEC, under a five million dollar emergency grant for long-term development projects in developing countries, made available 179 heavy-duty trucks to the 12 most affected countries. *OPEC Provides Emergency Transport*, AFRICA EMERGENCY, July 1985, at 12.

409. The Soviets pledged 24 helicopters to be used for shuttle flights for the famine relief effort. N.Y. Times, Nov. 4, 1984, at A3, col. 4.

410. N.Y. Times, Mar. 26, 1985, at A2, col. 3.

One approach some African governments have taken to combat starvation is the resettlement of parts of the population to more fertile lands,⁴¹¹ stating that "resettlement is necessary to thin out the overpopulated and ecologically deteriorated countryside."⁴¹² A second approach is the Lagos Plan, adopted by fifty African countries.⁴¹³ The Lagos Plan emphasizes the African countries' belief that the continent must begin feeding itself.⁴¹⁴ The plan calls for an end to Africa's reliance on the exportation of cash crops and instead advocates expanded food output, "African regional cooperation," and escalation of African agricultural grades.⁴¹⁵ Furthermore, it encourages "strengthening the subregional economic communities, with the idea that these would lead to a Pan-African common market by the year 2000."⁴¹⁶ Thus far, twelve African states have begun utilizing established national food schemes.⁴¹⁷

IV. POLITICAL, LEGAL, AND LOGISTICAL PROBLEMS LINKED WITH THE DISASTER RELIEF SYSTEM: RECOMMENDED REFORMS

Political objectives, legal structures, and logistical factors affect and sometimes impede the execution of disaster relief. The first part of this Section examines the policy objectives underlying United States laws related to the provision of aid, the dearth of international law governing aid and donor-recipient relationships, the logistics of administering aid to the recipient nation, the intervention of the recipient government in relief endeavors, and miscellaneous forces which affect the distribution of aid. The last part of the Section offers recommendations to alleviate some of the negative effects of these factors on the provision of aid and concludes that a nexus between emergency aid and development is crucial to the resolution of a catastrophe.

411. The Ethiopian government in January 1985, planned to move approximately 100,000 persons to fruitful lands in Ethiopia's south and southwest regions. N.Y. Times, Mar. 26, 1985, at A2, col. 1. The Ethiopian government this year is planning to move two million refugees. N.Y. Times, Jan. 21, 1985, at A6, col. 3.

412. N.Y. Times, Mar. 26, 1985, at A2, col. 2.

413. Shepard, *When Foreign Aid Fails*, ATL MONTHLY, Apr. 1985, at 45. In 1980, the *Lagos Plan* was also adopted by the Organization of African Unity. *Id.*

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

A. The Problems

1. United States Laws Related to Provision of Aid

a. Principal Policy Objectives

The United States Government has stated its policy with respect to each of the laws discussed in Section II. Some have suggested that the government's behavior has been inconsistent with its stated policies, revealing its underlying motives. This inconsistency is not surprising, because a government's motives or objectives in giving aid are usually multifaceted, encompassing humanitarian, political, and economic objectives. For instance, either the United States or the Soviet Union could have a strategic interest in giving aid to Ethiopia, whose location on the Horn of Africa could make it a focus of superpower rivalry.

A distinct delineation of the policy objectives behind United States laws governing food aid is not possible because those objectives necessarily overlap, but several major themes manage to emerge. The examination focuses on Public Law 480 because that law is the most widely utilized and debated. (Note, however, that the objectives of Public Law 480 often refer to the law in its entirety, not simply to its donative aspects.)

i. Providing Humanitarian Assistance

Although humanitarian concerns have been perceived as the primary motive behind United States food assistance activities, the United States has engaged in programs which tend to further its political objectives. For example, the trend in United States aid has been towards bilateral assistance,⁴¹⁸ as evidenced by its reduction in contributions to the World Food Program.⁴¹⁹ While multilateral food assistance programs⁴²⁰ place a premium on humanitarian, emergency and developmental objectives, such programs restrict the use of food assistance to further United States domestic and foreign policies.⁴²¹ Moreover, the Title II program was under attack in the years prior to the World Food Conference

418. See R. HOPKINS & D. PUCHALA, GLOBAL FOOD INTERDEPENDENCE 92 (1980).

419. *Id.* United States contributions fell from 35% in 1969-70 to 15% in 1979. *Id.*

420. See *supra* notes 152-71 and accompanying text.

421. See *infra* notes 438-58 and 534 and accompanying text.

in Rome in 1974.⁴²² Criticism of the program fueled efforts to emphasize the humanitarian aspects of United States food aid programs and to deemphasize political and surplus disposal facets. One proposal that emerged from that conference was a system of food reserves.⁴²³

The utility of such a system was dramatized by the volatility of the world food situation during the 1970s. United States food aid shipments to developing countries had dropped drastically⁴²⁴ during the global food crisis of the early 1970s.⁴²⁵ Subsequently, increased food production due to favorable weather conditions worldwide allowed rebuilding of grain stocks to pre-1972 levels.⁴²⁶ Amendments to Public Law 480 in 1975⁴²⁷ and 1977, which added the minimum tonnage provisions of Title II⁴²⁸ and permitted the increase of shipments in times of urgent need, even if United States supplies were limited,⁴²⁹ enabled the United States once again to offer abundant amounts of aid.

As of the enactment of the 1980 Food Security Wheat Reserve

422. *Feeding the World's Population*, *supra* note 64, at 338. See *Food For War*, *supra* note 17, at 7-8. Wallerstein argues that until the Kennedy administration the driving force behind foreign aid policy was domestic agricultural surpluses. *Id.*

423. H.R. REP. NO. 966, 96th Cong., 1st Sess. 3, reprinted in 1980 U.S. CODE CONG. & ADMIN. NEWS 5458, 5460.

424. *Id.* at 5-6, reprinted at 5462-63. Public Law 480 shipments decreased from 9.9 million tons for fiscal year 1972 to 3.3 million tons for fiscal year 1974. Wheat shipments dropped from 6.5 million tons for fiscal year 1972 to 1.4 million tons for fiscal year 1974. *Id.* at 5, reprinted at 5462. United States carryover stocks of wheat dropped from 26.8 million tons at the end of crop year 1971-72 to 9.3 million tons by the end of crop year 1973-74 and did not recover until the crop year 1976-77 when the stocks equaled 30.3 million tons. *Id.*

425. The "global food crisis," which lasted from 1972 through 1974 was precipitated primarily by two factors: (1) a political decision by the United States to reduce its levels of agricultural stockpiles; and (2) severe droughts and crop failures experienced in the USSR, India, and Sahel, which caused these nations to increase substantially their food import levels. See Bale & Southworth, *World Agricultural Trade and Food Security: Emerging Patterns and Policy Directions*, 1 WIS. INT'L L.J. 24, 29 (1982).

426. H.R. REP. NO. 966, 96th Cong., 1st Sess. 5, reprinted in 1980 U.S. CODE CONG. & ADMIN. NEWS 5458, 5462.

427. International Development and Foods Assistance Act of 1975, Pub. L. No. 94-161, (89 Stat.) 849.

428. *Id.* Tonnages were set at 1.3 million metric tons, one million of which would be made available only to private voluntary organizations and the World Food Program.

429. *Feeding the World's Population*, *supra* note 64, at 346.

Act,⁴³⁰ United States grain stocks were adequate for a minimal level of world food security, but this security was offset by increased world consumption over the decade.⁴³¹ If unfavorable weather conditions again caused shortages in production, forcing grain prices to rise, millions in developing countries could suffer.⁴³² In addition, developing countries had been steadily increasing their dependency on food imports and food aid.⁴³³ Although recognizing that food aid is not the long-term answer to these countries' problems, Congress realized that an emergency wheat supply could stave off hunger while a country increased its production capabilities. Moreover, an emergency food supply could prevent a major setback in world food security if another serious worldwide production shortfall should occur.⁴³⁴ Although the four million metric ton reserve was not a final solution to such a crisis, Congress determined that a reserve of wheat stocks, upon which so many developing countries rely as a staple of their diets, would be of great assistance.⁴³⁵ Hence, the Food Security Wheat Reserve was established and reserved solely for "emergency humanitarian food needs."⁴³⁶

Though humanitarian considerations are a component of all United States donative assistance, they appear to be the primary impetus for the creation of the wheat reserve,⁴³⁷ an act by which

430. Agricultural Act of 1980, Title III, 7 U.S.C. § 1736f-1 (Supp. 1985).

431. H.R. REP. No. 966, 96th Cong., 1st Sess. 5, *reprinted in* 1980 U.S. CODE CONG. & ADMIN. NEWS 5458, 5462.

432. *Id.* at 5, *reprinted at* 5463.

433. *Id.* In the early 1950's developing countries produced almost all their own food. *Id.* As of the 1980 Act, legislators projected 75 million tons of grain, 13-14% of which was food aid, for 1980. *Id.* The International Food Policy Research Institute also projected increases for the 1990s. *Id.*

434. *Id.* at 6, *reprinted at* 5463-64.

435. *Id.* at 6, *reprinted at* 5464. The Agriculture Department assured Congress that the reserve would not depress United States wheat prices because they do not displace commercial sales but are used only for Public Law 480 concessional sales or grants. *Id.* at 7-8, *reprinted at* 5465.

436. 7 U.S.C. § 1736f-1(a) (Supp. 1985).

437. In addition to its humanitarian goal, the Reserve helped fulfill the United States commitment under the Food Aid Convention of 1980. H.R. REP. No. 966, 96th Cong., 1st Sess. 6, *reprinted in* 1980 U.S. CODE & ADMIN. NEWS 5458, 5464. The United States pledged 4.47 million tons of grain annually to developing countries. *Id.* The 1971 Food Aid Convention contained a United States pledge of 1.89 million tons a year. *Id.* During a period of tight domestic supply, the United States would be unable to meet its 4.47 million ton pledge without a wheat security reserve because Public Law 480 procurement is limited

Congress responded to past food crises by attempting to guard against, or at least to augment the seriousness of, similar situations in the future.

ii. Supplementing United States Farm Policy

Congress' initial motive in enacting Public Law 480 was to assist the ailing agricultural industry.⁴³⁸ The policy underlying Public Law 480 is:

to expand international trade; to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; . . . and to promote in other ways the foreign policy of the United States.⁴³⁹

to commodities in excess of domestic requirements, carryover, and commercial exports. *Id.*

The rationale underlying the establishment of a wheat reserve rather than a financial reserve is fourfold. First, the availability of money does not assure the availability of food, and "[p]eople cannot eat dollars." *Id.* at 9, *reprinted at* 5467. Second, a fund would have an adverse price impact because purchasing food when it is in short supply would increase prices. *Id.* Third, the President may be reluctant to purchase scarce wheat and increase domestic prices. *Id.* Fourth, wheat may be purchased for a reserve when stocks are plentiful and prices are lower, thus strengthening prices when farmers need it most. *Id.* at 10, *reprinted at* 5467.

The reserve was confined to wheat because wheat is less expensive to acquire and store than other foods, is the most widely traded grain, and may be substituted in human consumption for rice or coarse grains if necessary. *Id.*

438. See *supra* note 17 and accompanying text.

439. 7 U.S.C. § 1691 (1973 & Supp. 1985). The President is directed "to give priority consideration . . . to making available the maximum feasible volume of food commodities (with appropriate regard to domestic price and supply situations) required by those countries most seriously affected by food shortages and by inability to meet immediate food requirements on a normal commercial basis." *Id.*, § 1691(1). He is also directed to urge other donors to increase their participation, *id.*, § 1691(2); to emphasize development in donee countries, *id.*, § 1691(3); to "give special consideration to the potential for expanding markets for America's agricultural abundance abroad in the allocation of commodities or concessional financing," *id.*, § 1691(4); and to "give appropriate recognition to and support of a strong and viable American farm economy in providing for the food security of consumers in the United States and throughout the world." *Id.*, § 1691(5).

While humanitarian objectives have influenced the development of the law over the past thirty-two years,⁴⁴⁰ disposal of agricultural surplus and its corollary, market development, remain major policy goals.⁴⁴¹

All commodities exported under Public Law 480 must meet the requirements stated in section 401 of the law.⁴⁴² Under that section, the Secretary of Agriculture must determine that domestic supply requirements are met, that adequate carryover stocks exist, and that sufficient commodities are available for commercial export sales before approving Public Law 480 assistance amounts, except in the case of special and urgent humanitarian needs.⁴⁴³

Title II of Public Law 480 requires the President to "take reasonable precaution to assure that commodities furnished . . . will not displace or interfere with sales which might otherwise be made," except in the case of emergency.⁴⁴⁴ The potential for displacement of commercial markets for United States wheat products or surpluses by section 416 is one of the concerns of the Department of Agriculture.⁴⁴⁵ When asked the reason that the United States is reluctant to donate wheat under section 416, even though it donates dairy commodities under that section, Daniel Amstutz of the Department of Agriculture⁴⁴⁶ replied:

[D]isplacement of wheat is of greater concern [than displacement of dairy products] because . . . to be candid, in international markets we are not displacing [United States] exports of dairy products; in the area of wheat, we could be displacing [United States] exports. That is a very selfish answer, and it is a factual

440. See, e.g., *supra* note 44 and accompanying text.

441. See *Food Aid and the Role of the PVOs*, *supra* note 4, at 47-48. Agricultural surpluses have been increasing, forcing down the prices received by farmers for their products. *Id.*

In at least one instance Public Law 480 has been used to protect domestic industry from foreign imports. In the early 1970s South Korea was importing inexpensive textiles to the United States. To help the textile industry, the United States agreed to furnish South Korea with \$275 million in Title I concessional loans in exchange for a voluntary restriction on textile exports to the United States. *Food for War*, *supra* note 17, at 154-55.

442. 7 U.S.C. § 1731(a) (1982 & Supp. 1985).

443. *Id.*

444. 7 U.S.C. § 1722 (1982 & Supp. 1985).

445. *Food Aid and the Role of the PVOs*, *supra* note 4, at 7. See generally *id.* at 10-25.

446. Undersecretary, International Affairs and Commodity Programs.

statement.⁴⁴⁷

United States agricultural exports constitute a substantial portion of United States farm income⁴⁴⁸ and consequently are important to its balance of trade.⁴⁴⁹ Although the United States only recently became a major exporter of agricultural commodities,⁴⁵⁰ forty percent of United States farmland now produces commodities which are consumed abroad.⁴⁵¹ In 1981, the United States experienced record agricultural exports, valued at \$43.8 billion.⁴⁵²

Since peak sales in 1981, agricultural exports have been declining.⁴⁵³ This reduction has been attributed to a decreasing world demand caused by a global recession, a strong dollar, worldwide harvests, and the increased use of export subsidies by other nations.⁴⁵⁴ Because the agriculture and food system is the nation's largest industry and employer,⁴⁵⁵ its stability is imperative for a sound United States economy.

The United States has the capacity to export twice the amount of grain that is actually exported.⁴⁵⁶ Because the agricultural-commodity needs of traditional importers, such as Japan and Western Europe, have levelled off, the United States must develop new markets in order to expand exports and decrease sur-

447. *Food Aid and the Role of the PVOs*, *supra* note 4, at 22.

448. *International Trade and Development: Hearing Before the Subcomm. on International Development Institutions and Finance of the House Comm. on Banking, Finance and Urban Affairs*, 99th Cong., 1st Sess. 24 (1985) [hereinafter *International Trade and Development*]. In 1980, exports comprised approximately 30% of United States farm cash receipts. *Id.*

449. *Hearing Before the Subcomm. on Foreign Agricultural Policy of the Senate Comm. on Agriculture, Nutrition, and Forestry*, 98th Cong., 2nd Sess. 24 (1984) [hereinafter *Subcomm. on Foreign Agriculture*].

450. *See International Trade and Development*, *supra* note 448, at 24. In 1950, only 10% of farm cash receipts came from exports, which increased to 14% in 1960. *Id.*

451. *Id.*

452. *Subcomm. on Foreign Agriculture*, *supra* note 449, at 76 (statement of Wayne A. Boutwell, President, National Council of Farmer Cooperatives).

453. *Id.* By 1983, the value of agricultural exports dropped to 34.8%. *Id.*

454. *International Trade and Development*, *supra* note 448, at 24.

455. *Id.* Agricultural assets are worth about \$1 trillion, "an amount equal to almost 90% of the combined assets of all manufacturing corporations in the United States." *Id.* In 1982, farm commodities added \$71 billion to the gross national product. *Id.*

456. *Id.*

plus.⁴⁵⁷ Although developing countries have increased their level of United States imports, long-term expansion of agricultural exports lies in the cultivation of African markets.⁴⁵⁸

iii. Encouraging Two Types of Development

Through Public Law 480 and USDA export credit programs, the United States encourages other nations to decrease their reliance on emergency aid and aims at the expansion of export markets. Efforts to emphasize the developmental aspects of food aid have been carried out through Titles I and III of Public Law 480 more often than through Title II or other laws.

Many poor countries are prohibited from purchasing United States agricultural commodities because they are unable to secure credit.⁴⁵⁹ Title I agreements help nations overcome this problem by affording direct loans at concessional rates of interest;⁴⁶⁰ Title I agreements also open markets which were previously unavailable to United States exporters.⁴⁶¹ Title III, known as the "Food for Development" program, is intended to give Title I recipients an incentive to develop their agricultural capabilities by forgiving Title I debts, so long as the proceeds were used for additional development purposes.⁴⁶² A 1981 amendment required self-help measures contained in sales agreements to be more specific and measurable.⁴⁶³

As stated in Section II, the supply of donative aid through Title II primarily meets emergency needs. Another objective of Title II assistance, however, is to support "community and self-help activities designed to alleviate the causes of need for [emergency aid]." ⁴⁶⁴ Section 206 of Title II directs that foreign currencies generated from Title II commodity sales be used, except under

457. *Subcomm. on Foreign Agriculture, supra* note 449, at 24 (statement of Robert W. Kohlmeyer, Northern American Export Grain Association).

458. *Uses of Agricultural Abundance, supra* note 27, at 12 (statement of Richard Goldberg, Deputy Under Secretary, USDA).

459. *Id.*

460. *See supra* notes 27-31 and accompanying text.

461. *See supra* note 39 and accompanying text. One condition of receiving Title I concessional sales is that the recipient must agree to execute self-help activities to improve its production capabilities.

462. *See Feeding the World's Population, supra* note 64, at 342. *See text accompanying note 67 supra* for a discussion of Title III.

463. *Feeding the World's Population, supra* note 64, at 342.

464. 7 U.S.C. § 1722(b)(1) (1982 & Supp. 1985).

certain conditions, for agricultural development, rural development, or nutrition programs.⁴⁶⁵ Title II also is considered a useful market development tool.⁴⁶⁶ Eight of the ten most profitable commercial importers of United States agricultural commodities are "graduates" of the Title II program.⁴⁶⁷ Together, Title I and Title II food assistance enable poor countries to free some of their capital for use in development so they may at some point engage in commercial trading.⁴⁶⁸

Public Law 480 is employed in conjunction with private enterprise development projects to expand United States export markets. A particularly successful project has been implemented by Land O'Lakes, Incorporated, a United States food cooperative.⁴⁶⁹ Land O'Lakes created a nonprofit organization in Jamaica called the Jamaica Agricultural Development Foundation.⁴⁷⁰ Under Title II, the United States donates surplus dairy products to the Foundation.⁴⁷¹ The Foundation then contracts with Jamaican processors to ready the dairy products for consumption; they are then sold in Jamaican commercial markets.⁴⁷² Land O'Lakes provides the Jamaican processors with technological assistance.⁴⁷³ The profits⁴⁷⁴ are used by the Foundation to help strengthen the Jamaican economy,⁴⁷⁵ thus enabling Jamaica to increase imports.⁴⁷⁶

The USDA, through the CCC, administers two other programs

465. 7 U.S.C. § 1721 (1982 & Supp. 1985).

466. *Uses of Agricultural Abundance*, *supra* note 27, at 35 (statement of Robert D. Fondahn, President, Fondahn & Associates, Inc.).

467. *Id.*

468. *See Food Aid and the Role of the PVOs*, *supra* note 4, at 81 (prepared statement of W. Glenn Tussey, Associate Director, Washington Office, American Farm Bureau Federation). For example, Korea received Public Law 480 assistance from 1956 through 1981, totaling more than \$1.6 billion. During that period, per capita income rose from \$100 to \$1500 and yearly exports rose from \$20 million to \$18 billion. *Uses of Agricultural Abundance*, *supra* note 27, at 162. Yearly exports to Korea are now worth more than all the aid given to Korea under the Public Law 480 program in 25 years. *Id.*

469. *Uses of Agricultural Abundance*, *supra* note 27, at 163.

470. *Id.* Land O'Lakes serves on the board of directors of the Foundation. *Id.*

471. *Id.*

472. *Id.*

473. *Id.*

474. The estimated profits over six years are \$35-50 million. *Id.*

475. *Id.*

476. *Id.* at 60.

designed to facilitate the exportation of United States agricultural commodities to countries with credit problems:⁴⁷⁷ the Export Credit Sales Program (GSM-5)⁴⁷⁸ and the Export Credit Guarantee Program (GSM-102).⁴⁷⁹ Under the Sales Program, the CCC buys an exporter's accounts receivable after the exporter has delivered the commodity to the importer.⁴⁸⁰ The importer has a maximum of three years to pay the CCC with interest.⁴⁸¹ Under the Guarantee Program, the CCC acts as guarantor of foreign letters of credit given to United States exporters in the sale of agricultural commodities.⁴⁸²

The majority of credit has been extended under the GSM-102 program.⁴⁸³ In fiscal year 1984, \$4 billion in GSM-102 guarantees were extended, comprising ten percent of all agricultural exports.⁴⁸⁴ The export credit programs have been successful market development tools.⁴⁸⁵ For example, with the use of export credits, Iraq increased United States agricultural imports from \$135 million in 1982 to approximately \$700 million in 1985.⁴⁸⁶

Finally, the United States is attempting to influence the development of recipient nations by insisting that they adopt economic reforms. One such approach to influence development in African

477. *Id.* at 12 (statement of Richard Goldberg, Deputy Under Secretary, USDA).

478. 7 U.S.C. § 1707(a) (1982); 7 C.F.R. § 1488.1-.22 (1985).

479. 15 U.S.C. § 714(c)(f) (1982); 7 C.F.R. § 1493.1-.15 (1985).

480. 7 C.F.R. § 1488.1(b). *See also* Transportation Institute v. Dole, 603 F. Supp. 888, 891 (D.D.C. 1985).

481. 7 C.F.R. § 1488.1(a). *See id.*, § 1488.14.

482. 7 C.F.R. §§ 1493.1, 1493.4, 1493.9, & 1493.10. *See also Dole*, 603 F. Supp. at 892. The CCC also provides a "blended credit" program which combines GSM-5 and GSM-102 financing. *Id.* The blended credit program has recently been suspended by the USDA as a result of a ruling in the *Dole* case which applied cargo preferences to the program.

483. *Subcomm. on Foreign Agriculture, supra* note 449, at 21.

484. *Id.* In fiscal year 1985, \$5 billion in guarantees will be made available. *Rural Development, supra* note 3, at 43 (statement of Melvin E. Sims, General Sales Manager, USDA).

485. *Rural Development, supra* note 3, at 105 (statement of Melvin E. Sims, General Sales Manager, USDA).

486. *Subcomm. on Foreign Agriculture, supra* note 449, at 21. Nonpayments under GSM-102 will cost the CCC as much as \$4 billion by 1985. The large payments by the CCC due to defaults have for practical purposes made the GSM credits a vehicle for donative aid in addition to their market development function. *See id.*

nations is the Economic Policy Initiative (EPI).⁴⁸⁷ The EPI aims to encourage African countries to redirect their economic philosophy along capitalist lines. To those African countries indicating a willingness and capacity to undertake growth-oriented policies,⁴⁸⁸ the EPI will provide \$500 million in economic aid over five years. A second policy of reform is the "Food for Progress" initiative. This program provides food relief for African countries obligating themselves to agricultural reforms "stressing market approaches in agricultural pricing, marketing, and input supply and distribution."⁴⁸⁹

iv. Subsidizing Maritime Industry

Under the Cargo Preference Act of 1954,⁴⁹⁰ at least fifty percent of all government-generated cargo "shall be transported on privately owned United States-flag vessels, to the extent such vessels are available at fair and reasonable rates. . . ."⁴⁹¹ The intent in passing the Act was to further the policies of the Merchant Marine Act of 1936,⁴⁹² which included developing a United States merchant marine fleet that could meet the country's shipping needs and serve in the military when necessary.⁴⁹³ Since United States-flag ships generally are more expensive to operate than are foreign-flag ships, the Cargo Preference Act is in effect a subsidy to strengthen the Merchant Marine.⁴⁹⁴

The cargo preference requirements apply to the Title I,⁴⁹⁵ Title

487. Lyman, *FY 1985 Foreign Assistance Requests for Sub-Sahara Africa*, 84 DEP'T ST. BULL., May 1984, 44-45.

488. *Id.*

489. *U.S. Assistance and Africa's Economic Crisis*, 85 DEP'T ST. BULL., Mar. 1985, at 23, 25.

490. Pub. L. No. 83-664, (68 Stat.) 832 (codified at 46 U.S.C. § 1241(b)(1) (1982)).

491. *Id.*

492. Pub. L. No. 74-858, (49 Stat.) 1985 (codified as amended at 46 U.S.C. §§ 1101-1295 (1982)). See *Application of Cargo Preference Laws Relating to the Exportation of United States Agricultural Commodities: Hearings Before the Senate Comm. on Commerce, Science, and Transportation*, 99th Cong., 1st Sess. 2 (1985) [hereinafter *Application of Cargo Preference Laws*].

493. 46 U.S.C. § 1101 (1982).

494. See *Dole*, 603 F. Supp. at 896-97; *Application of Cargo Preference Laws*, *supra* note 492, at 13.

495. GENERAL ACCOUNTING OFFICE, REPORT TO THE HONORABLE MILLICENT FENWICK 2 (1982) (on the effect of cargo preferences on Title II). The CCC only pays the differential cost of complying with the Cargo Preference Act.

II,⁴⁹⁶ Section 416,⁴⁹⁷ and blended credit⁴⁹⁸ programs. Since the passage of Public Law 480, the Cargo Preference Act has increased the cost of providing food aid by \$1.6 billion.⁴⁹⁹ Glenn Tussey, a member of the American Farm Bureau Federation, testified before Congress that cargo preference requirements increase the cost of food assistance that the United States furnishes to hungry people by approximately twenty-five dollars per ton.⁵⁰⁰ As a result of the district court's application of the Cargo Preference Act to the USDA's blended credit program in *Transportation Institute v. Dole*,⁵⁰¹ the Secretary of Agriculture has suspended the extension of blended credit.⁵⁰²

The Cargo Preference Act directs the Department of Transportation to survey compliance of other government agencies with cargo preference requirements,⁵⁰³ but the statute does not provide the Department of Transportation with any enforcement authority.⁵⁰⁴ Congresswoman Helen Delich Bentley has accused the USDA of "constantly and flagrantly" violating the Cargo Preference Act in its Title I, Title II, and Section 416 shipments,⁵⁰⁵ though the Maritime Administration itself has not made any public accusations.⁵⁰⁶

496. *Id.*

497. 22 C.F.R. § 210.5(d)(1)(i) (1985).

498. *See Dole*, 603 F. Supp. 888. The cargo preferences do not apply to the individual GSM-5 and GSM-102 programs. 7 C.F.R. §§ 1488.1(c), 1493.1(c) (1985).

499. *Food Aid and the Role of the PVOs*, *supra* note 4, at 48 (statement of Glenn Tussey, American Farm Bureau Federation).

500. *Id.* at 49.

501. 603 F. Supp. at 907. The court rejected the USDA's contention that the Act applied only to "food aid" programs. *Id.* at 901.

502. *See Application of Cargo Preference Laws*, *supra* note 492, at 4. Initially, the Maritime Administration had not applied the Cargo Preference Act to the blended credit program, stating that "flag carriage requirements . . . would result in costs that would entirely offset the program's benefits, thereby defeating the underlying purpose of both the blended credit program and the cargo preference laws." *Dole*, 603 F. Supp. at 893.

503. 46 U.S.C. § 1241(b)(2).

504. Morison, *Bentley Rips Preference Evasions*, J. of Commerce, Apr. 19, 1985, at 1B, col. 2.

505. *Id.* at 1B, col. 1.

506. *See id.* at 1B, cols. 1-2. In 1983, the USDA and AID were warned by the Maritime Administration about violations of the cargo preference requirements for Title I, Title II and Section 416 programs. *Application of Cargo Preference Laws*, *supra* note 451, at 3.

b. Criticism of Policy: Effect on Aid Programs

i. Using Food as Aid

Although the majority of United States foreign aid since World War II has been in the form of capital, food assistance has comprised a significant portion of relief efforts,⁵⁰⁷ and the amount of food aid probably will increase in the future.⁵⁰⁸ At least one expert⁵⁰⁹ has identified some specific advantages to the use of food as aid. Food is cheaper and more readily available than other forms of aid.⁵¹⁰ Money, if not used to buy food directly, must be applied to programs or to projects, and the poor benefit only slowly and indirectly via the "trickle-down effect" of economic development.⁵¹¹ "[P]oor people cannot eat capital loans and grants."⁵¹² Food aid alleviates hunger and malnutrition while facilitating other developmental activities.⁵¹³

Furthermore, the public reacts more favorably to funding for food aid than to appropriations for capital and technical assistance.⁵¹⁴ The average taxpayer can more easily identify with the need to feed "starving children" or even the need to aid farmers than with the concept of "foreign capital assistance."⁵¹⁵ Finally, food aid has become a more attractive form of assistance because the United States produces greater quantities of agricultural commodities than it consumes; food, therefore, has a lower opportunity cost than capital, particularly because the exorbitant federal deficit precludes an increase in capital assistance.⁵¹⁶

507. FOOD FOR WAR, *supra* note 17, at xvi. About 28% of United States overseas aid between 1946 and 1976 consisted of food. *Id.*

508. *See id.*

509. Mitchel B. Wallerstein. *See supra* note 17.

510. FOOD FOR WAR, *supra* note 17, at 24.

511. *Id.*

512. *Id.* (citing Field & Wallerstein, *Beyond Humanitarianism: A Developmental Perspective on U.S. Food Aid*, in FOOD POLICY - THE RESPONSIBILITY OF THE UNITED STATES IN THE LIFE AND DEATH CHOICES (P. Brown & H. Shue eds. 1977)).

513. FOOD FOR WAR, *supra* note 17, at 24. Wallerstein notes that "food-for-work" projects, those projects that pay for labor on development projects with food, are based on this concept of food as "double-barreled." *Id.*

514. *See id.* at 25.

515. *Id.*

516. *See id.* at xvi, 24. Expansion of food aid will be somewhat retarded by the importance of agricultural exports in helping with the United States balance of payments problem. *Id.* at xxi. In addition, surplus agricultural commodities

Notwithstanding these advantages, the use of food as aid often has been severely criticized. Although food aid may be politically preferable to capital assistance, food donations are not always the proper response to disaster. For example, in 1975 the United States responded to an earthquake in Guatemala by donating emergency food aid. Because the earthquake had not affected Guatemalan food production, however, the United States food assistance depressed food prices in the local market.⁵¹⁷ Yet, even if food aid is the proper response to disaster, surplus foods from the donor country may not correspond to the types of food indigenous to the recipient nation,⁵¹⁸ leading to changes in the diet of the recipients.⁵¹⁹ Though the donor country may benefit from the disposal of its surplus commodities, the needy recipient may become dependent upon this foreign food.⁵²⁰ This change of diet and subsequent dependency may provide disincentive to local farmers to grow their own crops again.⁵²¹ Moreover, the poor may begin to spend their scant incomes on imported foods that have become part of their diets.⁵²²

Food as aid may be peculiarly suited to exercising coercive power over a recipient country's government. Because food is the most basic of necessities, the threat of withholding it could be a powerful method of influencing a poor state's government to act in accordance with the donor government's policies.⁵²³ The hungry would suffer most from such a strategy.

The donor government is not the only party in the position to use food as a political weapon. Donor governments have little control over the food once it has been delivered to the recipient. Recipient governments then have an opportunity to use the food

are not "free" resources at the disposal of the government. Food must be purchased, processed, and transported, which requires Congressional appropriations.

517. See R. HOPKINS & D. PUCHALA, *GLOBAL FOOD INTERDEPENDENCE* 88 (1980).

518. *FOOD FOR WAR*, *supra* note 17, at 23; Schlosser, *The Starvation Cycle: Perpetrating the Aid-Famine Process*, 32 *WORLD PRESS REV.*, Feb. 1985 at 40.

519. *FOOD FOR WAR*, *supra* note 17, at 23. See also, Schlosser, *supra* note 518, at 40.

520. See *FOOD FOR WAR*, *supra* note 17, at 23.

521. Schlosser, *supra* note 518, at 40.

522. See generally Doyle, *Cultivating Disaster: Local and International Contexts Affecting the Provision of Food in Natural Disasters*, in *DISASTER ASSISTANCE* 130, 148-53 (L. Stephens and S. Green eds. 1979).

523. See *id.*

for their own political purposes.⁵²⁴ They may terminate the delivery of food to populations in certain regions in which civil uprising occurs, as has been reported in Ethiopia.⁵²⁵ They also could add the donated food to food that is already available on the commercial markets in their countries, lowering prices and raising the standard of living in certain politically unstable regions.⁵²⁶ This may have the effect of reducing farmers' incomes as well as their incentive to reinvest in production.⁵²⁷ Furthermore, attempts by the donor government to monitor the use of aid necessitates involvement in the recipient government's internal affairs.⁵²⁸ Such encroachment on the sovereignty of the recipient will be resented and may, in the long run, be damaging to the donor country.⁵²⁹

Many critics argue that though food aid should not be eliminated, it should be used sparingly and only in conjunction with long-term developmental assistance.⁵³⁰ They contend that the United States utilizes Public Law 480 to respond on a "crisis-by-crisis" basis, ignoring long-term planning.⁵³¹ The United States' belated response to the African famine is cited as an example of this short-sightedness.⁵³² Furthermore, critics perceive food aid as "part of the problem as well as the solution because its disincentive effect drives down prices for domestically-grown commodities, reducing incomes and the incentive to reinvest in ways that would increase productivity."⁵³³ Continued short-term assistance

524. See *Feeding the World's Population*, *supra* note 64, at 340.

525. See *supra* notes 617-630 and accompanying text.

526. *Feeding the World's Population*, *supra* note 64, at 340.

527. *Id.*

528. FOOD FOR WAR, *supra* note 17, at 23.

529. *Id.* at 23-24.

530. See *id.* at 24.

531. *African Drought Poses Major Aid Challenge*, CONG. Q., Dec. 1, 1984, at 3041-42.

532. *Id.* The Ethiopian government had requested famine relief in October of 1982 but the United States did not respond until May 1984, according to Rep. Howard Wolpe (D. Mich.), chairman of the House Foreign Affairs Subcommittee on Africa. *Id.* at 3043. Following the October 1984 broadcasts, AID administrator Peter McPherson announced increases in emergency aid to Ethiopia. *Id.* The total emergency aid donated to Ethiopia for the first 45 days of fiscal year 1985 was estimated at \$97.5 million, substantially greater than the \$19.8 million donated to that country for the entire fiscal year 1984. *Id.*

533. *Feeding the World's Population*, *supra* note 64, at 339. But see *Food Crisis in Africa: Hearing before the Subcomm. on Africa of the Comm. on For-*

may contribute to the recipient government's delay in confronting deeper problems.

Long-term development assistance may be less practicable than short-term aid, however, because of the need to reappropriate aid programs each year. Moreover, the implementation of development assistance programs may be unlikely in the face of a hostile, uncooperative recipient government.

Even if the recipient government is willing to work with the donor government, other obstacles impede developmental assistance. Hunger is not an isolated problem. It is rooted in poverty, overpopulation, and crop instability. Rivalry between governments and political strife within recipient countries aggravate the causes of hunger. Yet these problems cannot be eradicated by another country alone; the needy nation must be responsible for helping itself.

ii. Disposing of Surplus Commodities

One criticism of the Public Law 480 program is that it is principally a method for disposing of unwanted surplus foods.⁵³⁴ The objection is that the program focuses on the needs of United States farmers instead of the needs of aid recipients. As previously discussed, the recipients' diets may be disrupted, local food production may be hampered, and the country receiving the surplus food may have inadequate facilities for storage and distribution. If a food donation program is executed to promote only the policy of surplus food disposal, relief may do more harm than good for the recipient. Recipient governments may begin to resent the efforts. Ultimately, the program's original goal of aiding the United States farmer may be undercut.

iii. Supporting Maritime Industry

Various bills have been introduced in Congress to exempt the cargo preferences from export credit, concessional loans, and don-

eign Affairs, 98th Cong., 1st Sess. 16 (1983), which, while agreeing that "[f]ood and food production aid must go hand in hand with total development efforts," states that "no inherent reason [exists] why food aid needs to have a disincentive effect on production."

534. See *Food Aid and the Role of the PVOs*, *supra* note 4, at 88 (prepared statement of Colleen Westbrook, Public Policy and Research Coordinator, Oxfam America). This criticism relates primarily to Title I food sales.

ative aid programs,⁵³⁵ but no legislation has been enacted. The criticism of applying the Cargo Preference Act to export credit is aimed at the fact that programs designed to assist the troubled agricultural industry should not be diminished to subsidize the maritime industry.⁵³⁶ Those opposing the Cargo Preference Act's application to donative and concessional aid programs argue that the maritime subsidy reduces the USDA's ability to feed the world's hungry.⁵³⁷

The President's Task Force on International Private Development recommended that cargo preference costs should be eliminated from the Public Law 480 budget,⁵³⁸ but the Reagan Administration has stated that

[it] will oppose legislation which would remove cargo preference requirements from programs under which U.S. agricultural commodities or products thereof are donated, bartered, or sold for foreign assistance or humanitarian purposes under concessional terms, including those programs carried out under the Agricultural Trade Development and Assistance Act of 1954 . . . and the Food Security Wheat Reserve Act of 1980.⁵³⁹

Representatives of the maritime and agricultural industries developed a joint plan to resolve the cargo preference dispute.⁵⁴⁰ The plan called for removing the requirements from "commercial exports" but increasing the requirements for "concessional" cargo from fifty percent to seventy-five percent in 1986.⁵⁴¹ The Depart-

535. S.721, 99th Cong., 1st Sess. (1985) (S.721 only proposed the removal of cargo preferences from export credits); H.R. 1760, 99th Cong., 1st Sess. (1985).

536. See *Application of Cargo Preference Laws*, *supra* note 492, at 16. This was the view of the dissenting members of the Senate Commerce Commission which reported unfavorably on S.721. The dissenters were not arguing against the propriety of subsidizing the maritime industry, but only that it not be done through the blended credit program. *Id.* at 13.

537. See *Food Aid and the Role of the PVOs*, *supra* note 4, at 82 (statement of W. Glenn Tussey, American Farm Bureau Federation). But see Morison, *Bentley Set to Fight for Cargo Preference*, *J. of Commerce*, May 10, 1985, at 1B, col. 3. Congressman Norman Lent argued that if the cargo preferences were removed from Public Law 480, additional food would not be available for aid because "any money saved would be swallowed up by the federal deficit." *Id.*

538. *International Trade and Development*, *supra* note 448, at 3.

539. Letter from David Stockman, Director, Office of Management and Budget, to Sen. John Danforth, Chairman, Senate Commerce Commission, reprinted in *Application of Cargo Preference Laws*, *supra* note 492, at 12, 13.

540. *J. of Commerce*, July 29, 1985, at 1B.

541. *Id.*

ment of Transportation would be responsible for funding the cost differential on the additional twenty-five percent.⁵⁴² The plan was sent to Congress, but it has been unable to attract a sponsor.⁵⁴³

iv. Achieving Short-Term Political Goals

One approach taken by the United States to achieve its social objectives abroad has been to make economic assistance to foreign countries contingent upon their respect for human rights. In 1977, United States legislation was enacted that denied food aid⁵⁴⁴ to "the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights;"⁵⁴⁵ the legislative intent was to advocate the advancement of human rights.⁵⁴⁶

The United States in the past has been accused of using its foreign economic assistance to African countries as a tool to further its political ideologies. The accusations may not be unjust; the United States has proclaimed its intention to employ food aid as a political instrument.⁵⁴⁷ American officials made no attempt to conceal usage of aid to topple the Marxist regime of Colonel Mengistu.⁵⁴⁸ The United States is now utilizing its foreign policy

542. *Id.*

543. *Id.* Although public opinion arguably favors the removal of Cargo Preference Act Requirements from P.L. 480, section 416 and the Blended Credit Program in order to decrease the cost of providing aid, the Reagan Administration takes the more pragmatic approach. The Cargo Preference Act generates 39.8% of all cargo which United States flag ships move in international trade, *Application of Cargo Preference Laws, supra* note 492 at 3, while an increase in the amount of food aid as a result of removal of the preferences is speculative. Nonetheless, the Cargo Preference Act should not apply to the Blended Credit Program because its application furthers no legislative policy. Preferences have caused the abandonment of the program, reducing farm exports, food for the needy and shipments for the Merchant Marine.

Whether to ease the plight of the world's hungry at the expense of the troubled farm and shipping industries is not the subject of debate. Instead, the issue is who should benefit from the United States tax dollars, foreign commercial shipping interests or the United States Merchant Marine.

544. International Development and Food Assistance Act of 1977, § 112, 22 U.S.C. § 2151n (1982).

545. *Id.*, § 2151n(a).

546. See S. REP. NO. 406, 94th Cong., 1st Sess. 30-36, reprinted in 1975 U.S. CODE CONG. & ADMIN. NEWS 1651, 1675-80.

547. Sethi, *The Politics of Hunger*, WORLD PRESS REV., Feb. 1985, at 39.

548. *Id.* at 38. See also Timberlake, *Beyond the Famine*, WORLD PRESS REV., Jan. 1985, at 50.

to regain influence in Ethiopia and to weaken Ethiopia's alliance with the Soviet Union.⁵⁴⁹ In its 1986 budget requests to Congress, the White House underlined its policy change in Africa to long-term economic assistance determined by political ideology rather than need.⁵⁵⁰ The Reagan Administration also has declared that it will use its bilateral aid to compensate its "proven friends,"⁵⁵¹ although the Administration has publicly stated it is being receptive to Africa's needs "without regard to politics."⁵⁵²

Two amendments to the United States Foreign Assistance Act have placed conditions upon the donation of United States food aid in the past to African countries. The amendments prevent the government from giving anything other than "humanitarian" aid to countries that have not paid their debts to the United States. Under the amendments, United States food can only be donated; it cannot be earned. The first amendment, the so-called Hick-enlooper Amendment,⁵⁵³ prohibits development aid to countries that have nationalized the property of United States citizens without taking the "appropriate steps" for payment. The African Relief and Recovery Bill,⁵⁵⁴ however, has now waived this require-

549. In May of 1984, Ethiopia claimed that some countries were using food relief as a political device because it had received no food shipments since the end of March. 30 KEESENGS CONTEMP. ARCHIVES 33017 (1984). In 1983, the U.S. severed all food relief to Ethiopia, but nine months later because of pressure from Congress and the press, the Reagan Administration again granted food relief. Shepard, *Drought of the Century: Africa*, ATL. MONTHLY, April 1985, at 36. In Mali, the United States has been successful in using its food assistance as a political tool to move the country away from its socialist ideology to a more capitalist democracy. Shapiro, *Starving—A Close-Up View of Famine in Africa*, U.S. NEWS & WORLD REP., Dec. 24, 1985, at 34. See also Mayer, *infra* note 584, at 54.

550. Shepard, *Congress and the White House at Odds*, AFRICA REP., May-June 1985, at 25, 28.

551. Lancaster, *Africa's Development Challenges*, CURRENT HIST., Apr. 1985, at 148, 183. "The United States sharply cut its aid to Zimbabwe in the wake of Zimbabwe's abstention in the United Nations on the resolution condemning the Soviet destruction of the Korean airliner and its support of the resolution condemning the United States invasion to Grenada." *Id.*

552. See *Food for Hungry Without Regard to Politics*, U.S. NEWS & WORLD REP., May 13, 1985, at 37.

553. Foreign Assistance Act of 1961, § 620(e)(1) (codified at 22 U.S.C. § 2370(e)(1) (1982)).

554. African Relief and Recovery Act of 1985, Pub. L. No. 99-8, 99 Stat. 21 (1985).

ment. The second amendment, the Brooke Amendment,⁵⁵⁵ prevents development aid to countries that have not paid off loans from the United States government. Unlike the Hickenlooper Amendment provisions, waiver of the Brooke Amendment's penalties is much more difficult to achieve; the President may waive only in the event of a national security threat to the United States.

Many commentators on United States foreign aid programs contend that the nexus between political goals and aid hampers the effectiveness of those programs. More development assistance is given to allies than to nonallies, regardless of relative need. Many poor countries that do not pose a threat to United States security do not receive nearly the amount of aid needed.⁵⁵⁶ The disparity between the amount of aid given to the friendly or strategically important countries and that given to unfriendly or nonimportant countries exists in the donative context as well. A comparison of the United Nations Food and Agricultural Organization's statistics on food need to actual Title II assistance given to Africa demonstrates this contention.⁵⁵⁷ The United States insists that it does not allow political differences to determine assistance to the needy.⁵⁵⁸ Nonetheless, critics believe that in the case of Africa, particularly Ethiopia, the United States is "employing emergency relief as a carrot and stick to achieve its foreign policy objectives."⁵⁵⁹

555. Foreign Assistance Act of 1961, § 620(c) (codified at 22 U.S.C. § 2370(e)(1) (1982)).

556. OVERCOMING WORLD HUNGER: THE CHALLENGE AHEAD, REPORT OF THE PRESIDENTIAL COMM. ON WORLD HUNGER, AN ABRIDGED VERSION at 13 (1978). Egypt has been the largest recipient of foreign assistance since 1976, reflecting the United States' policy of using aid both as an inducement and a reward for participation in Middle East peace negotiations. *Feeding the World's Population*, *supra* note 64, at 335.

557. *Food Aid and the Role of the PVOs*, *supra* note 4, at 90 (statement of Colleen Westbrook, Public Policy and Research Coordinator, Oxfam America) (relying on statistics compiled by the Agency for International Development). *Id.* at 97. See also *Feeding the World's Population*, *supra* note 64, at 332-35.

558. See, e.g., *Food for Hungry Without Regard to Politics*, U.S. NEWS & WORLD REP., May 13, 1985, at 38 (interview with Peter McPherson, Administrator of the Agency for International Development).

559. Tucker, *The Politics of Famine in Ethiopia*, THE NATION, Jan. 19, 1985, at 48.

v. Complicating Implementation

In 1978, the World Hunger Working Group⁵⁶⁰ found that the organization and management of United States food, nutrition, and agriculture programs was not conducive to a coherent government-wide world hunger policy.⁵⁶¹ Among the specific problems cited were: (1) failure to identify clearly the responsibilities for food aid policy and operations;⁵⁶² (2) the lack of a mechanism by which the private sector can participate systematically in the planning and execution of programs;⁵⁶³ and (3) the abundance of congressional constraints imposed on AID, relegating its top staff to operational details and paperwork at the expense of policy formulation and coordination.⁵⁶⁴

The machinations of the political process in this country inevitably will result in delays in the formulation of policy and more often in the appropriations process. Even though members of various committees, representatives of diverse constituencies and members of opposing political parties may be able to agree on the ultimate goal they wish to achieve, such as aid to Africa, often they vigorously disagree on the amount or the disposition of aid. This disagreement results in delays; often the targeted recipients of donative aid cannot wait months for the President and members of Congress to attach riders to the legislation which appropriates the money for their food.

In 1984, for example, President Reagan insisted on tacking military aid to El Salvador and covert aid to Nicaraguan "contras" onto a bill providing \$150 million in food aid to Africa.⁵⁶⁵ In 1985,

560. President Carter created the World Hunger Working Group in 1978 to study world hunger and malnutrition and to assess and make recommendations on United States food policy and programs. Exec. Order No. 12,078, 43 Fed. Reg. 39,741 (1978).

561. WORLD HUNGER WORKING GROUP, *WORLD HUNGER AND MALNUTRITION: IMPROVING THE U.S. RESPONSE* 47 (1980).

562. *Id.* The Group found that "[c]riteria are vague, planning is weak, action is uncertain, evaluation is slight, and financial responsibility is questionable." *Id.*

563. *Id.* at 47-48.

564. *Id.* at 47.

565. See *Emergency Africa Assistance Faces a New Round of Delays*, CONG. Q., Mar. 2, 1985, at 375. The House of Representatives passed Joint Resolution 492 on March 6, 1984, but the bill was delayed in the Senate by an attempt to attach to the bill \$93 million in military aid to El Salvador. See *African Drought Poses Major Aid Challenge*, CONG. Q., Dec. 1, 1984, at 3042. Ninety million dol-

Congress tacked relief for United States farmers onto H.R. 1096, authorizing \$175 million in nonfood aid to Africa.⁵⁶⁶ Reagan vetoed the resolution.⁵⁶⁷ When farm state senators further delayed action on the African aid bill, President Reagan prepared to use his emergency powers to send additional aid without congressional appropriation by revaluing United States-owned food aid.⁵⁶⁸ Such political maneuvering is counterproductive in the midst of a consensus that the United States should send aid to starving people.

2. International Law Related to Provision of Aid

No international law exists which defines the obligations of donor and recipient states before, during and after disasters. Neither the United Nations nor any state has enacted a law which defines the legal relationships between donor and recipient states;⁵⁶⁹ moreover, very little law addresses the right of an individual to receive disaster relief. Although the Preamble to the U.N. Charter states as a goal the "reaffirm[ation of] faith in fundamental human rights, in the dignity and worth of the human person,"⁵⁷⁰ it does not contain any specific rights to disaster relief. Article 1(3) of the U.N. Charter is the primary provision dealing with human suffering, but it does not list as a purpose the alleviation of human suffering on an international scale. Furthermore, no provision in the U.N. Charter or in Article 55, which addresses international economic and social cooperation, proposes a method

lars of the \$150 million for food aid, however, was successfully attached to another supplemental measure, Joint Resolution 493, of which the House approved on March 28, 1984. The remaining \$60 million in food aid, however, was further delayed until June 25, 1984, because of other efforts to attach El Salvador aid and covert aid to the contras. P.L. 98-332, containing the \$60 million, had to be programmed for fiscal year 1985 because of the delay.

566. *Emergency Africa Assistance Faces a New Round of Delays*, CONG. Q., Mar. 2, 1985, at 375.

567. *See Stalled Africa Aid Bills Prompt Executive Steps to Free Funds*, CONG. Q., Mar. 9, 1985, at 431.

568. *Id.* The Agriculture Department has authority to set any value up to the export market value on United States-owned food sent overseas via P.L. 98 (1981).

569. Samuels, *The Relevance of International Law in the Prevention and Mitigation of Natural Disasters*, in *DISASTER ASSISTANCE* 245, 246-47 (L. Stephens and S. Green eds. 1979).

570. U.N. CHARTER Preamble, *reprinted in* CHARTER OF THE UNITED NATIONS (Goodrich, Hambro & Simons eds. 1969).

of accomplishing these objectives.⁵⁷¹ Unlike the Preamble to the U.N. Charter, the International Bill of Human Rights⁵⁷² and the International Covenants⁵⁷³ proclaim that individuals should possess the right to freedom from hunger but add that this right cannot be perfected by specific enforcement.⁵⁷⁴

Although the U.N. Charter does not designate responsibility for disaster relief,⁵⁷⁵ the General Assembly has stated that UN-DRO⁵⁷⁶ is to coordinate relief facilities.⁵⁷⁷ The U.N. has urged re-

571. MACALISTER-SMITH, *supra* note 248, at 161.

572. G.A. Res. 217, Third Session (1948) (U.N. Doc. No. unavailable). See Lauterpacht, *The Universal Declaration of Human Rights*, 25 Y.B. INT'L L. COMM. 356 (1948).

573. International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966). See also Convention for the Protection of Human Rights and Fundamental Freedoms, United States Comm. on Foreign Affairs, in HUMAN RIGHTS DOCUMENTS (1983).

574. See MACALISTER-SMITH, *supra* note 248, at 161.

575. Green, *Benevolent Chaos: The Capacity of International Agencies in Disasters*, in FAMINE 141, 141 (Cahill ed. 1982).

576. See *supra* notes 332-36 and accompanying text.

577. The specific duties of UN-DRO are to:

(a) To establish and maintain the closest cooperation with all organizations concerned and to make all feasible advance arrangements with them for the purpose of ensuring the most effective assistance;

(b) To mobilize, direct and co-ordinate the relief activities of the various organizations of the United Nations system in response to a request for disaster assistance from a stricken State;

(c) To co-ordinate United Nations assistance with assistance given by intergovernmental and nongovernmental organizations, in particular by the International Red Cross;

(d) To receive, on behalf of the Secretary-General, contributions offered to him for disaster relief assistance to be carried out by the United Nations, its agencies and programmes for particular emergency situations;

(e) To assist the Government of the stricken country to assess its relief and other needs and to evaluate the priority of those needs, to disseminate that information to prospective donors and others concerned, and to serve as a clearing-house for assistance extended or planned by all sources of external aid;

(f) To promote the study, prevention, control and prediction of natural disasters, including the collection and dissemination of information concerning technological developments;

(g) To assist in providing advice to Governments on pre-disaster plan-

recipient governments to cooperate with UNDRO by appointing a single national disaster relief coordinator, stockpiling emergency supplies, informing UNDRO in advance of facilities and services available and taking other preparedness measures.⁵⁷⁸ Moreover, the General Assembly has not only invited governments to adopt legislative measures to aid the disaster relief process,⁵⁷⁹ but also has offered several recommendations to nations: 1) waiver of visa requirements applicable to relief personnel; 2) relaxation of air traffic regulations and procedures for flights carrying emergency aid; and 3) designation of free or reduced airfares for relief shipments and personnel.⁵⁸⁰

Although the U.N. recommendations are helpful, the dearth of relevant law nonetheless hinders the expediency of disaster relief. International disaster relief laws regulating the relationships between donor and recipient states and coordinating international responses to disaster relief are needed to prevent and mitigate disasters.⁵⁸¹

ning in association with relevant voluntary organizations, particularly with the League of Red Cross Societies, and to draw upon United Nations resources available for such purposes;

(h) To acquire and disseminate information relevant to planning and coordinating disaster relief, including the improvement and establishment of stockpiles in disaster-prone areas, and to prepare suggestions to ensure the most effective use of available resources;

(i) To phase out relief operations under his aegis as the stricken country moves into the stage of rehabilitation and reconstruction, but to continue to interest himself, within the framework of his responsibilities for relief, in the activities of the United Nations agencies concerned with rehabilitation and reconstruction;

(j) To prepare an annual report for the Secretary-General, to be submitted to the Economic and Social Council and to the General Assembly.

G.A. Res. 2816, 26 U.N. GAOR Supp. (No. 29) at 86, U.N. Doc. A/8429 (1971).

578. *Id.*

579. *Id.*

580. MACALISTER-SMITH, *supra* note 248, at 154. The United Nations also offered three recommendations to donors. These recommendations were "intended to ensure greater suitability of relief contributions, a more rapid response to the most essential needs, and correct notification of impending relief shipments." *Id.* at 155.

581. Samuels, *supra* note 569, at 246-47, 254.

3. Logistics of Administering Aid

In many African countries, though food aid is rushed to the country's ports, distribution bottlenecks choke the relief effort. Getting food supplies to those in need is a major challenge. As of April 1985, of the 6.3 million tons of food aid pledged to Africa, only 2.7 tons had been delivered.⁵⁸² Some of the factors that constrain the distribution of food aid include: (1) shortage of trucks, planes and fuel;⁵⁸³ (2) inadequate road structure;⁵⁸⁴ (3) limited capacities of warehouse facilities and ports;⁵⁸⁵ (4) inaccessibility of certain regions;⁵⁸⁶ (5) lack of coordination; and (6) insurgency.⁵⁸⁷

A severe problem that creates a backlog of food at ports and warehouses, causing food shortages at many feeding centers, is the lack of trucks for disbursing food aid.⁵⁸⁸ In Ethiopia and Sudan, for example, forty percent of food aid is held up at ports and railroad terminals waiting to be moved.⁵⁸⁹ One reason for the shortage of trucks in Ethiopia is the need to divert trucks to aid the Ethiopian government's resettlement operation and to deliver seed and fertilizer to farmers.⁵⁹⁰ Furthermore, shipment delays also have occurred because starving children stop food trucks on the road.⁵⁹¹ Consequently, the United Nations and other international organizations threaten to delay food shipments because of their fear of food spoilage⁵⁹² on the docks.⁵⁹³

582. N.Y. Times, May 7, 1985, at A3, col. 4. In June 1985, only about 4 million of the 8 million in need throughout Ethiopia were being helped due to the shortage of transportation. N.Y. Times, June 17, 1985, at A3, col. 4. Further, 60% of the food relief delivered since December was not yet dispensed as of June. *Id.* The Ethiopian Government claims that those donating food aid should also furnish the "instrumentalities" to disburse such relief. *Id.*

583. *See infra* notes 588-603 and accompanying text.

584. *See infra* notes 598-99 and accompanying text.

585. *See infra* notes 602-03 and accompanying text.

586. *See infra* notes 604-09 and accompanying text.

587. *See infra* notes 626-29 and accompanying text.

588. Wash. Post, Apr. 16, 1985, at A15, col. 1. The Ethiopian army until recently was reluctant to loan any of its own trucks to the rescue effort. Anderson, *Too Little—Too Late*, NEWSWEEK, Nov. 12, 1984, at 71.

589. Wash. Post, June 11, 1985, at A4, col. 5. Two hundred twenty two thousand metric tons of food was backed up in Ethiopia at the entry ports of Asab, Massawa and Djiboutin in June 1985. *Id.* With a need of about 2,500 trucks in Ethiopia for food distribution, only 1,000 are available. *Id.*

590. Wash. Post, Apr. 16, 1985, at A15, col. 1.

591. Mayer, *A Five Point Plan for Action*, NEWSWEEK, Nov. 26, 1984, at 5.

592. *See infra* notes 649-51 and accompanying text.

Moreover, fuel shortage is a major affliction of trucking fleets.⁵⁹⁴ Even if truck capacity can be found, no network of roadside service can readily assist a disabled vehicle or provide a needed spare part.⁵⁹⁵ Contract negotiations for truckers also may hamper relief efforts.⁵⁹⁶ Additionally, if a relief agency wants to hire trucks, aid programs must compete with the needs of commercial industries.⁵⁹⁷ While a country might somehow manage to obtain the trucks, food supply distribution may still be hindered by the lack of roads.⁵⁹⁸ Likewise, food relief delivery where roads do exist also can be obstructed by traffic jams.⁵⁹⁹

Planes, like trucks, are desperately needed and are considered a highly preferable means of delivering aid to those in need.⁶⁰⁰ Insufficient airport capacity to unload the large number of aircraft which transport food into African countries poses a severe problem.⁶⁰¹ Similarly, limited port and warehouse facilities hinder the

593. Wash. Post, Apr. 16, 1985, at A15, col. 1.

594. Although in April 1984 CARE and UNICEF signed an agreement with Shell Oil Company for 3,000 metric tons of fuel to facilitate the operation of machinery, this then posed the problem of installing gasoline stations. E. Girardet, *In Sudan, Aid Workers Keep On Truckin' Food to Famine Victims*, CARE in Action: Sudan (1985) [hereinafter *Sudan*].

595. Two hundred of the Ethiopian Relief Commission's trucks are nonoperative because of lack of spare parts. See Anderson, *supra* note 591, at 71. U.S. officials have stated that the general manager of the state-run railways was responsible for delays and that their offer to fly in spare parts under a \$3 million emergency fund evoked no positive response. Wash. Post, Apr. 28, 1985, at A21, col. 6.

596. In the Kordofan province of Sudan, trucking contract disputes delayed deliveries of United States donated grain from Port Sudan. Wash. Post, Apr. 28, 1985, at A21, col. 5.

597. See *Sudan*, *supra* note 594, at 1.

598. N.Y. Times, Aug. 21, 1984, at A6, col. 3. See also Timberlake, *Beyond the Famine*, WORLD PRESS REV., Jan. 1985, at 50. Many African countries "are larger than most European countries—some of Sudan's provinces are larger than France, for example, and the country is larger than all of Western Europe—and yet their permanent roads total often a fraction of their northern counterparts." *The Nightmare of Logistics*, AFRICA EMERGENCY, July 1985, at 3. Chad, for example, has a total of 100 miles of paved roads. *Id.* In the Kordofan province of Sudan less than 100 kilometers of roads are paved. See *Feeding Program*, *supra* note 314, at 1. In Ethiopia, the closest road for half its population is a two day hike away. Iyer, *The Land of the Dead*, TIME, Nov. 26, 1984, at 68.

599. See Mayer, *supra* note 591, at 53.

600. See Hanlon, *A Race Against Time*, WORLD PRESS REP., Feb. 1985, at 37; Timberlake, *supra* note 598, at 50.

601. See Mayer, *supra* note 591, at 54. In Ethiopia, at an airport normally

delivery of food aid.⁶⁰² Limited dock facilities and a small harbor in Mauritania force ships from the United States and Europe to dock in Dakar, Senegal, thereby detaining the delivery of food aid to Mauritania for up to eight hours.⁶⁰³

The remoteness of numerous drought-stricken areas⁶⁰⁴ also poses problems which hamper food relief efforts. In Ethiopia, of the estimated seven million people confronting starvation, only one million are easily accessible to relief workers.⁶⁰⁵ Landlocked countries⁶⁰⁶ which have no "control over access to the ports from which they must receive their food . . . are totally dependent on the ability of other countries to provide the facilities they need."⁶⁰⁷ Chad provides an excellent example of the logistical trap of a landlocked nation.⁶⁰⁸ The two closest ports to Chad are Apapa in Nigeria and Douala in Cameroon. The journey from Douala to Chad takes approximately a month; the trip from Apapa to Chad, if traveled by road, requires one week.⁶⁰⁹

Because relief agencies may fail to coordinate their famine relief operations, overlapping efforts and inefficiency often result.⁶¹⁰ Other than the host government, generally no principal coordinator for all relief efforts exists.⁶¹¹ "The business of overseas disaster relief [is] one of the few remaining multi-million dollar concerns that operate[s] on such an amateur basis, with little outside control, and few standards or sanctions."⁶¹² In Ethiopia, the sys-

equipped to handle three to four planes a day, 54 airplanes have waited at times to be unloaded. *Id.*

602. N.Y. Times, Sept. 21, 1985, at A14, col. 2.

603. *CARE Inspector Ensures Food Reaches Destination*, CARE In Action: Mauritania (1985).

604. One relief worker in Ethiopia commented that the obscurity of some areas rivals the "crossing [of] four or five grand canyons." *The Nightmare of Logistics*, AFRICA EMERGENCY, July 1985, at 3.

605. N.Y. Times, Aug. 21, 1984, at A6, col. 3.

606. Four of the Sahelian countries—Chad, Mali, Niger, and Upper Volta—are landlocked and must depend almost entirely on road and rail links to one of the West African ports to transfer grain to their distribution centers.

607. *The Nightmare of Logistics*, AFRICA EMERGENCY, July 1985, at 3.

608. *See id.*

609. *Id.*

610. Gower, *The Aid Failure*, WORLD PRESS REP., Feb. 1985, at 39. Unlike Ethiopia, which has a government commission to coordinate relief efforts, the Sudanese Government has not designated a ministry to coordinate and lead the relief effort; consequently, relief efforts are often inefficient and duplicative.

611. *Id.*

612. *Id.* "Relief Programs go badly wrong [sic] money is wasted, people die,

tem for determining the requirements of the country's 225 feeding centers is ineffective.⁶¹³ In part, the absence of organization and coordination in Africa relief programs is attributable to a lack of necessary management skills.⁶¹⁴ Additionally, the competition for funds among voluntary relief agencies, forcing them to strive for recognition, further discourages coordination of agencies' efforts.⁶¹⁵ Competition not only produces "redundancy and waste;" it diverts concentration "away from real needs."⁶¹⁶

4. Intervention of Recipient Government

In addition to the mechanical, logistical and coordination problems associated with food relief programs, efforts may also be frustrated by the recipient countries themselves. When donor interference threatens a country's sovereignty, the donee government may respond with noncooperation or hostility. Because government invitation⁶¹⁷ is the customary means for the commencement of an international relief agency's work in another country, relief workers who do not confine their endeavors to "officially sanctioned projects" may face expulsion.⁶¹⁸ Donors must adhere to the rules and regulations that countries dictate.

The lack of cooperation by African governments in handling emergency food supplies from donor nations may be a result of threatened sovereignty or simply a different perception of government priorities. The Ethiopian Government at times has closed its ports to shipments of emergency aid, instead giving priority to cargos of fertilizer and concrete.⁶¹⁹ Moreover, some governments

and . . . no institutional mechanism [exists] for insuring that such mistakes are not repeated." *Id.* See also F. CUNY, *supra* note 5, at 127-28.

613. Wash. Post, Apr. 16, 1985, at A15, col. 2.

614. N.Y. Times, June 10, 1985, at A19, col. 5. Similarly, relief agents in Mexico have claimed that both insufficient communication and lack of coordination in dilapidated areas have obstructed aid efficiency. See Barber, *World Ready to Help If Mexico Makes Request*, Wash. Post, Sept. 21, 1985, at A18, cols. 4-6.

615. DISASTER ASSISTANCE 18 (L. Stephens & S. Green eds. 1979). See also F. CUNY, *supra* note 5, at 130-32.

616. See F. CUNY, *supra* note 5, at 130-31.

617. Green, INTERNATIONAL DISASTER RELIEF 60 (1977) [hereinafter INTERNATIONAL DISASTER RELIEF].

618. See Cooper, *supra* note 147, at 68.

619. N.Y. Times, Mar. 7, 1985, at A15, col. 1. The delay in unloading emergency food aid may cost a donor \$5,000 per day. *Id.* See also Karlen & Greenberg, *The Deadly Politics of African Aid Efforts*, NEWSWEEK, June 3, 1985, at 37

have utilized their resources to emphasize political or religious celebrations, instead of allocating them for the distribution of relief. For example, in Ethiopia, although millions of its citizens were facing food shortages, the government concentrated on commemorating its tenth anniversary in power, a celebration which reportedly cost \$100 million.⁶²⁰ The Sudanese government also has delayed food transportation by permitting a major railroad to transport "religious festive goods" rather than food supplies.⁶²¹ Finally, a missing document or one lacking a signature may prevent the distribution of food relief.⁶²²

Donor assistance or interference may result in hostile reactions from the recipient government, especially when the donee country is already experiencing civil strife. For example, in Ethiopia, internal war between government troops and anti-government rebels in the northern regions of Eritrea and Tigre prevented relief programs from functioning. Government attacks on trucks carrying relief supplies to famine victims in rebel-held areas are evidence that the Ethiopian Government has impeded and refused food aid delivery to these provinces.⁶²³ The Ethiopian Government in January 1985 appropriated both the cargo and crew of an Australian ship carrying food aid intended for guerrilla-held areas because it charged that donor food aid delivery to the war-torn provinces was a violation of Ethiopian sovereignty and an interference with its internal affairs.⁶²⁴ In addition, Ethiopia does not allow humanitarian agencies unrestricted passage to guerrilla-

[hereinafter *The Deadly Politics*]; *African Famine*, 1985 FACTS ON FILE 221 [hereinafter *African Famine*].

620. *Millions Starve in Ethiopia as Drought Intensifies*, 1985 FACTS ON FILE 889; *Africa's Agony Stirs the World*, U.S. NEWS & WORLD REP., Nov. 12, 1984, at 14.

621. N.Y. Times, June 25, 1985, at A3, col. 3.

622. See *The Deadly Politics*, *supra* note 619, at 37.

623. See Murphy, *Bare Cupboard*, TIME, Dec. 10, 1984, at 44; Iyer, *supra* note 591, at 68; *Africa's Agony Stirs the World*, U.S. NEWS & WORLD REP., Nov. 12, 1984, at 14; Wash. Post, Feb. 3, 1985, at A20, col. 2. "Part of a cargo of emergency supplies destined for refugee camps in Sudan was seized by Ethiopian officials from a West German vessel in mid-January. The supplies were released when the charitable organization which had donated them agreed to re-consign the cargo to Ethiopia." 31 KEESINGS CONTEMP. ARCHIVES 33384 (1985). Also, the government in Zimbabwe has, in the past, stopped food shipments to areas held by anti-government rebels in the Matabeland Province.

624. Wash. Post, Jan. 17, 1985, at A32, col. 4. See also Harden, *Despite Vast U.S. Aid, Ethiopia Stays Hostile*, Wash. Post, Apr. 14, 1985, at A33, col. 1.

held areas because the methods of executing the humanitarian objectives of an international disaster relief system are frequently perceived as a threat to the sovereignty of its nation.⁶²⁵

It is not only government officials,⁶²⁶ but also guerrillas that hamper food delivery; in the Tigre province a rebel faction allegedly prevented the hungry from travelling to government relief centers located in the southern region.⁶²⁷ Guerrillas have on occasion impeded relief efforts by delaying relief vehicles and assailing food aid disbursement centers.⁶²⁸ Consequently, aid trucks are avoiding the most dangerous areas and many starving victims are thus being cut off from regular food supplies. Even if food aid does arrive in guerrilla-held areas, monitoring it to ensure that famine victims receive the food instead of rebels is virtually impossible.⁶²⁹ In an effort to combat guerrilla troops, the Ethiopian Government expends two times the amount of funds it disperses on agriculture to subsidize its military, and consequently desperately needed food is taken from the mouths of famine victims.⁶³⁰

Corrupt African governments also impede food distribution.⁶³¹ Some African governments themselves are reportedly the recipients of disappearing food aid.⁶³² Exchanges of emergency grain

625. INTERNATIONAL DISASTER RELIEF, *supra* note 617, at 63.

626. Relief Agencies, middlemen and railway workers have also been accused of corruption. The International Christian Aid (ICA) has allegedly misdirected relief funds. Spring, *InterAid Activities Provoke a Federal Investigation*, CHRISTIANITY TODAY, Mar. 1, 1985, at 36. Relief workers in Sudan claimed that "shipments of food and other goods sent by relief agencies in 1984 had never reached the refugees because they have been diverted by middlemen and sold on the open market." N.Y. Times, Jan. 13, 1985, at A10, col. 4. Also in Sudan, relief workers have claimed corruption on behalf of persons operating the railway. N.Y. Times, July 2, 1985, at A11, col. 1.

627. See Murphy, *supra* note 623, at 44. Tigrean Rebels have halted trucks carrying refugees and set them on fire after disembarking refugees. N.Y. Times, Nov. 25, 1984, at A20, col. 3.

628. *Starvation in Africa*, AMERICA, June 16, 1984, at 450. See also N.Y. Times, June 9, 1985, at A13, col. 1; N.Y. Times, Nov. 20, 1984, at A3, col. 4. Guerrillas ambushed five crewmen flying a cargo plane to the region of Wollo in Ethiopia. N.Y. Times, Mar. 5, 1985, at A7, col. 5.

629. Wash. Post, Apr. 14, 1985, at A32, col. 1.

630. N.Y. Times, May 23, 1985, at A3, col. 2.

631. See *African Famine*, *supra* note 619, at 221.

632. See *The Deadly Politics*, *supra*, note 619, at 38. By May 1985, 30,000 tons of food in Ethiopia were disappearing each month. N.Y. Times, May 29, 1985, at A9, col. 1.

supplies for arms are alleged to have occurred.⁶³³ It has been alleged that the European Community's food supplies to Sudan were delayed due to the Sudanese government's desire to sell such aid through the "open market" instead of delivering it to famine victims.⁶³⁴ In Ethiopia, the Ethiopian Government has diverted food aid to its army.⁶³⁵ In Korem, Ethiopian people are unable to obtain food unless they either (1) move to the resettlement areas; or (2) pay the Farm Administration.⁶³⁶ Similarly, in Mexico, policemen in search of bribes⁶³⁷ and food stolen from Mexico City's airport⁶³⁸ also have hampered aid relief to victims.

Even recipient government efforts to compensate may have disastrous results for relief programs. Some African countries have instituted resettlement programs to move famine victims to more fertile lands, but this too may create food distribution problems. In Ethiopia, for example, relief workers have alleged that starving victims were denied food if they did not cooperate and board vehicles used in the government's resettlement program.⁶³⁹ Diplomats also have decried the rapidity of the Ethiopian Government's resettlement program claiming that "[b]y moving too many people too fast, without adequate preparation or sufficient resources and infrastructure in place, . . . the Government is not only endangering the success of the resettlement effort but also jeopardizing the continuing emergency relief program."⁶⁴⁰ Frequently, farmers are not given the tools and seeds essential to resettlement; thus, the resources utilized in the resettlement program, which are diverted from drought victims, benefit no one.⁶⁴¹

The huge amount of food relief donated to Africa each year assists in alleviating starvation, but in turn it allows or even induces the recipient African governments to follow policies which ignore

633. See *African Famine*, *supra* note 619, at 221.

634. *Id.*

635. *Zimbabwe-Internal Security, Political and Economic Development*, 29 KESINGS CONTEMP. ARCHIVES 32240 (1983).

636. *Cry, The Pitiless Land*, LIFE, May 1985, at 126-27. The European Community donated the grain, which allegedly was re-exported to Russia in exchange for weapons.

637. *Cody, Mexicans Blame Bureaucrats*, Wash. Post, Sept. 28, 1985, at A17, col. 3.

638. *Id.*

639. *Cry, The Pitiless Land*, LIFE, May 1985, at 126-27.

640. N.Y. Times, Jan. 21, 1985, at A6, col. 3.

641. *Accord*, Iyer, *supra* note 598, at 67-68.

the problems of food production and agriculture.⁶⁴² Specifically, "[f]ood aid has . . . enabled some . . . governments to postpone essential agricultural reforms, to give low priority to agricultural investment, and to maintain a pricing system which gives farmers inadequate incentives to increase local production."⁶⁴³ Furthermore, African dependency on food aid impedes the discovery of long-term solutions to facilitate self-sufficiency.⁶⁴⁴

Finally, the recipient government's perception of relief efforts presents an intangible yet undeniable problem. For example, some African nations have viewed the United States' contributions of aid negatively. Despite the United States' position as Ethiopia's principal supplier of food aid, Ethiopia clearly denounces United States efforts and instead remains closely aligned with the Soviet Union, which donates only a "fraction" of United States contributions.⁶⁴⁵ In diplomatic negotiations between Ethiopia and Western donors, Ethiopia has often criticized both the lack and the inadequacy of Western efforts.⁶⁴⁶

5. Miscellaneous Forces

In addition to logistical and government-inflicted problems, refugee immigration, weather, and the spoilage of food generate further problems for relief efforts. Even if governmental and logistical problems are overcome, operating forces nonetheless remain uncontrollable. In Sudan, refugees from Chad and Ethiopia drain the country's food supply.⁶⁴⁷ Sudan's concern is that the continuing influx of refugees and the effect of their presence on its economy may overwhelm the nation.⁶⁴⁸ Rotting food, piled up on the docksides⁶⁴⁹ because of the lack of means to move it inland, cre-

642. Shepard, *When Foreign Aid Fails*, THE ATLANTIC MONTHLY, Apr. 1985, at 43.

643. *Id.*

644. See Mayer, *supra* note 591, at 55.

645. *Africa's Need for Food Tests Limits of U.S. Emergency Aid*, CHRISTIANITY TODAY, Feb. 1, 1985, at 53.

646. N.Y. Times, Dec. 12, 1984, at A1, col. 1.

647. In January of 1985, Sudan was experiencing an influx of 3,000 Ethiopians a day. Randal, *Sudan's Burden Grows Heavier*, Wash. Post, Jan. 25, 1985, at A1, col. 1.

648. *Id.*

649. See N.Y. Times, May 17, 1985, at A6, col. 3; See Murphy, *supra* note 623, at 44.

ates another pressing dilemma.⁶⁵⁰ Loads of food relief sit on docks for weeks and remain unprotected from the brutal heat and sunlight, and as a result, the bags break open and the food spoils.⁶⁵¹ Rain not only ruins unshielded food,⁶⁵² but it also washes out railroad tracks⁶⁵³ and makes clay roads impassable, thereby obstructing food relief distribution.

B. The Suggested Reforms

To suggest that definitive solutions exist to a situation of this magnitude is presumptuous. A number of suggestions have been made, however, that involve donative aid on some level. Those set forth below are not meant to be comprehensive. Rather, they identify themes that reappear in discussions of the reform of United States donative aid laws. Many of these suggestions come from private voluntary organizations. Members of these organizations who are directly involved with the recipient countries are uniquely qualified to identify aspects of the laws which are effective or ineffective and to suggest ways in which laws can be improved. Unlike legislators, whose knowledge of a disaster is received at best second-hand, PVO workers actually view the results of the implementation of a particular law or program. Moreover, private voluntary organizations are far less concerned with the political ramifications of food aid than are legislators.⁶⁵⁴ Legislators are often qualified to make recommendations from a political or budgetary perspective; private organizations may better understand how to incorporate those concerns into programs that truly have the best interests of the hungry in mind.

The first set of recommendations suggests modification of

650. See *supra* notes 588-603 and accompanying text.

651. See N.Y. Times, June 25, 1985, at 3, col. 3.

652. *Id.*

653. May, *Sudan's Need: A Fast Track For Food Aid*, N.Y. Times, July 2, 1985, at A11, col. 1.

654. Oxfam-America, headquartered in Boston, is an example of a PVO which is involved on a "grass roots" level with poor countries. Oxfam neither seeks nor accepts P.L. 480 funds because it contends that the policies behind the law adversely affect the law's role in development. *Food Aid and the Role of the PVOs*, *supra* note 4, at 87 (statement of Colleen Westbrook, Public Policy and Research Coordinator, Oxfam-America) [hereinafter Westbrook statement]. Those policies are the use of food aid to increase demand for United States farm products and the use of food aid to promote United States foreign policy. *Id.* at 88-89.

United States aid laws and the execution of programs under them; the second set of recommendations examines proposals for the establishment of international humanitarian rules for adoption by nations or organizations to facilitate relief. The third set of recommendations proposes coordination of relationships between donor states and organizations and between donors and recipients. This third set of recommendations also proposes coordination of relationships within donor states and organizations and within recipient states. The final recommendation emphasizes the necessity of establishing a nexus between emergency aid and development.

1. Modification of Aid Laws and Programs

a. Enhancement of Monetization

Food aid may be viewed as a resource for development⁶⁵⁵ and as a component of an overall plan for world food security rather than as an isolated ingredient.⁶⁵⁶ Selling or bartering some of the food available as food aid could implement and sustain foreign programs such as nutrition education, basic health care, water management, agricultural extension, and small-scale credit.⁶⁵⁷ The needs of the recipient, however, must be taken into account as well. The amount of food that can be sold before local prices are depressed depends upon the recipient country's market;⁶⁵⁸ a provision which sets a percentage applicable to all countries will not reflect the ability of a particular nation's market to absorb monetization of that amount of food. Therefore, Title II language allowing monetization should be made more concrete,⁶⁵⁹ and per-

655. *Food Aid and the Role of the PVOs*, *supra* note 4, at 27 (prepared statement of Robert J. McCloskey, Senior Vice President for External Affairs, Catholic Relief Services) [hereinafter McCloskey statement].

656. *Food Aid and the Role of the PVOs*, *supra* note 4, at 91 (Westbrook statement, *supra* note 654). See also *Food Aid and the Role of the PVOs*, *supra* note 4, at 4 (statement of Daniel G. Amstutz, Under Secretary, International Affairs and Commodity Program, United States Department of Agriculture) [hereinafter Amstutz statement]; *Food Aid and the Role of the PVOs*, *supra* note 4, at 73 (prepared statement of Charles L. Sykes, Assistant Executive Director, CARE) [hereinafter Sykes statement].

657. *Food Aid and the Role of the PVOs*, *supra* note 4, at 26 (McCloskey statement, *supra* note 655); *Food Aid and the role of the PVOs*, *supra* note 4, at 91 (Westbrook statement, *supra* note 654).

658. *Id.*

659. *Food Aid and the Role of the PVOs*, *supra* note 4, at 91 (Westbrook

haps a minimum percentage could be established so that the impact on the individual recipient could be assessed.⁶⁶⁰ Monetization of section 416, not currently authorized, could offset costs of distribution, inland transportation and processing costs of the section 416 commodities, as well as finance nutrition education.⁶⁶¹

b. Establishment of Multiyear Agreements and Increased Assistance

Planning future food assistance programs is impossible if funding varies from year-to-year. Thus, to enhance the law's development capability, Title II should be committed on a multi-year basis.⁶⁶² Also, emergency assistance limits should be increased to avoid the need for Congress to pass supplemental bills to cover actual emergency needs, which not only delays but often holds emergency assistance "hostage" to other political concerns.⁶⁶³

c. Separation of Public Law 480 and Increase of Title II Minimum Tonnage

Oxfam America recommends the separation of the Title II program from the remaining provisions of Public Law 480; separating it completely would emphasize nonpolitical aspects and lend credence to nonpolitical goals.⁶⁶⁴ The increase of the Title II minimum tonnage has implications for both developmental and emergency food assistance. One argument is that an increase of the 1.7 million ton minimum would give the program the added flexibility it needs.⁶⁶⁵ Such an increase would reflect the United States' willingness and ability to take a leading role in combatting hunger and malnutrition and providing emergency assistance. Fur-

statement, *supra* note 654). Westbrook favors the use of direct cash aid to either monetization or direct food aid. *Id.*

660. *Food Aid and the Role of the PVOs*, *supra* note 4, at 26 (McCloskey statement, *supra* note 655).

661. *Food Aid and the Role of the PVOs*, *supra* note 4, at 73 (Sykes statement, *supra* note 656).

662. *Food Aid and the Role of the PVOs*, *supra* note 4, at 72 (McCloskey statement, *supra* note 655). See also, *Food Aid and the Role of the PVOs*, *supra* note 4, at 73 (Sykes statement, *supra* note 659).

663. *Food Aid and the Role of the PVOs*, *supra* note 4, at 95 (Westbrook statement, *supra* note 654).

664. *Id.*

665. *Food Aid and the Role of the PVOs*, *supra* note 4, at 73 (Sykes statement, *supra* note 656).

thermore, because motivation to provide assistance may diminish once the minimum required tonnage is met, an increase in the minimum tonnage would ensure that a needy country receives an adequate amount of food assistance.

A counter argument is that a minimum tonnage level only reinforces legislators' views of food aid as surplus-motivated.⁶⁶⁶ Instead, food aid should be allocated on the basis of the realistic needs of the recipient country and not on other motives such as the availability of United States farm surpluses.⁶⁶⁷

d. Expansion of the Section 416 Program

Section 416 is a more flexible program than Public Law 480 because, unlike Title II, it does not require the appropriations process.⁶⁶⁸ Currently this law authorizes the release of wheat as well as dairy products, although wheat has not yet been shipped under that program. The use of section 416 could be expanded, as a supplement to Title II, to include the shipment of wheat, incorporating Title II protections against market disruption and disincentives to local production.⁶⁶⁹ Also, as mentioned previously, permitting section 416 to allow the sale or barter of some commodities could defray costs of implementation as well as finance development projects.⁶⁷⁰

Unfortunately, the increased usage of section 416 to feed the world's hungry encounters practical limitations due to federal budget accounting practices. Section 416 expenses are repaid to the CCC from the agricultural account and therefore compete for limited resources with domestic programs such as farm price supports. Alternatively, Public Law 480 is financed from the foreign affairs and foreign assistance accounts.⁶⁷¹

666. *Food Aid and the Role of the PVOs*, *supra* note 4, at 92 (Westbrook statement, *supra* note 654).

667. *Id.*

668. See *supra* notes 43-54 and accompanying text for a discussion of the Title II appropriations process.

669. *Food Aid and the Role of the PVOs*, *supra* note 4, at 72 (McCloskey statement, *supra* note 655).

670. See generally *supra* notes 17-68 and accompanying text.

671. See *Food Aid and the Role of the PVOs*, *supra* note 4, at 4-5 (Amstutz statement, *supra* note 656).

2. Proposal of International Humanitarian Measures

a. Establishment of United Nations Humanitarian Order

Over the years, the United Nations has repeatedly requested that its members cooperate in the development of international law for disaster relief. In a 1983 appeal, the United States was the only state to vote against such a proposal.⁶⁷² The General Assembly in its fortieth session discussed a declaration for a new humanitarian order.⁶⁷³

Before discussing the proposal, the Assembly requested and received the comments of various nations on such a declaration.⁶⁷⁴ In his Report, the Secretary-General stated that article 25 of the Universal Declaration of Human Rights gives everyone a right "to a standard of living adequate for the health and well-being of himself and of his family, including food. . . ."⁶⁷⁵ Certain countries suggested codification of this right and other humanitarian ideals into a governing declaration or model law. An effort to codify is currently being considered and several proposals to that effect have been submitted to the General Assembly by the Commission on Human Rights and the Economic and Social

672. *Strengthening the capacity of the United Nations system to respond to natural disasters and other disaster situations*, G.A. Res. 202, 38 U.N. GAOR Press Release (Jan. 13, 1984) at 309, 310, U.N. Press Release GA/6935 (1984).

673. *New International Humanitarian Order, Report of the Secretary-General Part One*, U.N. GAOR, U.N. Doc. No. A/40/348 (1985).

674. *New International Humanitarian Order, Report of the Secretary-General Part Two: Views and Comments Received from Governments*, U.N. GAOR, U.N. Doc. A/40/348/Add.1 (1985). Issues raised were the needs for further study, for international standards, for early-warning systems and for co-ordination. The United States recommended that internationally recognized procedures for emergency relief be formulated, but expressed doubt whether a broadly drafted declaration would actually have any effect. *Id.* at 34. The Sudan contended that serious problems such as drought, desertification and food shortages needed immediate attention. *Id.* at 26. Governments responding were Australia, Austria, Barbados, Belgium, Burkina Faso (formerly the Upper Volta), Burundi, Canada, Central African Republic, Cuba, Cyprus, Denmark, the Federal Republic of Germany, Honduras, Ireland, Italy, Japan, Kuwait, Liechtenstein, Mexico, Netherlands, Pakistan, Philippines, Qatar, Romania, Saint Vincent and the Grenadines, Sri Lanka, Sudan, Sweden, Switzerland, Trinidad and Tobago, United Kingdom, United States and Venezuela.

675. *New International Humanitarian Order Part One*, *supra* note 673, at 14. The Universal Declaration of Human Rights, G.A. Res. 217/A, U.N. Doc. A/810 (1948), sets forth the right to be free from hunger, but these rights are unenforceable.

Council.⁶⁷⁶ Other countries stressed that a current international framework exists in the form of UNDRO, UNHCR, and the ICRC, and that current principles and norms for regulating humanitarian affairs already exist. These countries stressed implementation of and compliance with the already existing principles.⁶⁷⁷ Thus, the United Nations' efforts to promote a new international humanitarian order which might provide better disaster relief or less of a need for such assistance have so far resulted in only a re-evaluation by governments of the humanitarian issues addressing today's society. The difficulty of obtaining voluntary compliance, enforceability, and agreement between nations probably renders insufficient any attempts to improve the human condition, and specifically the problems of responding to disasters, by the drafting of declarations. Still, a declaration may initiate a long-term plan to improve disaster response and certainly will serve as a basis for further evaluation of the problems resulting from disaster assistance.

b. Enactment of International Law Association Model Rules

In the early 1970s, the International Law Association's (ILA) Committee on International Medical and Humanitarian Law studied the legal problems of disaster relief operations and drafted a model agreement to regulate technical problems such as the distribution of aid.⁶⁷⁸ Based upon relief agreements which actually have been used in relief situations, the provisions of the agreement are only applicable to donors which are states or inter-governmental organizations.⁶⁷⁹

In 1980, the ILA revised the Model Agreement,⁶⁸⁰ which now consists of four sections. Section I regulates the execution of the relief effort. Under Article 1, the recipient state may request specific aid in specific locations.⁶⁸¹ Article 2 requires the donor state to respect the laws of the recipient state and to maintain a

676. *New International Humanitarian Order Part One*, *supra* note 673, at 14.

677. *Id.* at 36. The existing principles were not specified.

678. 58 INT'L L. A. 461-72 (1978).

679. Bothe, *International Medical and Humanitarian Law*, 59 INT'L L. A. 520, 526-27 (1980).

680. *See id.* at 521-27; Resolutions, *International Medical and Humanitarian Law*, 59 INT'L L. A. 5, 5-7 (1980).

681. MACALISTER-SMITH, *supra* note 248, at 153.

nonpolitical position.⁶⁸² Article 3 provides for the appointment of a central relief director over the relief unit, while Article 4 grants privileges and immunities to the relief organization. Articles 5 through 9 govern the provision of facilities, importation of food, access to telecommunications, freedom of movement of relief personnel and assistance from local authorities. Under Article 10, either a relief agency of the recipient state or the foreign relief organization under the supervision of local authorities may distribute aid. Article 11 requires communication between the director of the relief organization and the authorities of the recipient state.⁶⁸³ The final provision in Section I, Article 12, concerns financial responsibility.⁶⁸⁴

Section II governs the actions and treatment of relief personnel. Article 13 defines the members of the mission and compels them to respect national law.⁶⁸⁵ Under Article 14, personnel are exempt from immigration requirements. Article 15 requires relief workers to wear a distinctive emblem or a uniform. The third section addresses compensation for injuries, liability incurred by either party and settlement of disputes. Article 18, the last in Section IV, governs the duration and termination of the agreement.⁶⁸⁶

c. Publication of United Nations Institute for Training and Research Model Rules

Published in 1982⁶⁸⁷ by the U.N. Institute for Training and Research (UNITAR), the "Model Rules for Disaster Relief Operations" have a dual function: to augment the inadequate regulation in international humanitarian law of assistance to victims of disasters and to surmount some of the legal restrictions and bureaucratic impediments which hinder the success of relief endeavors.⁶⁸⁸ The Model Act consists of three categories of rules, each of which is applicable to a particular class of potential parties.⁶⁸⁹

The first category contains an agreement between the donor

682. *Id.*

683. *Id.*

684. *Id.*

685. *Id.*

686. *Id.*

687. *Id.*

688. *Id.* See also Baradei, *Model Rules for Disaster Relief Operations, Policy & Efficacy Studies*, 8 UNITAR 3 (1982).

689. MACALISTER-SMITH, *supra* note 248, at 155.

state and the recipient state which regulates the provision of assistance. In the second category is an agreement between a donor organization, either governmental or nongovernmental, and the recipient state which also regulates the provision of aid. The agreement in the third category, between a donor state or organization or a recipient state and a state, governs the transportation of assistance.⁶⁹⁰ UNITAR designed the Model Rules to regulate immediate relief, not to address disaster prevention or post-disaster rehabilitation.⁶⁹¹ Thus, the rules establish procedures to expedite the distribution of aid in the event of a disaster. For example, Model Rule 1 provides that the recipient state is to designate a national relief director to coordinate relief operations.⁶⁹² Model Rule 3 requires the distribution of supplies without discrimination.⁶⁹³ Similarly, Rules 4 through 17 govern the packaging, transportation, and importation of supplies, as well as the treatment of personnel.⁶⁹⁴ The UNITAR proposals emphasize practical, non-controversial rules.⁶⁹⁵

Although international law regulating disaster relief is strongly needed, few states have hastened to accept the ILA or UNITAR conventions. International law is needed to establish a state's legal obligation (1) to assist another in disaster, (2) to prepare for disaster relief within its borders and (3) to accept relief from donors when the state suffers a disaster.⁶⁹⁶ The enactment of international law defining such responsibilities will expedite disaster aid and more lives will be saved.

3. Coordination of Relationships

a. Institution of Agreements Between Donor Nations

Although an immediate response to a disaster is often difficult to institute, the agreements mentioned in Section III can provide guidance for measures that should be taken in the event of future

690. *Id.* at 156.

691. *Id.*

692. *Id.*

693. *Id.*

694. *Id.*

695. *Id.* The Model Rules have foundations on the Principles and Rules for Red Cross disaster relief and the Red Cross Declaration of Principles for Relief to the Civilian Population of 1969, as well as General Assembly Res. 2816 (XXVI) of 1971. *Id.*

696. Samuels, *supra* note 569, at 263.

disasters. Another approach of interest was instituted in an agreement between the United States and Mexico that was later repealed;⁶⁹⁷ the agreement attempted to establish the means and procedures for mutual relief in the event of a disaster or catastrophe.⁶⁹⁸ The agreement created a joint committee composed of representatives from both countries. The task of this committee was to prepare a study of "the measures that [could] be applied in emergency cases and that [could] serve as a guide to the authorities of the two countries at the national, state, and municipal levels."⁶⁹⁹ Though not all nations may desire to establish such committees, other solutions may be viable to ease the flow of aid.

In order to improve the mechanisms for the food aid distribution, all nations must participate in the negotiation and execution of multilateral agreements. Many nations, however, are extremely wary about entering into multilateral aid agreements; sovereigns are concerned about the entrance of foreign aid workers during a time of disaster and the possibility that unfriendly governments will interfere with their sovereignty. One possible solution to these concerns is the enactment of a multilateral treaty which provides for the establishment of a commission composed of countries representing numerous political blocs. In the event of a disaster, a recipient country could select certain member states through which all aid would flow. The recipient nation would no longer fear that hostile nations would impinge on its sovereignty; yet all necessary relief could still be sent to the disaster area. If the nations selected to channel aid into the country had difficulties in meeting all the requirements, other signatories could assist in funding the relief efforts. Enactment of procedures for emergency relief in advance of disasters could prove to be of great benefit to all disaster victims.

b. Coordination of Efforts of Various Donors

To effectuate delivery of food aid, the competition for success and recognition among relief agencies must be lessened so that cooperation will be enhanced rather than discouraged.⁷⁰⁰ The establishment of the OEOA has proven to be an effective method of

697. Disaster Assistance, May 3, 1968, United States-Mexico, 19 U.S.T. 4810, T.I.A.S. 6481 (repealed Jan. 15, 1980).

698. *Id.* at 4812.

699. *Id.* at 4813.

700. *See F. CUNY, supra* note 5, at 130.

coordinating the relief efforts of PVOs, IGOs and governments. As stated above, the existence of the OEOA is limited to the duration of the African crisis. Nonetheless, perhaps the U.N. should extend the life of the OEOA, or at least assist another group of nations or some other organization in the creation of a similar permanent office of emergency operations. This office could implement predisaster planning, in order to assure carefully chosen strategies instead of hasty responses.⁷⁰¹ Moreover, during a disaster, the office could solicit regular and comprehensive reports from the recipient government concerning the needs of victims, effectuating more efficient use of available supplies. Such an office could prove an invaluable vehicle for the coordination of emergency operations.

c. Restructure of Hierarchy Within PVOs and Training of Workers

To facilitate the efficiency of food aid distribution, "choices must be made at the field level, and the people making these choices need a supportive, not restrictive, framework of rules, procedures, and policies to assist in this process."⁷⁰² To implement such a scheme, a few relief agencies have investigated and initiated three approaches.⁷⁰³ The first approach enables field workers with prior sanction from headquarters officials to make immediate "on-the-spot decisions."⁷⁰⁴ The second approach allows for a quicker response in times of emergency because rather than transmitting data to the headquarters for execution, the headquarters dispatch specialists to the scene with the authority to make most decisions.⁷⁰⁵ The third approach focuses on the restructuring of organizations to execute the majority of resolution-making abroad.⁷⁰⁶ Better training for relief-agency personnel could also expedite food-relief distribution. Relief agencies usually conduct an orientation program for new personnel regarding agency procedure, but they seldom conduct training regarding approaches to be taken, strategies to be used, and potential

701. *See id.* at 132.

702. *See id.* at 125.

703. *See id.* at 126.

704. *Id.* Oxfam and CARE have implemented the "devolution" approach.

705. *Id.*

706. *Id.* Church World Service has taken this approach.

problems encountered in a disaster management situation.⁷⁰⁷

d. Modification of Recipient Nation's Response to Influx of Workers and Aid

The response of recipient nations to the influx of relief workers and emergency aid varies. In regions fraught with civil or political strife, such as Ethiopia, relief workers are frequently unable to fulfill their obligations to disaster victims. Thus, recipient governments should negotiate with rebels to permit the entry of relief workers into such regions. Yet even workers who are permitted access to the region cannot execute their duties with inadequate systems of delivery. Thus, grain should be positioned overseas for ready access.⁷⁰⁸ Furthermore, recipient governments should discharge army trucks for the delivery of food and improve the schedule of port facilities to eliminate wasteful congestion in harbors. Steps such as these to improve the distribution of relief in Africa are strictly logistical and could be implemented immediately.

4. Establishment of Nexus Between Emergency Aid and Development

Oxfam views short-term emergency relief aid as the most effective use of food aid.⁷⁰⁹ Because a disaster does not always disrupt food supplies, however, sending food aid in any emergency may only depress local prices and hamper rather than encourage overall recovery.⁷¹⁰ Furthermore, a reasonable termination date for the provision of food aid should be established so that people can prepare to provide for themselves again; prolonging food aid only reinforces the perception that relief and feeding centers are permanent.⁷¹¹ Above all, relief must be coupled with recovery assistance in the form of seeds, tools and animals.⁷¹² While emergency food assistance should be adequate and timely, it should also be

707. *Id.* at 136.

708. *Food Aid and the Role of the PVOs*, *supra* note 4, at 95 (Westbrook statement, *supra* note 654).

709. *Id.* at 93.

710. *Id.* Ms. Westbrook cites the Guatemalan earthquake in 1976 as an example. *See supra* note 657 and accompanying text.

711. *Food Aid and the Role of the PVOs*, *supra* note 7, at 94 (Westbrook statement, *supra* note 654).

712. *Id.*

coordinated with local crop and development programs to ensure that it facilitates recovery.

V. LEGAL RESOLUTION OF DISPUTES OVER AID AGREEMENTS

In foreign aid agreements between states and international organizations, the donor state promises either a nonrefundable monetary amount, a credit, other services or other contributions.⁷¹³ These agreements indicate the purpose of the aid and the specific projects for which the aid is intended.⁷¹⁴ Even if the recipient state receives the aid without having to repay, the agreement is a binding contract, not a gift. The recipient state's consideration may be, for example, its obligation to provide necessary materials and experts, exempt materials from customs and taxes, distribute the emergency aid as specified, or fulfill other provisions of the agreement.⁷¹⁵

Foreign aid agreements raise several types of legal issues: (1) the applicable law; (2) the liberty of the recipient state to dispose of the aid as it chooses; (3) the preservation of donor states' interests; (4) privileges and immunities for deliveries; and (5) "the political conditions which may be linked with the conclusion of aid agreements."⁷¹⁶ When disputes arise over such issues, the parties may seek resolution in several types of fora. This section discusses the choice of applicable law and examines the various fora.

A. Choice of Applicable Law

Most aid agreements today do not state the law applicable to them. Thus, the concept that the municipal laws of one of the participating states control the implementation of the provisions of an aid agreement is no longer valid.⁷¹⁷ Instead, international law generally is applied to foreign aid agreements. The sources of international law are the constitution of the donor organization, customary law, treaties and various human rights covenants.⁷¹⁸ Nonetheless, the agreement may designate that certain provisions are governed by state law.⁷¹⁹

713. 8 ENCYCLOPEDIA OF INTERNATIONAL LAW 238 (Dolzer ed. 1985).

714. *Id.*

715. *Id.* at 238-39.

716. *Id.* at 239.

717. *Id.*

718. 5 ENCYCLOPEDIA OF INTERNATIONAL LAW 147 (Dolzer ed. 1985).

719. 8 ENCYCLOPEDIA OF INTERNATIONAL LAW 239 (Dolzer ed. 1985).

B. Judicial Arenas for Dispute Resolution

1. The International Court of Justice

a. Organization and Procedure of the Court

The International Court of Justice (ICJ) consists of fifteen judges elected by the United Nations General Assembly and the Security Council.⁷²⁰ Members of the U.N. nominate the candidates⁷²¹ and the General Assembly and Security Council elect them. Only one national from each state may sit on the panel.⁷²² The judges must meet the qualifications necessary in their own countries for appointment to the highest judicial offices.⁷²³

Official Court languages are French and English.⁷²⁴ The Court settles disputes over its jurisdiction. A majority vote of the Court rules and a party may not appeal a Court decision.⁷²⁵

b. Competence of the Court

The substantive law applied by the Court is set forth in Article 38 of the Statute of the International Court of Justice.⁷²⁶ The

720. Statute of the International Court of Justice, art. 3, para. 1, Documents of the United Nations Conference on International Organization (San Francisco, 1945), vol. 15, p. 355, *reprinted in* DOCUMENTS OF THE INTERNATIONAL COURT OF JUSTICE 61 (Rosenne ed. 1974) [hereinafter Statute]. Of the judges elected at the first election, five are elected for three-year terms and five are elected for six-year terms based on the drawing of lots. *Id.*, art. 13, paras. 1-2. The judges of the Court may not be removed which assures their independence. *Id.*, art. 18, para. 1.

721. Statute, *supra* note 721, at art. 4, para. 1.

722. *Id.*, art. 3, para. 1. "Judges with the same nationality as one of the parties do not have to disqualify themselves, but the opposing party can then choose a judge of the same nationality from a list of qualified candidates." *Id.*, art. 31, paras. 1-2.

723. *Id.*, art. 2. The judges have diplomatic privileges and immunity when engaged in court business. *See id.* art. 19. They meet at The Peace Palace in The Hague. *See id.* art. 22, para. 1.

724. Another language may be used if the Court consents to it and the parties agree as well. G. ELIAN, *THE INTERNATIONAL COURT OF JUSTICE* 56 (1971). *See* Statute, *supra* note 720, art. 39, paras. 1-2.

725. Statute, *supra* note 720, art. 60.

726. According to article 38, paragraph 1:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice accepted as

statute compels the Court to apply first any bilateral or multilateral international treaties, which the two parties accept as binding upon them. Thereafter the Court may examine customary international law applicable to the case. "Either in addition to, or in the absence of these two sources, the Court may [seek] general principles of law commonly recognised as law by the international legal community."⁷²⁷

Procedural rules of the Court are set forth in the Resolution Concerning the Internal Judicial Practice of the Court⁷²⁸ and in the new Rules of Court adopted on April 14, 1978 which came into force on July 1, 1978.⁷²⁹ The Statute and the U.N. Charter authorize and establish the organization, general principles and regulations of the Court.⁷³⁰ A nation may receive Court approval to deviate from the Rules of the Court, but not from any requirements set forth in the Statute.⁷³¹

All countries which are parties to the Statute may seek redress in the International Court of Justice. Only nations, however, may be parties to litigation; thus, an individual who or a corporation which has a dispute with a nation must persuade its own government to represent its interests.⁷³² Members of the U.N. are automatically parties to the Statute of the International Court of Justice; a nonmember state may become a party to the Statute upon recommendation of the Security Council.⁷³³ No state may be a party in litigation before the ICJ without first consenting in a preliminary agreement that the ICJ will have jurisdiction in present or future litigation. This agreement is necessary to establish

law;

(c) the general principles of law recognized by civilized nations; [and]

(d) subject to the provisions of Article 59, judicial decision and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

727. T. ELIAS, *THE INTERNATIONAL COURT OF JUSTICE AND SOME CONTEMPORARY PROBLEMS* 13-14 (1983).

728. *Reprinted in DOCUMENTS OF THE INTERNATIONAL COURT OF JUSTICE* 207 (Rosenne ed. 1974) [hereinafter DOCUMENTS].

729. ELIAS, *supra* note 727, at 13. The old rules are reprinted in DOCUMENTS, *supra* note 728, at 91.

730. Both are reprinted in DOCUMENTS, *supra* note 728, at 59 and 1 respectively. See U.N. CHARTER, art. 7, para. 1, arts. 92-93.

731. ELIAN, *supra* note 724, at 60.

732. Daly, *Can One Court Reach Around the World*, 8 UPDATE 2, 4 (1984). Statute, *supra* note 720, art. 34, para. 1.

733. ELIAN, *supra* note 724, at 45. U.N. CHARTER, art. 93.

ICJ competency.⁷³⁴ Moreover, a party to the Statute may consent to compulsory jurisdiction under the following Optional Clause, under which a party recognizes

as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of treaties;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of international obligation; and
- d. the nature or extent of the reparation to be made for the breach of an international obligation.⁷³⁵

Twenty-five states have agreed to compulsory jurisdiction of the Court under the Optional Clause.⁷³⁶ Compulsory jurisdiction of the Court may also be accepted through a preliminary declaration⁷³⁷ granting jurisdiction. Both parties to a suit must have submitted such preliminary declarations. Furthermore, provisions in treaties and conventions can also confer jurisdiction on the ICJ for settlement of disputes.⁷³⁸ Most nations, including the United States and the Soviet Union, have not agreed to compulsory jurisdiction under the Optional Clause.⁷³⁹

Under the Connally Amendment of 1946, the United States refuses to submit to ICJ jurisdiction if the United States decides the dispute is "essentially domestic or where the United States deems that the dispute arises under a multinational treaty."⁷⁴⁰ According to Article 3 of the statute, however, if a party does not appear, the ICJ can determine for itself if it has jurisdiction and proceed

734. ELIAN, *supra* note 724, at 53.

735. Statute, *supra* note 720, art. 36, para. 2.

736. Daly, *supra* note 732, at 4.

737. ELIAN, *supra* note 724, at 54. As of July 31, 1969, the following submitted such declarations: England, Australia, Belgium, Cambodia, Canada, Colombia, Switzerland, Denmark, the Philippines, Finland, France, Gambia, Haiti, Honduras, India, Israel, Japan, Kenya, Liberia, Lichtenstein, Luxemburg, Malawi, Mauritius, Mexico, Nicaragua, Nigeria, Norway, New Zealand, Holland, Pakistan, Panama, Portugal, United Arab Republic, the Dominican Republic, Salvador, Somalia, United States, Sudan, Sweden, Swaziland, Turkey, Uganda, Uruguay, the Cian Kai-she government of Taiwan. Forty-five states have submitted declarations; none of these are socialist nations.

738. ELIAS, *supra* note 727, at 42.

739. Daly, *supra* note 732, at 4.

740. *Id.*

with the case.⁷⁴¹

The U.N. General Assembly or any specialized U.N. agency can request an advisory opinion of the ICJ as to whether the U.N. or one of its agencies acted lawfully. Individuals cannot make such requests. Very few advisory opinions on the legality of U.N. actions have been sought.⁷⁴²

Because jurisdiction is voluntary, compelling respondents to appear in the ICJ is difficult. For example, on April 8, 1984, the United States withdrew its consent to the Court's jurisdiction over any dispute concerning Central America arising during the next two years;⁷⁴³ Nicaragua's appeal to the ICJ for damages⁷⁴⁴ because one of its ships hit a mine planted by the United States Central Intelligence Agency provoked the withdrawal. Although the United States did not appear, the Court ordered the United States to "immediately cease and refrain from any action restricting, blocking, or endangering access to or from Nicaraguan ports, and, in particular, the laying of mines."⁷⁴⁵

Moreover, the ICJ has not been used to settle international disputes to the extent originally expected. From 1945 to 1980 the ICJ issued only thirty judgments in cases in which both parties argued before the Court.⁷⁴⁶ The Court has issued only seventeen advisory opinions and forty-four substantive orders.⁷⁴⁷

Even when parties do appear and utilize the Court, the enforceability of the judgment rendered is questionable. If a state accepts the Court's jurisdiction over it in a case, it must comply with the Court's decision.⁷⁴⁸ If the state does not perform as obli-

741. Statute, *supra* note 720, art. 53.

742. 5 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 146 (Dolzer ed. 1985).

743. Hassan, *A Legal Analysis of the United States Attempted Withdrawal from the Jurisdiction of the World Court in the Proceedings Initiated by Nicaragua*, 10 U. DAYTON L. REV. 295, 295 (1985). See N.Y. Times, Apr. 9, 1984 at A1, col. 2.

744. Hassan, *supra* note 743, at 295.

745. *Id.* at 299. See N.Y. Times, May 11, 1984 at A1, col. 5. See also *Military and Paramilitary Activities in and against Nicaragua (Nicar. & U.S.)* 1984 I.C.J. 4, reprinted in 23 INT'L LEGAL MATERIALS 468, 472-74 (1984). In the 1980 Iranian hostage crisis, the United States appealed to the ICJ and Iran did not appear. Daly, *supra* note 732, at 6.

746. Daly, *supra* note 732, at 6. All 30 cases involved either "(1) Jurisdiction over person, (2) jurisdiction over property, (3) treaties, or (4) responsibilities (liability) for acts." *Id.*

747. *Id.*

748. ELIAS, *supra* note 727, at 68. See U.N. CHARTER, art. 94.

gated under the decision, the other party may request that the Security Council⁷⁴⁹ make recommendations or decide upon measures to effectuate the judgment.⁷⁵⁰ Unfortunately, the sanctions of the Council, if made, will never be enforced because the United Nations does not have the police power necessary to execute its decisions.

Under the jurisdiction of the Court are all cases referred by the parties and "all matters specially provided for in the charter of the United Nations or in treaties and conventions in force."⁷⁵¹ Thus, disputes over relief agreements between donor and recipient states who have submitted to the jurisdiction of the Court and who are parties to the Statute may be brought before the ICJ. Most likely, however, the states will not agree to jurisdiction or will not comply with the judgment. Therefore, the ICJ does not provide an adequate means of dispute resolution.

2. Domestic Courts

Complaints against nongovernmental organizations can be brought before the courts of the state "where the acts are to be executed"⁷⁵² or before the courts of the recipient state.⁷⁵³ Complaints against government organizations may also be brought in domestic courts, if the organization's actions are sufficiently private; government organizations, however, can claim that their actions are official and not subject to the jurisdiction of national courts. If so, then the complaint may only be brought in the judicial organ of the organization itself or in an arbitration proceeding.⁷⁵⁴

The laws of some countries permit a party to bring suit against foreign sovereigns. In the United States, the Foreign Sovereign Immunities Act (FSIA) governs actions against foreign sovereigns.⁷⁵⁵ If the defendant meets the definition of a foreign state

749. ELIAS, *supra* note 727, at 70. "The Security Council is not obliged to take measures for the execution of the decisions rendered by the Court." *Id.*

750. *Id.* at 68-69.

751. Statute, *supra* note 720, art. 36, para. 1.

752. 5 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 145 (Dolzer ed. 1985).

753. *Id.*

754. *Id.* at 146.

755. Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (codified at 28 U.S.C. §§ 1330, 1332(a)(2) (4), 1391(f), 1441(d), 1602-1611 (1985)). For a detailed discussion of FSIA, see generally 19 VAND. J. TRANSNAT'L L. (Winter 1986).

and one of the Act's exceptions to immunity is applicable to the defendant, the federal district courts have subject-matter jurisdiction over the action.⁷⁵⁶

The Act "codifies the doctrine of 'restrictive immunity,' which recognizes immunity only for those acts that are public in character and sets forth criteria to distinguish public from private acts."⁷⁵⁷ So under this doctrine, an act sufficiently commercial may be viewed as private and not immune from suit.⁷⁵⁸ Most courts treat immunity as a defense, and the burden of pleading and proving immunity is on the defendant state.⁷⁵⁹ Waiver by a state of its immunity may be explicit or implied.⁷⁶⁰ Failure to raise the immunity issue at an early stage in pleading constitutes an implied waiver.⁷⁶¹ Under the Act, the court has personal jurisdiction over the defendant if it possesses subject-matter jurisdiction and proper service has been made.⁷⁶²

Only if sovereign immunity is not established and the country's statutory requirements are met may a party sue a sovereign in a United States court under the FSIA. But each country's provisions permitting suit against sovereigns are complicated and the requirements may be difficult to meet. For example, in nations

756. 28 U.S.C. § 1603(a)-(b) (1976) includes in its definition of foreign state the political subdivisions of foreign states and agencies or instrumentalities of foreign states. Section 1603(a) defines agency or instrumentality as any entity which is a separate legal person, an organ of a foreign state, or whose major ownership interest is held by a foreign state, and is not otherwise a citizen of the United States or created under the laws of some third country. 28 U.S.C. §§ 1604-1605 (1976) list general exceptions to jurisdictional immunity which include: (1) waiver of immunity either explicitly or impliedly; (2) "action . . . based upon a commercial activity carried on in the United States by a foreign state"; (3) "rights in property taken in violation of international law"; (4) "rights in property in the United States acquired by succession or gift"; and (5) other actions "in which money damages are sought against a foreign state for personal injury or death."

757. Kane, *Suing Foreign Sovereigns: A Procedural Compass*, 34 STAN. L. REV. 385-86 (1982). See 28 U.S.C. §§ 1604-1605 (1982).

758. Kane, *supra* note 757, at 385-86 & n.4.

759. *Id.* at 415.

760. *Id.* at 417. See 28 U.S.C. § 1605(a)(1) (1982).

761. Kane, *supra* note 757, at 417.

762. *Id.* at 386. See 28 U.S.C. § 1608 and 1330 (b) (1982). Separate provisions exist for service of foreign states and of agencies or instrumentalities of foreign states. See 28 U.S.C. § 1608(a)(1) (1982). "Personal jurisdiction requires sufficient contacts of the defendant with the forum to assure fairness to a non-resident defending away from home." Kane, *supra* note 757, at 402.

which have adopted the restrictive immunity principle, donated aid may be considered a public act of the government and thus subject to immunity, but loans, treaties and international sales of relief materials may be sufficiently commercial to exempt a country or its agent from immunity. Thus, suit in a domestic court under an act exempting sovereigns from immunity may not be a viable method of dispute resolution.

C. Arbitration Arenas for Dispute Resolution

Although the International Court of Justice has interpreted fewer treaties in recent years, arbitration of treaty disputes has increased.⁷⁶³ Two types of international arbitration exist: (1) "Administered" or "institutional arbitration", examples include established organizations, such as the American Arbitration Association, the International Chamber of Commerce, and the London Court of Arbitration; and (2) "Ad hoc arbitration," in which the parties consent to arbitration and the method of appointing arbitrators.⁷⁶⁴

Numerous advantages to institutional arbitration exist. For example, a permanent Secretariat registers the request for arbitration as well as communications between the parties. A set of procedural rules exists. The costs are predictable.⁷⁶⁵ Contracting parties may subject their disputes to institutional arbitration by specifying a particular administration in the contract or treaty.

To utilize ad hoc arbitration, the parties must include in their contract an agreement that disputes, as well as the means of appointing arbitrators, will be submitted to arbitration.⁷⁶⁶ Yet such clauses are often inadequate. Thus, in order to facilitate the decision to utilize arbitration, the United Nations Commission on In-

763. Sohn, *The Role of Arbitration in Recent International Multilateral Treaties*, 23 VA. J. INT'L L. 171, 176, n.19 (1983) (citing post-1970 treaties that refer disputes to the International Court of Justice for Arbitration). "Although . . . less than 20 post-1970 multilateral agreements referr[ed] disputes to the International Court of Justice, more than 60 such agreements (and many bilateral agreements) refer disputes concerning their interpretation and application to arbitration." *Id.* at 176 n.19.

764. Salter, *International Commercial Arbitration: The Why, How and Where*, 88 COM. L.J. 381, 381 (1983).

765. Golsong, *A Guide to Procedural Issues in International Arbitration*, 18 INT'L LAW. 633, 636 (1984).

766. Rhodes & Sloan, *The Pitfalls of International Commercial Arbitration*, 17 VAND. J. TRANSNAT'L L. 19, 22 (1984).

ternational Trade Law (UNCITRAL) in 1976 adopted a set of arbitration rules for ad hoc use, which may be incorporated into contracts.⁷⁶⁷

Although sovereign immunity is a defense in judicial dispute resolution, it is not a defense in arbitration. A state which consents to the jurisdiction of an arbitrator cannot avoid jurisdiction by claiming sovereign immunity.⁷⁶⁸ Although the state is bound contractually to comply with the arbitrator's award, the enforceability of compliance is always questionable.⁷⁶⁹

Arbitration involving a foreign state or agency of the state as a party suggests special problems.⁷⁷⁰ The state's capacity to agree to an arbitration must be determined by the law of the state con-

767. *Id.* Contracts and treaties should address the essential elements of an effective arbitration which include:

(1) Scope of arbitration clause:

(a) Broad: any and all disputes arising out of or relating to this agreement;

(b) Narrow: only specific disputes.

(2) The number of arbitrators and method of their selection, with participation in the process reserved for the parties.

(3) Qualifications of arbitrators (technical, legal, business) and whether they may act as *amiables compositeurs* or *ex aequo et bono*.

(4) Languages for arbitrators; documents, submissions, proceedings: if possible designate only one language to keep costs down.

(5) The location for arbitration, considering applicable local arbitration law, availability of qualified local counsel, availability of secretarial or administrative staff including interpreters, and costs including transportation and housing.

(6) Form of the award: reasoned or not, by majority or unanimity (provisions for lack of unanimity), availability of dissenting opinions.

(7) Possibility of consent to immediate entry of judgment in a court of competent jurisdiction and a waiver of any or all rights to appeal in any national court system. *Id.* at 44-45.

For a good discussion of the elements of an effective arbitration clause, see de Vries, *International Commercial Arbitration: A Contractual Substitute for National Courts*, 57 TULANE L. REV. 42, 64-79 (1982). See also Golsong, *A Guide to Procedural Issues in International Arbitration*, 18 INT'L LAW. 633 *passim* (1984); Park, *Arbitration of International Contract Disputes*, 39 BUS. LAW. 1783, 1785-89 (1984).

768. Cremades, *The Impact of International Arbitration on the Development of Business Law*, 31 AM. J. COMP. L. 526, 532 (1983).

769. *Id.*

770. See generally Batiffol, *Arbitration Clauses Concluded Between French Government-Owned Enterprises and Foreign Private Parties*, 7 COLUM. J. TRANSNAT'L L. 32 (1968); Cogan, *Are Government Bodies Bound by Arbitration Agreements?*, 22 ARB. J. 151 (1967).

cerned, the law of the forum in which the state is sued, and the international conventions to which the state is a party.⁷⁷¹ National laws differ, and not all states are free to arbitrate.

The advantages of domestic arbitration - finality, efficiency, economy, and informality - do not apply to international arbitration.⁷⁷² States often dispute the validity of the arbitration clause or the qualifications of arbitrators.⁷⁷³ Furthermore, initial arbitration may not produce a final result. After the hearing and award a party may appeal on grounds of fraud, mistake, error of law, or even lack of fairness.⁷⁷⁴ Delays in commencing and completing the process increase due to distance, communication, and language problems. International arbitration exceeds the expense of domestic arbitration because administration and arbitrators' fees are higher; moreover, costs to the parties escalate because additional counsel, interpreters, translators, and transportation to the site of arbitration are necessary. Finally, unfamiliar foreign procedural systems complicate the procedure.⁷⁷⁵

Nonetheless, because of the unavailability of the ICJ to individuals and organizations as well as the difficulty in obtaining jurisdiction over nations,⁷⁷⁶ and because of the possibility of immunity from litigation in domestic courts, arbitration may be the most viable alternative for those seeking resolution of a dispute over an aid agreement.⁷⁷⁷ The three main bodies for institutional arbitra-

771.

In some Western countries, such as Austria, Italy, the Netherlands, and the United Kingdom, there is no limitation on arbitrability of government contracts. In other Western countries, government contracts are not arbitrable in the absence of a specific statute or treaty. Such is the case in Belgium, France (domestic contracts), and Germany, as well as contracts entered into by the federal government of the United States. In France, by decisions of the highest court, disputes related to international commercial contracts between the French state or state-owned enterprises and foreign private parties are arbitrable.

de Vries, *supra* note 767, at 58.

772. *See id.* at 61.

773. *Id.* at 61 n.83.

774. *Id.*

775. *Id.* at 61.

776. *See supra* notes 754-61 and accompanying text.

777. Some regions have created their own arbitral systems. For example, the Asian-African Legal Consultative Committee (AALCC) has centers in Kuala Lumpur and Cairo. Wall, *The Asian-African Legal Consultative Committee and International Commercial Arbitration*, 17 CAN. Y.B. INT'L L. 324, 324 (1979). The AALCC adopted UNCITRAL rules. *Id.* at 330.

tion are UNCITRAL, the American Arbitration Association (AAA), and the International Chamber of Commerce (ICC).

1. United Nations Commission on International Trade

The United Nations Commission on International Trade (UNCITRAL) formulates arbitration rules for use in international and ad hoc commercial arbitration.⁷⁷⁸ The UNCITRAL Arbitration Rules⁷⁷⁹ were endorsed by the U.N. General Assembly in 1976⁷⁸⁰ and have achieved international acceptance. They were followed in 1980 by the UNCITRAL Conciliation Rules.⁷⁸¹ UNCITRAL consists of the Rules only, not an arbitral body. Parties choose the UNCITRAL rules by designating in their contract that the rules govern. Institutional arbitrators often apply UNCITRAL rules.⁷⁸² These rules are subject to mandatory provisions of applicable arbitration law.⁷⁸³

Under UNCITRAL Rules parties choose the language, select the site,⁷⁸⁴ and stipulate the substantive law to be applied in arbitration. If the parties have not chosen the substantive law, the arbitration tribunal determines the applicable law according to the conflict of law principles it deems appropriate.⁷⁸⁵

2. The American Arbitration Association

Founded in 1926 as a nonprofit public service organization, the American Arbitration Association, unlike the UNCITRAL, con-

778. Broches, *A Model Law on International Commercial Arbitration? A Progress Report on the Work Undertaken Within the U.N. Commission on International Trade Law*, 18 GEO. WASH. J. INT'L L. & ECON. 79, 79 (1984).

779. See UNCITRAL Arbitration Rules, 31 U.N. GAOR Supp. (No. 17) at 34-50, U.N. Doc. A/31/17 (1976).

780. G.A. Res. 31/98, 31 U.N. GAOR Supp. (No. 39) at 182, UN Doc. A/31/39 (1976).

781. UNCITRAL Conciliation Rules, 35 U.N. GAOR Supp. (No. 17) at 33-38, U.N. Doc. A/35/17 (1980).

782. Rhodes & Sloan, *supra* note 766, at 23. See also Suy, *Achievements of the United Nations Commission on International Trade Law*, 15 INT'L LAW. 139 (1981). "The AAA has announced that it is prepared to administer arbitration under UNCITRAL rules and has recently published administrative rules for this purpose." Rhodes & Sloan, *supra* note 766, at 23.

783. Rhodes & Sloan, *supra* note 766, at 23 & n.10.

784. de Vries, *supra* note 767, at 71.

785. Rhodes & Sloan, *supra* note 766, at 41.

sists of an arbitral body.⁷⁸⁶ AAA selects arbitrators from a National Panel of Arbitrators comprised of approximately 50,000 individuals in the United States. The AAA neither employs nor pays arbitrators; either they are unpaid or are paid by the parties.⁷⁸⁷ The AAA cases consist primarily of monetary damage cases in which domestic tortious conduct or commercial contracts are in dispute.⁷⁸⁸ The total number of international commercial cases handled by the AAA is proportionally small to other types of cases.⁷⁸⁹ Though utilizing the AAA is expensive, the cost of arbitration in the AAA is less than the cost of litigation in United States courts.⁷⁹⁰

The AAA rules give the parties the most control over the arbitrator selection process. After the Association selects a group of arbitrators, each party may eliminate unacceptable arbitrators from that group; the parties then rank in order of preference those names remaining on the list.⁷⁹¹ The AAA chooses the arbitrators from the remaining names according to those rankings.⁷⁹² Because the Association rules do not contain provisions to determine applicable law, arbitrators will either apply the substantive law of the nation in which the arbitral tribunal is located or determine the law by utilizing that country's conflict of law rules.⁷⁹³ The AAA also selects the location of arbitration if the parties do not.⁷⁹⁴ The AAA allows parties to choose the language.⁷⁹⁵

786. Kritzer & Anderson, *The Arbitration Alternative: A Comparative Analysis of Case Processing Time, Disposition Mode, and Cost in the American Arbitration Association and the Courts*, 8 *Jusr. Sys. J.* 6, 8 (1983).

787. *Id.*

788. *Id.*

789. de Vries, *supra* note 767, at 45.

790. Kritzer & Anderson, *supra* note 786, at 18. "The AAA cost provisions are set out in rules 48 through 52. The schedule by which administrative costs are calculated begins with a minimum of \$200, or three percent of a claim between \$1 and \$40,000, and goes to a maximum of \$1800 plus one-quarter percent of any amount over \$160,000. In claims over \$5,000,000, the AAA has the power to set an 'appropriate fee.'" Rhodes & Sloan, *supra* note 766, at 32 (footnote omitted).

791. Rhodes & Sloan, *supra* note 766, at 30-31. Commercial Arbitration Rules of the American Arbitration Association, Rule 13, *reprinted in* G. WILNER, DOMKE ON COMMERCIAL ARBITRATION at appendix VII, 43, 44 (1984) [hereinafter AAA Commercial Arb. Rules].

792. Rhodes & Sloan, *supra* note 766, at 30-31.

793. *Id.* at 41-42.

794. de Vries, *supra* note 767, at 68. AAA Commercial Arb. Rules, *supra* note 791, Rule 11 at appendix VIII, 43.

3. The International Chamber of Commerce

Some of the most important international commercial disputes have been heard in the Court of Arbitration of the International Chamber of Commerce (I.C.C.).⁷⁹⁶ The function of the Court is to settle international business disputes by arbitration.⁷⁹⁷ This mandate would appear to include relief treaties between governments and organizations, because such agreements are ultimately business transactions.

The headquarters of the I.C.C. Court of Arbitration is in Paris, but the court organizes and supervises arbitral proceedings all over the world. Unless chosen by the parties,⁷⁹⁸ the Court of the I.C.C. selects the location of arbitration.⁷⁹⁹ The Court will choose a third country, taking care to balance geographically the respective positions of the parties.⁸⁰⁰ The worldwide reach of the I.C.C. accommodates the settlement of relief agreement disputes occurring throughout the world.

Article 2(1) of the I.C.C. Arbitration Rules apparently permits the parties to select and appoint arbitrators. Nonetheless, the

795. AMERICAN ARBITRATION ASSOCIATION PROCEDURES, SUPPLEMENTARY PROCEDURES FOR INTERNATIONAL COMMERCIAL ARBITRATION, para. 6, *reprinted in* G. WILNER, DOMKE ON COMMERCIAL ARBITRATION (1984).

796. Between 1923 and 1984, 5,000 cases were filed with I.C.C. Court of Arbitration of which 2,978 were filed between 1923 and July 1976. The average number of cases between 1981 and 1983 was 268. Derains, *International Chamber of Commerce Arbitration*, 5 PACE L. REV. 591 (1985).

The I.C.C. has national committees in fifty-seven countries. The composition of the I.C.C. Court of Arbitration reflects this internationalism. By the end of 1984, it was composed of a French chairman, Mr. Michèl Gaudet, five vice-chairmen (from India, Lebanon, Sweden, Switzerland, and the United States), a U.S. Secretary General, and members from Australia, Austria, Belgium, Canada, Colombia, Cyprus, Denmark, Egypt, Finland, France, Federal Republic of Germany, Greece, India, Iceland, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Madagascar, Mexico, Morocco, Netherlands, Nigeria, Norway, Portugal, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, United States, Venezuela, and Yugoslavia. *Id.* at 594-95.

797. *Id.* at 593 (citing the Rules for the I.C.C. Court of Arbitration, Pub. No. 291, art. 1(1) (1980)).

798. The parties chose the place of arbitration themselves in 67% of the cases. Derains, *supra* note 796, at 595.

799. de Vries, *supra* at note 767, at 68 (citing I.C.C. Rules, art. 12).

800. Derains, *supra* note 796, at 595. "In 1983, I.C.C. arbitration proceedings took place in 81 different countries: 85% in Western Europe, 7.5% in North America, and the remaining 7.5% in other parts of the world." *Id.*

Court will appoint or confirm the appointments of arbitrators if the parties have not.⁸⁰¹ The Court of Arbitration steps in if the parties have made no provisions to appoint arbitrators and always supervises the application of the rules by the appointed arbitrators.⁸⁰²

I.C.C. Arbitration Rules empower the arbitrator to determine the validity of his jurisdiction and the applicability of substantive law, and to consider the merits of various languages for the proceeding. If an agreement to arbitrate in the I.C.C. exists, the arbitrator, not the Court, determines jurisdiction.⁸⁰³ To determine substantive law, the I.C.C. follows the Geneva Convention of 1961,⁸⁰⁴ which permits the parties to determine the law that the arbitrator shall apply to merits of the dispute. If the parties have failed to indicate the applicable law, the arbitrator may then utilize the conflict of law rules which he considers appropriate to determine the applicable law.⁸⁰⁵ These provisions are similar to article 33(1) of the UNCITRAL Arbitration Rules; yet, unlike UNCITRAL Rules, I.C.C. Arbitration Rules allow the arbitrator to select the language in which the proceeding will be conducted.⁸⁰⁶

Legal recourse based on aid agreements is even more difficult to attain because most aid agencies claim certain privileges and immunities which, if accepted, render their actions untouchable. Most international aid organizations include in their constitutions a brief general outline of privileges and immunities.⁸⁰⁷ Further detailed privileges and immunities are set forth in specific treaties and agreements.⁸⁰⁸ Substantial similarities exist in the provisions

801. I.C.C. Arbitration Rules, art. 2(1), *reprinted in* G. WILNER, DOMKE ON COMMERCIAL ARBITRATION (1984) [hereinafter I.C.C. Arbitration Rules].

802. Derains, *supra* note 796, at 596.

803. The "arbitrator's right to rule on his own jurisdiction . . . was recognized by article 8(3) of the I.C.C. Arbitration Rules, leaving State courts only an a posteriori right of control." *Id.* at 598.

804. *Id.* at 601. *See* European Convention on International Commercial Arbitration, art. 7.

805. I.C.C. Arbitration Rules, *supra* note 801, at art. 13(3). "In all cases the arbitrator shall take account of the provisions of the contract and the relevant trade usages." *Id.*, art. 13(5).

806. *Id.*, art. 15(3). In choosing the language, the arbitrator must consider "all the relevant circumstances and in particular . . . the language of the contract." *Id.*

807. 5 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 153 (Dolzer ed. 1985).

808. *Id.* at 154.

of the various treaties and agreements.

International immunities include the capacity to contract, to possess real and personal property, and an exemption from legal process, unless immunity is waived.⁸⁰⁹ Authorities of the host state are generally precluded from entering the organization's premises and conducting searches and seizures. Organizations are usually exempt from taxes and customs duties on transactions or property and from prohibitions on the importing and exporting of items.⁸¹⁰ Furthermore, government representatives of international organizations are treated as diplomats.⁸¹¹ Persons employed by international organizations usually are immune from legal process within the host state, exempt from taxation, and free to travel.⁸¹²

An example of privileges and immunities provisions which may apply to aid activities is the Convention on Privileges and Immunities of the U.N.⁸¹³ The Convention empowers the U.N. to contract and to institute legal proceedings,⁸¹⁴ while exempting U.N. property⁸¹⁵ and the representatives of U.N.⁸¹⁶ members from legal process. Also contained in the Convention are provisions for the settlement of contracts, disputes of a private law character to which the U.N. is a party, disputes in which U.N. officials raise the defense of immunity; the Convention directs that all disputes arising from application or interpretation of the convention are to be referred to the ICJ.⁸¹⁷

A second U.N. immunities convention⁸¹⁸ applies specifically to

809. *Id.* at 155.

810. *Id.* at 156.

811. *Id.*

812. *Id.* at 156-58. These immunities should apply equally to high officials, staff members, local hires, international hires, nationals of the Host State and any other employee. *Id.* at 157.

813. Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 1 U.N.T.S. 15.

814. *Id.*, art. I, § 1, 1 U.N.T.S. 16.

815. Immunity of U.N. property may be waived. *Id.*, art. II, § 2, 1 U.N.T.S. 16, 18.

816. Under article IV, section 11(a), 1 U.N.T.S. 20, representatives of U.N. members are immune from personal arrest or detention. Words spoken or written and all acts done by representatives of U.N. members are subject to immunity under article IV, section 12, in discharge of their duties. Similar provisions are made for experts in article IV, section 22, 1 U.N.T.S. 26.

817. *See id.*, art. VIII, 1 U.N.T.S. 30, 32.

818. Convention on the Privileges and Immunities of the Specialized Agen-

the FAO, WHO, and other U.N.-related agencies.⁸¹⁹ This convention empowers these agencies to institute legal proceedings⁸²⁰ and exempts their property and assets from all legal proceedings.⁸²¹ The Agency provides for resolution of disputes arising from contracts and immunity.⁸²² Unless the parties have agreed upon some other form of settlement, such disputes shall be referred to the ICJ.⁸²³ If the dispute is between an agency and a member, then the parties must seek an advisory opinion from the ICJ.⁸²⁴

Due to the immunity granted by the above conventions, a cause of action probably does not exist against U.N. agencies and U.N.-related organizations. The ICJ may provide a forum in which to settle disputes of a private law nature wherein immune officials may be parties. But once again, all the problems of nonappearing respondents and voluntary jurisdiction render such dispute resolution methods impotent. While the conventions define the legal status of relief personnel, no adequate remedy for damages resulting from problems in relief agreements exists. Most international immunities agreements provide for some means of dispute resolution: either an ICJ advisory opinion or, more commonly, arbitration. Almost no immunities cases have been litigated in the ICJ or through arbitration, but the option exists.⁸²⁵ Other types of disputes involving third parties in private law contract or tort disputes are not covered by formal immunity provisions.⁸²⁶ Such disputes are usually resolved in arbitration. Otherwise, insurance is provided.⁸²⁷

cies, Nov. 21, 1947, 33 U.N.T.S. 262.

819. These agencies are related to the U.N. under articles 57 and 63 of the U.N. Charter. *Id.*, art. I, § 1(j), 33 U.N.T.S. 264.

820. *Id.*, art. II, § 3, 33 U.N.T.S. 266.

821. *Id.*, art. III, § 4, 33 U.N.T.S. 266. Immunity of such property and assets may be waived. *Id.*

822. *Id.*, art. IX, § 31, 33 U.N.T.S. 280.

823. *Id.*, art. IX, § 32, 33 U.N.T.S. 282.

824. *Id.* The FAO specifically is addressed in Annex II, 33 U.N.T.S. 292; the WHO is addressed in Annex VII, 33 U.N.T.S. 300.

825. 5 ENCYCLOPEDIA OF INTERNATIONAL LAW 158 (Dolzer ed. 1985).

826. *Id.*

827. *Id.* at 159. If a party is insured, the insurance company will litigate the case.

VI. CONCLUSION

According to the USDA, thirty-six countries currently are incapable of maintaining adequate food supplies.⁸²⁸ Many of these countries are suffering from a so-called "food crisis":⁸²⁹ a food crisis country experiences a declining rate of per capita food production, diets at unacceptable nutritional levels and significant international debt problems.⁸³⁰ Small African countries comprise eighty percent of the world's food crisis countries, while the remainder of such countries are located in Asia and Latin America.⁸³¹ With such large domestic stocks of agricultural commodities⁸³² and growing reports of world famine,⁸³³ many observers feel the United States should increase the amount of food aid it donates. The President's Task Force on International Private Enterprise suggested in its "action brief" that the amount of relief provided through the Public Law 480 program should be at least doubled.⁸³⁴ The USDA estimates that the CCC has in its stockpiles twice the amount of food necessary to meet the fiscal year 1985 food needs of the drought stricken areas of Sub-Saharan Africa and Central America.⁸³⁵

The House of Representatives Select Committee on Hunger concluded that the factor most limiting expansion of United States food assistance was funding.⁸³⁶ Although the United States currently has surpluses of agricultural commodities, and although the United States agricultural industry apparently has not

828. These shortages result from inadequate growth in domestic food production and a lack of currency with which to pay for imports. HOUSE SPECIAL REPORT, *supra* note 22, at 3. These countries, listed according to severity of the problem include: Guinea, Lesotho, Gambia, Syria, Sierra Leone, Senegal, Yemen Arab Republic, Mali, Bangladesh, Central African Republic, Ivory Coast, Kenya, Zambia, Benin, Peru, Liberia, Botswana, Ethiopia, Madagascar, Morocco, Cameroon, Burma, Ghana, Tanzania, Togo, Chad, Mauritania, Haiti, Guinea-Bissau, Guatemala, Congo, Nepal, Niger, Uruguay, Zaire, and Zimbabwe. *Id.*

829. *Id.* at 4.

830. *Id.* Between 1974 and 1983 food crisis countries have had a 700% increase in their debt holdings.

831. *Id.* at 5. Sixty percent of food crisis countries have per capita incomes of less than \$500, and 75% have per capita incomes of less than \$1000. *Id.*

832. *Food Aid and the Role of the PVOs, supra* note 4, at 84.

833. See *supra* notes 2-3 and accompanying text.

834. *International Trade and Development, supra* note 449, at 23.

835. *Food Aid and the Role of the PVOs, supra* note 4, at 69.

836. HOUSE SPECIAL REPORT, *supra* note 22, at iv.

reached its maximum production potential,⁸³⁷ financing is required to donate these surpluses.⁸³⁸ Consumption barriers also prevent the expansion of food aid.⁸³⁹ Much of the CCC stockpile is composed of dairy products, to which many Africans have an intolerance.⁸⁴⁰ Political considerations also limit the amount of United States surpluses which can be given to the poor.⁸⁴¹ The United States must be careful to avoid violating international agreements by "dumping" surplus commodities, causing economic disruption of the recipient's food market.⁸⁴²

The successful implementation of United States donative food aid legislation requires a decision to extricate this massive effort from the political context. When the attempt to feed the starving assumes priority over political considerations and becomes a fundamental humanitarian concern, the question becomes how food aid is to be delivered, not if, when, why, or to whom it should be given. Though the question of the method of delivering aid is still massive and complex, it seems simple when the desired goal is clearly and unanimously in focus. Yet in the end, a greater amount of assistance, more efficiently executed operations, and even less politically motivated aid will not alone accomplish the objective of feeding the disaster-stricken persons on this earth. The governments of those facing starvation must also utilize developmental assistance to teach their people to begin feeding themselves.

Peggy F. Brandenburg
Susan N. Burgess
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Patrick M. Thomas
Linda L. Kotis, editor

837. See Bale & Southworth, *World Agricultural Trade and Food Security: Emerging Patterns and Policy Directions*, 1 WIS. INT'L L.J. 30 (1982). The United States has 127 million acres of farmable land which are currently uncultivated. This land, if farmed, could increase crop production by 30%. *Id.*

838. HOUSE SPECIAL REPORT, *supra* note 22, at iii, iv.

839. *Food Aid and the Role of the PVOs*, *supra* note 4, at 65.

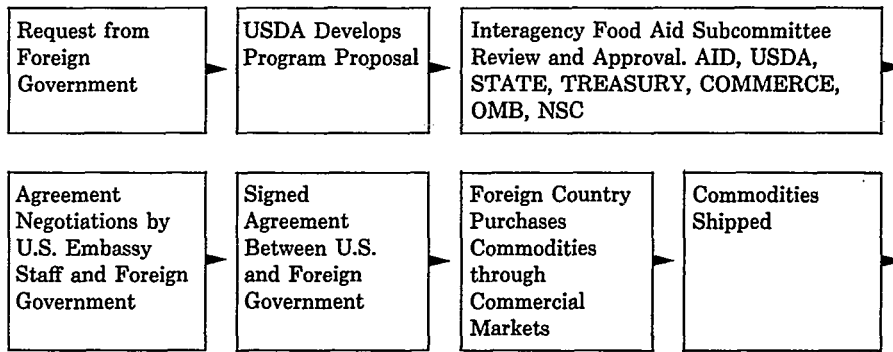
840. *Id.*

841. *Id.*

842. *See id.*

APPENDIX A

P.L. 480-Title 1/III Program Flowchart



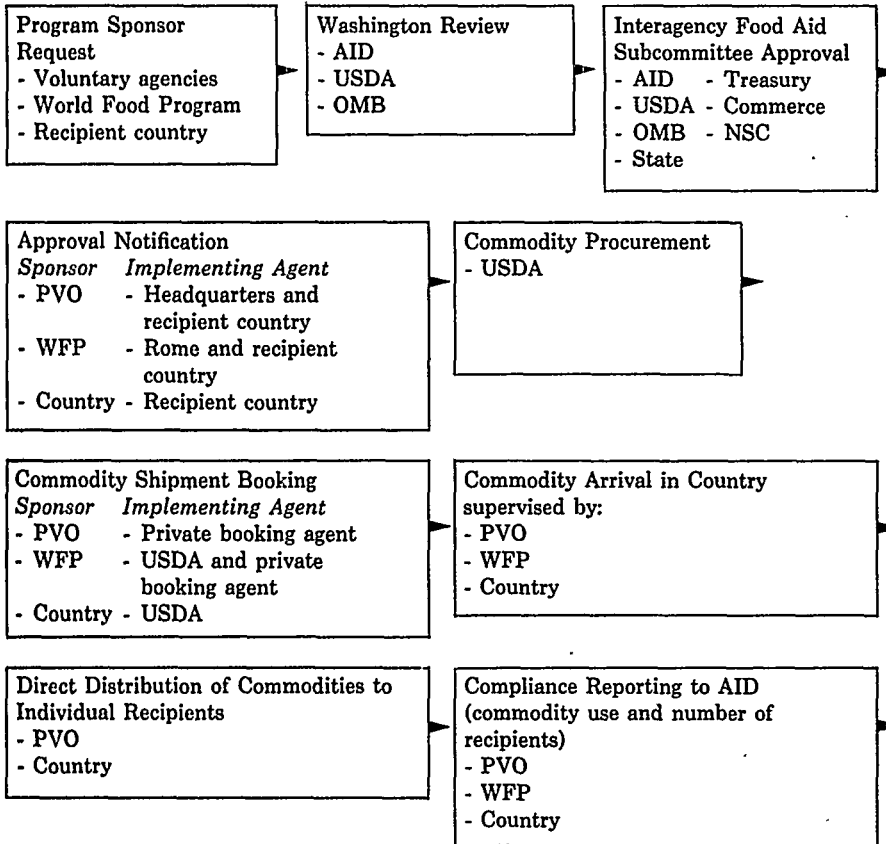
Agency Objectives:	<u>USDA</u> Market Development Surplus Disposal	<u>STATE</u> Foreign Policy <u>TREASURY</u> Financial Review	<u>COMMERCE</u> Trade <u>NSC</u> National Security
	<u>Economic</u> Development Humanitarian	<u>OMB</u> Budgetary Overview	

SOURCE
USDA 1984.

Reprinted in International Trade and Development: Hearing Before the Subcomm. on International Development Institutions and Finance of the House Comm. on Banking, Finance and Urban Affairs, 99th Cong., 1st Sess. 35 (1985).

APPENDIX B

Title II Program Development and Implementation



Agency Responsibility:

Primary program responsibility rests with AID. Operational responsibilities for Title II activities are carried out by three types of program sponsors: private voluntary agencies (PVOs); intergovernmental organizations, primarily the UN/FAO World Food Program (WFP); and recipient governments (Country).

Reprinted in International Trade and Development: Hearing Before the Subcomm. on International Development Institutions and Finance of the House Comm. on Banking, Finance and Urban Affairs, 99th Cong., 1st Sess. 36 (1985).