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Shaping Globalization: The Role of Human Rights - Comment on the Grotius Lecture by Mary Robinson

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SHAPING GLOBALIZATION: THE ROLE OF HUMAN RIGHTS -- COMMENT ON THE GROTIUS LECTURE BY MARY ROBINSON*

KO-YUNG TUNG**

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INTRODUCTION

Good evening. Commissioner Robinson, distinguished guests, ladies and gentlemen. Needless to say, I am not only honored to be

* *Editor's Note:* The following is a revised version of a response to the Grotius Lecture presented at the American Society of International Law's ("ASIL") 97th Annual Meeting on April 2, 2003. The Grotius Lecture Series is co-sponsored by the American University Washington College of Law, the ASIL, and the International Legal Studies Program. The purpose of the Grotius Lecture Series is to open the ASIL forum to distinguished scholars for discussion about new and important voices that might not be heard in international law and to create expanded space and opportunities to explore the intellectual underpinnings of international law and the issues of our time.

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here, but also terrified to be before such a distinguished, knowledgeable, and hypercritical audience.

Before the boxing gloves come off, allow me to acknowledge my thanks to the organizers of this event: the American Society of International Law and the International Legal Studies Program of American University's Washington College of Law. I am, indeed, honored to be a Distinguished Discussant at the Fifth Annual Grotius Lecture.

While I am somewhat optimistic that I shall succeed in being a "discussant," I fear that I may not succeed in being "distinguished" at it. To comment upon Commissioner Robinson's lecture is both easy and difficult at the same time. It is easy because I agree with everything she has said; it is difficult because I have nothing to add to what she has said.

Therefore, I hope you will allow me to discuss Commissioner Robinson's lecture from a perspective that I know something about – that is, the World Bank perspective and role regarding the promotion of human rights. At this point, may I remind you that I am speaking in my personal capacity and not as a World Bank official. As of yesterday, I have completed my term as Vice President and General Counsel of the World Bank.

I. THE WORLD BANK AND INTERNATIONAL HUMAN RIGHTS

The issue of the World Bank's position with regard to international human rights was vividly, tangibly, and most dramatically presented to me during the first week after joining the World Bank in December of 1999.

Before joining the World Bank, I had served for many years on the Advisory Board of Human Rights Watch based in New York. A week before Christmas, a letter was sent by the Executive Director of Human Rights Watch, addressed to the President of the World Bank and also to me. He argued forcefully that the Bank must suspend disbursement of a U.S. \$100 million second tranche of a loan to

Russia, scheduled to be released in two days.¹ What precipitated that letter was the announcement by the Russian Government that it would bomb Grozny, the capital of Chechnya, right before Christmas.² This posed a great dilemma for me because I had to advise the World Bank President on what actions to take. The issue before me was the following: Given the human rights situation in Chechnya, legally, can we, or must we, suspend a U.S. \$100 million loan committed to Russia that would be used to assist its coal miners who were being demobilized from Siberia to be relocated to other areas and to be retrained in other skills? These very poor people, the ultimate beneficiaries of the loan, had nothing to do with the war in Chechnya. The Russian Government had decided that it would vigorously destroy the separatist terrorists in Chechnya.³ Being a lawyer, I scrutinized the loan documents to ascertain the terms and conditions of the loan. While there was no express human rights conditionality, I noticed that one of the technical conditions had not yet been completely fulfilled. Accordingly, disbursement of the tranche was postponed until that condition was fulfilled, fortunately avoiding disbursement while Russian forces bombed Grozny during the Christmas season. When the condition was fulfilled, the tranche was released. This prompted Human Rights Watch to remark:

The World Bank today set aside concerns about financing Russia's war in Chechnya and disbursed [U.S.] \$100 million to the Russian government. "We are seriously disappointed by the Bank's decision The Bank's stated commitment to addressing the 'human aspects' of development

1. See Press Release, Human Rights Watch, No Financing for Russia's War in Chechnya: Rights Group Presses World Bank to Withhold \$100 Million (Dec. 15, 1999) (appending a copy of the letter to World Bank President James Wolfensohn, arguing that the World Bank withhold the loan payment until Russia ended its human rights violations in Chechnya), available at <http://www.hrw.org/press/1999/dec/chech1215.htm> (last visited Sept. 23, 2003).

2. See generally Dave Montgomery, *In Grozny, Two Months Spent Huddled Underground in Fear*, PHILA. INQUIRER, Dec. 15, 1999, at A21 (reporting on a Russian ultimatum to destroy the Chechnyan capital, Grozny, in response to terrorist attacks in Russia).

3. See *id.* (describing Russia's military assault on Chechnya, which has become "a full scale war").

rings hollow when its funds are paid directly to a government pursuing the kind of abusive campaign we are witnessing in Chechnya.”⁴

As a former Advisory Board Director of Human Rights Watch, I was pained to read that. But I still believe that the decision to disburse the funds that help the poor miners in Siberia was a correct one, despite my personal concerns about human rights in Chechnya.

In her lecture, Commissioner Robinson stated as follows:

My message today can be summed up simply. If we want globalization to work for all the world's people – which was the priority of the world's leaders at the U.N. Millennium Assembly in September 2000 – then multilateralism and respect for international law, in particular, international human rights law, must work as well.⁵

She concluded by noting as follows:

But one point cannot be denied. There are not two worlds – rich and poor. There is only one. It is for us to decide if we are committed to working together to shape it into one which is based on human rights and social justice as the best hope of achieving peace and security for all people.⁶

Her conclusion echoed her earlier quote of World Bank President Jim Wolfensohn:

The events of 11 September, 2001, helped drive home the message to people everywhere that there are not two worlds – rich and poor. There is only one. . . . Today, more and more people agree that poverty anywhere is poverty everywhere. Our collective demand is for a global system

4. See Press Release, Human Rights Watch, Human Rights Watch Deplores World Bank Decision on Russia Funds: Bank Disregards Serious Risk of Funding Abusive War in Chechnya (Dec. 28, 1999) [hereinafter Decision on Russia] (quoting Holly Cartner, the Executive Director of Europe and Central Asia division of Human Rights Watch), available at <http://www.hrw.org/press/1999/dec/chech1228.htm> (last visited Sept. 23, 2003). Human Rights Watch further argues that the transferring funds to Russia would implicate the Bank in Russia's human rights abuses. *Id.*

5. Mary Robinson, *The Fifth Annual Grotius Lecture Shaping Globalization: The Role of Human Rights*, 19 AM. U. INT'L L. REV. 1, 4 (2003).

6. *Id.* at 26.

based on equity, human rights and social justice. Our collective quest for a more equal world is also the quest for long-term peace and security.⁷

Now when the World Bank President and the United Nations High Commissioner for Human Rights say identical things, why is it that many people view the World Bank as not being aligned with, if not inimical to, international human rights?⁸ My view is that the World Bank is basically aligned with international human rights, but I believe that it can, and should, be more affirmatively and actively supportive.

II. THE DICHOTOMY BETWEEN POLITICS AND ECONOMICS IN INTERNATIONAL ORGANIZATIONS POST WORLD WAR II

In order to understand this gap in reality and perception, it is helpful to look at the historical origins and evolution of our international organizations. The United Nations was created immediately after World War II with the main mission to establish peace and security around the world.⁹ Accordingly, its mandate was essentially political in nature. On the other hand, the World Bank and its sister organization, the International Monetary Fund (“IMF”), were actually created before the United Nations, back in 1944, even before the end of World War II.¹⁰ With victory in sight, the Allied

7. James D. Wolfensohn, *Choosing a Better World*, ASIA TIMES, Jan. 22, 2003 (indicating that the World Bank is paying refreshed attention to global problems such as economic and social issues), available at http://www.atimes.com/atimes/Global_Economy/EA22Dj01.html (last visited Sept. 10, 2003).

8. See, e.g., Decision on Russia, *supra* note 4 (criticizing the World Bank for disbursement of funds to Russia during a time of human rights abuses in Chechnya).

9. See United Nations, About the United Nations/History (describing the history and purpose of the United Nations and the promulgation of the U.N. Charter on June 26, 1945), available at <http://www.un.org/aboutun/history.htm> (last visited Sept. 23, 2003).

10. See The Bretton Woods Project, Background to the Issues (stating that forty-three countries that met at Bretton Woods conceived of the World Bank and IMF during World War II to help rebuild Europe in post-war reconstruction efforts), available at <http://www.brettonwoodsproject.org/background/index.shtml> (last visited Sept. 23, 2003).

Powers met at Bretton Woods, New Hampshire, to design a new international architecture for the post-war landscape that would feature four distinct cardinal pillars: one would be the United Nations; another would be the IMF focusing on the international monetary policies; another would be the World Bank focusing on reconstruction and development; and fourth, an international trade organization, which did not come to pass until the recent creation of the World Trade Organization (“WTO”).¹¹

As connoted in its formal name, the International Bank for Reconstruction and Développement (“IBRD”), the World Bank’s designated function was to be a bank to finance primarily the reconstruction of the bombed-out factories of Western Europe and the development of roads, dams, and other infrastructure in the Third World.¹² Each of the international institutions had its distinct function, character, and modality. Oversimplifying, the United Nations was in charge of international politics, and the Bretton Woods Institutions in charge of international economics. Thus, as Commissioner Robinson had noted, two separate “languages” had developed. She talked about the need for “bilingualism” – the need for greater coherence between economic development and human rights.¹³ As she implied, there still are two separate languages spoken. Politics is spoken at the United Nations; economics is spoken at the World Bank and IMF. This dichotomy between economics and politics was very much in the minds of the framers at Bretton Woods. The then prevalent economic theory believed that politics and economics were not only distinct but could be kept

11. *See id.* (explaining that the purpose of the Bretton Woods conference was to “rebuild the shattered postwar economy and to promote international cooperation”).

12. *See* The World Bank Group, History (stating that one project of the World Bank was to provide a loan of \$250 million to France for post-war reconstruction), available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTARCHIVE/S/0,,contentMDK:20053333~menuPK:63762~pagePK:36726~piPK:36092~theSitePK:29506,00.html> (last visited Sept. 23, 2003).

13. *See* Robinson, *supra* note 5, at 2 (remarking on the importance of “[fostering] greater coherence between different legal and institutional frameworks” to deal effectively with the issues of globalization).

separate. This dichotomy was enshrined in Article 4, Section 10 of the World Bank's Charter, which reads as follows:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.¹⁴

This dichotomization of disciplines, or division of labor, between the World Bank and the United Nations worked quite well for the most part, until they clashed. This clash was first most dramatically manifested in the case regarding Portugal and South Africa. In 1960, the U.N. General Assembly adopted the Declaration on Granting of Independence to Colonial Countries and Peoples.¹⁵ In furtherance of the Declaration, the General Assembly adopted resolutions appealing:

[T]o all the specialized agencies of the United Nations, and in particular the International Bank for Reconstruction and Development and the International Monetary Fund, and requests them to refrain from granting Portugal any financial, economic or technical assistance so long as the Portuguese Government fails to renounce its colonial policy, which constitutes a flagrant violation of the provisions of the Charter of the United Nations.¹⁶

14. International Bank for Reconstruction and Development Articles of Agreement (amended Feb. 16, 1989), Art. 4, § 10, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049557~menuPK:63000601~pagePK:34542~piPK:36600~theSitePK:29708,00.html> (last visited Sept. 23, 2003).

15. *See Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514(XV), U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1960) (advancing the right to self-determination and calling on states to “respect [the] sovereign rights of all peoples and their territorial integrity”), *available at* <http://www.un.org/Depts/dpi/decolonization/docs/res1514.htm> (last visited Sept. 23, 2003).

16. *Territories Under Portuguese Administration*, U.N. GAOR Special Comm. on the Situation with Regard to the Implementation of the Declaration on the

Similar resolutions were adopted with respect to South Africa.

Despite numerous other similar resolutions subsequently adopted by the General Assembly requesting the World Bank to refrain from lending to Portugal for its colonial policy and to South Africa for its apartheid policy,¹⁷ the World Bank ignored these requests and in 1966 granted a U.S. \$30 million loan to Portugal and a U.S. \$20 million loan to South Africa. A month later, the General Counsel of the World Bank appeared before the U.N. General Assembly. Citing both Article 4, Section 10 of the Articles of Agreement of the World Bank, and the 1947 Relationship Agreement between the United Nations and the World Bank, he maintained that the Bank was not required to comply with the resolutions of the United Nations.¹⁸ Moreover, since the U.N. General Assembly Resolution was a "political" act, compliance with it would violate Article 4, Section 10.

Query: How would this have concluded if this had happened today?

It should be noted that while the General Counsel's opinions carry enormous weight, the ultimate authority in interpreting the Articles of Agreement rests with the Bank's Executive Directors, of whom there are twenty-four representing the 184 member countries.¹⁹

Granting of Independence to Colonial Countries and Peoples, 22d Sess., 363d mtg., ¶ 6, U.N. Doc. A/AC.109/124 (1965).

17. See Fergus MacKay, *Universal Rights or a Universe unto Itself? Indigenous Peoples' Human Rights and the World Bank's Draft Operational Policy 4.10 on Indigenous Peoples*, 17 AM. U. INT'L L. REV. 527, 550 (2002) (describing the World Bank's refusal to comply with the United Nations' request to withhold loan disbursements to Portugal and South Africa based on the argument that the "political prohibition in its Articles preclude loans refusal for any non-economic reasons").

18. See generally John D. Ciorciari, *The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement*, 33 CORNELL INT'L L.J. 331, 352 (2000) (noting that a statement circulated by then IBRD President George Woods proposed that the "Bank treat the loans to Portugal and South Africa as it would treat any other loans, contemplating human rights abuses only to the extent they represented economic concerns").

19. See International Bank for Reconstruction and Development Articles of Agreement, *supra* note 14, art. 9 (describing the process of review for any question of interpretation of the provisions of the Agreement).

The world has indeed changed, most drastically, since the 1960s. Apartheid is dead. Colonies have been freed. The Cold War is over. The Berlin Wall has come down. Democracy, human rights, and the rule of law are universally espoused, or at least universally given lip service.

III. EXTERME POVERTY AS A VIOLATION OF HUMAN RIGHTS AND THE ROLE OF THE WORLD BANK IN POVERTY ALLEVIATION

As the former Vice President and General Counsel of the World Bank, I can say that the World Bank is indeed very much involved in many aspects of human rights. My proposition is that the World Bank should forthrightly and affirmatively endorse and support international human rights. As Commissioner Robinson has so persuasively noted, international human rights is critically important for poverty alleviation. The World Bank's core mission is poverty reduction.²⁰ So it should follow that the World Bank must be concerned about and involved in international human rights. Indeed, World Bank President Wolfensohn said at last year's Annual Meeting: "Their demand is for a global system based on equity, human rights, and social justice. It must be our demand too."²¹ It is time for the World Bank Board and the institution to follow its President's clarion call.

Let me vividly paint the picture of those living in poverty – the clients of the World Bank. Today, with a global population of six

20. See The World Bank Group, About Us (explaining that the World Bank's principal purpose is to aid "the poorest people and the poorest countries"), *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:43912~piPK:36602,00.html> (last visited Sept. 23, 2003).

21. James D. Wolfensohn, A Time to Act, Address to the World Bank Board of Governors (Sept. 29, 2002), *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/PRESIDENTEXTERNAL/0,,contentMDK:20069713~menuPK:232083~pagePK:159837~piPK:159808~theSitePK:227585,00.html#> (last visited Sept. 23, 2003).

billion, almost half live under two dollars a day, of whom more than 1.2 billion people live under one dollar a day.²²

- One-fourth of humanity (1.5 billion) does not have clean water to drink.²³
- One-third (two billion) have no electricity.²⁴
- One hundred twenty million children cannot go to elementary school.²⁵
- Women around the world lack adequate health care. In many poor countries, one mother dies for every one hundred live births (one mother each minute equals sixty women during this talk).²⁶

22. See The World Bank Group, *About Us: What is the World Bank* [hereinafter *What is the World Bank*] (noting that “33,000 children die every day in developing countries”), available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040558~menuPK:34559~pagePK:34542~piPK:36600~theSitePK:29708,00.html> (last visited Sept. 23, 2003).

23. See The World Bank Group, *Social Indicators: Water and Sanitation* (detailing that 1.5 billion people from low and middle income economies cannot access safe water supplies, while in Sub-Saharan Africa less than fifty percent of the population has access to such supplies), available at <http://www.worldbank.org/poverty/data/trends/water.htm> (last visited Sept. 23, 2003).

24. See Paul Brown, *The Quest to Grow Without Grime*, THE GUARDIAN, Aug. 22, 2002, at 22 (reporting that without electricity, these two billion people cook on wood, dung, and charcoal, causing indoor pollution and death), available at <http://image.guardian.co.uk/sys-files/Guardian/documents/2002/08/20/gdn.m1a.020822.022.pdf> (last visited Sept. 23, 2003).

25. See Press Release, Basic Education Coalition, *Basic Education Coalition Presents “School-Day In the Life” Programs at DC-Area Schools* (Nov. 18, 2002) (reporting that two thirds of the 120 million children not in school are girls), available at http://www.basiced.org/2002_releases.php (last visited Sept. 23, 2003).

26. See Save the Children, *State of the World’s Mothers 2001 Country Rankings: The Ten Top and the Bottom Ten* (reporting that on average three quarters of all births take place with no trained professional present), available at <http://www.savethechildren.org/mothers/sowm01/rankings6.shtml> (last visited Sept. 23, 2003).

- Two million children die every year from vaccine-preventable diseases (four children each minute equals 240 children during this talk).²⁷
- Forty thousand die every day from preventable diseases (thirty people each minute equals eighteen hundred during this talk).²⁸
- Forty million live with HIV/AIDS – now the fourth largest killer worldwide, and the leading cause of death in Sub-Saharan Africa. There are thirteen million HIV/AIDS orphans now; a number expected to more than double by 2010.²⁹
- Three million people died of AIDS last year – 8,219 per day, 342 per hour, or 5.7 per minute.³⁰ (Over three hundred during our time together this afternoon – imagine most of the people in this room dead before the hour is through.)
- In Botswana, the life expectancy has dropped from fifty-seven years to thirty-nine years principally because of AIDS.³¹

27. See *State of the World's Vaccines and Immunization Key Facts from the Report* (stating that “[t]he children of the poorest [twenty percent] of the world’s population suffer over half of all deaths from pertussis (whooping cough), polio, diphtheria, measles and tetanus, and [forty-five percent] of all deaths from perinatal conditions.”), available at <http://childrensvaccine.org/files/021129-Messagesen.pdf> (last visited Sept. 23, 2003).

28. See Press Release, Oxfam America, Oxfam International Report: Debt Relief Still Failing the Poor (July 19, 2001) (noting that 40,000 persons die daily from preventable diseases because there are no affordable drugs available, and no strong healthcare delivery systems), available at <http://www.oxfamamerica.org/news/art655.html> (last visited Sept. 23, 2003).

29. See generally Karen A. Stanecki, *The AIDS Pandemic in the 21st Century*, Draft Report, XIV International Conference on AIDS, Barcelona, July 2002, at 1 (stating that nine percent of all adults in Sub-Saharan Africa are HIV positive), available at http://www.usaid.gov/pop_health/aids/Publications/docs/aidsdemoimpact.pdf (last visited Sept. 23, 2003).

30. See Tommy G. Thompson, U.S. Secretary of Health and Human Services, *Public Health Knows No Borders* (stating that three million people died from AIDS last year), available at <http://usinfo.state.gov/journals/itps/0803/ijpe/pj81thompson.html> (last visited Sept. 24, 2003). Mr. Thompson further predicts that at least another sixty-eight million people will die from AIDS over the next twenty years. *Id.*

31. See, Press Release, U.S. Agency for International Development, Life Expectancy Will Drop Worldwide Due to AIDS (July 8, 2002) (reporting that

- A child born today in Zambia or Zimbabwe is more likely to die of AIDS than to reach maturity.³²

While these statistics are staggering, they do not tell the whole story: to understand what poverty really is we must listen to the voices of the poor. The Bank recently published the results of a decade-long project interviewing over 60,000 poor people in sixty countries.³³ Here is what some of them have to say:

- A blind woman from Tiraspol, Moldova: “For a poor person everything is terrible – illness, humiliation, shame. We are cripples; we are afraid of everything; we depend on everyone. No one needs us. We are like garbage that everyone wants to get rid of.”³⁴
- An old woman from Ghana: “If you don’t have money today, your disease will lead you to your grave.”³⁵
- Vares, Bosnia and Herzegovina: “No one helps, not anyone. . . . I would gladly help someone, but how, when I am in need of help myself. This is misery. Our souls, our psyches are dead.”³⁶
- Uganda: “Even if a woman is given a chicken or goat by her parents, she cannot own it. It belongs to her husband. A wife

Botswana’s life expectancy, currently at thirty-nine years, will be twenty-seven years by 2010 due to the AIDS epidemic), *available at* <http://www.usaid.gov/press/releases/2002/pr020708.html> (last visited Sept. 23, 2003).

32. *See id.* (detailing that more infants will die from AIDS than from all other causes).

33. *See generally* DEEPA NARAYAN ET AL., WORLD BANK, VOICES OF THE POOR: CAN ANYONE HEAR US? VOICES FROM 47 COUNTRIES (1999) [hereinafter VOICES FROM 47 COUNTRIES] (providing information on access to health care and education for the poor), *available at* <http://www.worldbank.org/poverty/voices/reports/canany/vol1.pdf> (last visited Sept. 23, 2003).

34. *Id.* at 52.

35. *Id.* at 87.

36. DEEPA NARAYAN ET AL., WORLD BANK, VOICES OF THE POOR: CRYING OUT FOR CHANGE 147 (2000) [hereinafter CRYING OUT FOR CHANGE], *available at* <http://www.worldbank.org/poverty/voices/reports/crying/cry.pdf> (last visited Sept. 23, 2003).

may work hard and get a chicken. If it lays eggs, they belong to the husband.”³⁷

- A man in Indonesia: “We keep girls from school to protect them from being kidnapped by outsiders, as that will mean the family will lose the bride price the girl would have brought them.”³⁸
- A Central Asian refugee in Moscow: “Our life is a prison. . . . We are hiding from the police. They tear up our registration certificates and say that we don’t have any rights because we come from a different ethnic group.”³⁹
- A mother in South Asia: “When my child asks for something to eat, I say the rice is cooking until he falls asleep from hunger – for there is no rice.”⁴⁰

Thus, poverty is not merely the deprivation of money.

- Poverty is the deprivation of education.
- Poverty is the deprivation of food.
- Poverty is the deprivation of health.
- Poverty is the deprivation of shelter.
- Poverty is the deprivation of justice.
- Poverty is the deprivation of human dignity.

Thus extreme poverty is an egregious breach of the Universal Declaration of Human Rights.

37. VOICES FROM 47 COUNTRIES, *supra* note 33, at 138.

38. VOICES OF THE POOR: FROM MANY LANDS, WORLD BANK 203 (Deepa Narayan & Patti Petesh eds., 2000), *available at* <http://www.worldbank.org/poverty/voices/reports/lands/full.pdf> (last visited Sept. 23, 2003).

39. CRYING OUT FOR CHANGE, *supra* note 36, at 209.

40. James D. Wolfensohn, Coalitions for Change, Address to the Board of Governors (Sept. 28, 1999), *available at* <http://www.worldbank.org/html/extdr/am99/jdw-sp/jdwsp-en.pdf> (last visited Sept. 23, 2003).

IV. RECENT DEVELOPMENTS AND THE BILINGUAL LANGUAGE OF POLITICS AND ECONOMY

As Commissioner Robinson had mentioned, in the year 2000, the international community, including the United Nations and the World Bank, adopted the Millennium Development Goals, calling for the cutting by half the number of people living in poverty, giving universal primary education, and achieving gender equality by the year 2015, a mere dozen years from today.⁴¹ The following year at the Summit on Financing for Development in Monterrey, Mexico, the developed countries acknowledged their obligations to finance development, and the developing countries recognized their obligations to adopt correct policies and reforms.⁴² Monterrey was followed by the World Summit on Sustainable Development in Johannesburg last September.⁴³ There the world leaders reiterated the Millennium Development Goals and urged that “no effort be spared in the promotion of the rule of law,” recognizing that the rule of law, which includes human rights, was central to the achievement of the Millennium Development Goals.⁴⁴ Thus, just as the Berlin Wall came

41. See The World Bank Group, *Goals for the 21st Century: Millennium Development Goals (MDGs)* (highlighting that “improvements in female education, health programs, and income growth” could result in the potential achievement of the Millennium Development Goals), available at <http://www.worldbank.org/poverty/mission/up4.htm> (last visited Sept. 23, 2003).

42. See Press Release, United Nations, *Monterrey Summit: Critical Political Support Expected for an International Convention on Corruption* (Mar. 6, 2002) (describing the goals of the Monterrey Summit, including taking measures against corruption to protect the world economies), available at <http://www.unog.ch/news2/documents/newsen/m0205e.htm> (last visited Sept. 23, 2003).

43. See generally United Nations Division for Sustainable Development, *Johannesburg Declaration on Sustainable Development* (declaring the shared vision of the global community for future sustainable development and to “building a humane, equitable and caring global society”), available at http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm (last visited Sept. 23, 2003).

44. See generally *United Nations Report of the World Summit on Sustainable Development*, at 65, U.N. Doc. A/CONF.199/20 (2002) (listing respect for the rule of law and strengthening of governmental institutions as an objective of sustainable development efforts by the global community), available at

down, the wall between politics (in this case human rights) and economics (in this case development) must come down, with the recognition that politics affects economics, that economics affects politics, and that in order to meet the Millennium Development Goals, both politics and economics must work hand in glove – the bilingualism that Commissioner Robinson spoke of.

World Bank President Jim Wolfensohn often recounts the story when he first joined the Bank. He had remarked at one Board meeting that corruption was a major problem in the world and that it vitiated our efforts to fight poverty. He says that my predecessor General Counsel took him aside and said to him: “Jim, we do not use the ‘C’ word here” because corruption is political and, therefore, outside the Bank’s mandate. To President Wolfensohn’s credit, he did not heed his lawyer’s advice; today, the “C” word is not only allowed to be spoken, but anti-corruption is a major focus of the World Bank.

A year ago, at an internal conference at the World Bank, I used the “HR” word – human rights. I was immediately taken to task by some Executive Directors and some staff members of the World Bank as they said that human rights were political and, therefore, outside our mandate. Thenceforth, I started to use the “HD” word – “human dignity”; and the “ROL” term – The Rule of Law. I see no reason why the World Bank cannot use the word “human rights” as it is already involved in human rights by recognizing the right to education, the right to health, the right to justice.

V. RULE OF LAW

In 1991, my predecessor defined the rule of law as consisting of five elements:

- (1) there is a set of rules which are known in advance;
- (2) such rules are actually in force;
- (3) mechanisms exist to ensure the proper application of the rules and to allow for departure from them as needed according to established procedures;

- (4) conflicts in the application of the rules can be resolved through binding decisions of an independent judicial or arbitral body; and
- (5) there are known procedures for amending the rules when they no longer serve their purposes.⁴⁵

The rule of law as defined by Mr. Shihata was acceptable to the World Bank of the 1980s. The twenty-first century requires a new definition of the rule of law for the World Bank. With the assistance of the World Bank's International Advisory Council on Law and Justice, whose members include Lord Chief Justice Woolf of the United Kingdom, U.S. Supreme Court Justice Stephen Breyer, and former Chief Justice of India Bhagwati, I have come up with the following definition of the rule of law. For the rule of law to prevail, the following four essential elements must exist:

- (1) The government itself is under the law.
- (2) Every person in society is treated equally before the law.
- (3) Justice is accessible to all.
- (4) The human dignity of each individual is recognized and protected by law.

This reflects the change from the *rules-based* rule of law as defined by Mr. Shihata to what I call the *value-based* rule of law in my definition. This definition accords with what Nobel Laureate Amartya Sen has said, as quoted by Commissioner Robinson: “[T]here is a compelling need in the contemporary world to ask questions not only about the economics and politics of globalization, but also about the *values* and *ethics* that shape our conception of the global world.”⁴⁶

Rules and laws are not value-neutral; they must reflect as well as support our common values – to me, these values are reflected and

45. Ibrahim F.I. Shihata, *The World Bank and Governance Issues in Its Borrowing Members*, in *THE WORLD BANK IN A CHANGING WORLD* 85 (Franziska Tschofen & Antonio R. Parra eds., 1991).

46. Amartya Sen, *Globalization: Value and Ethics*, Address at the Falcone Foundation (May 23, 2001), available at <http://www.fondazionefalcone.it/english/sen.html> (last visited Sept. 23, 2003) (emphasis added).

implemented by the recognition of the inherent human right to dignity.

CONCLUSION

Commissioner Robinson has also clearly stated the challenge before us:

[W]e all know that the challenges are enormous. The Monterey Conference . . . addressed the investments needed to ensure access to education, health care, and social welfare for children and the elderly and to provide basic infrastructure, improved governance, and protection of the environment. . . . It is a tragic failure of political will that the world has not been able to raise more than a small fraction for development spending of the amount it spends for the weapons of war.

. . . While few would question that the primary responsibility for protecting human rights remains with national governments, there is increasing recognition that it is essential to ensure human rights obligations also fall where power is exercised, whether it is in the local village, the boardrooms of transnational corporations or in the meeting rooms of the World Trade Organization (“WTO”), the World Bank, or the International Monetary Fund (“IMF”). . . . This, for me, is the essence of a more values-led, ethical globalization.⁴⁷

Commissioner Robinson had put the challenge directly to the World Bank. The World Bank should accept the challenge. It does have enormous resources; it lent U.S. \$20 billion last year. In providing financial and technical assistance in such areas as education, health, and legal and judicial reform, the World Bank is, indeed, involved in certain aspects of human rights. It is to be commended for this; but it can do more and with a more clearly articulated position.

Thus, I propose that it is vital for the World Bank to recognize the premises underpinning its position on human rights. The core premises, I submit, can be articulated as follows:

- The World Bank’s mission is to fight poverty.

47. Robinson, *supra* note 5, at 20.

- Extreme poverty is often a manifestation of extreme deprivations of human rights.
- As an international organization whose member states have international and domestic human rights obligations, the World Bank should assist its members in fulfilling their human rights obligations, consistently with its mandate, competence, and resources.
- The World Bank is not a world government that legislates human rights obligations for its members, nor is it a world policeman that enforces its members' existing human rights obligations.

I conclude by joining Commissioner Robinson in our united front in promoting the innate dignity of every man, woman, and child.

Thank you very much.