Opening Remarks

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There was a time when this conference would have been most unusual. It is an international discussion but our topic is the erstwhile internal issue of governance and the administration of justice. Indeed I recall a local survey about judicial delay and corruption in the Philippines, funded by an American foundation, and during the public presentation of the survey results, a Filipino judge stood up to ask what a foreign group was doing, intruding into a sovereign matter. He pointed, quite correctly, that the justice system is a preeminently public concern monopolized by government and impervious, so it seemed, to international oversight.

Perhaps until the early 90s that argument was still tenable. Today, however, international financial institutions (or IFIs) – the World Bank, the IMF, the ADB, the USAID – have candidly focused on "governance and the rule of law", transparency and anti-corruption. Whereas before the activists working in NGOs cried "imperialism" against World Bank projects and the IMF conditionalities, today they hitch a ride upon these programs and work hand-in-hand in shared crusades.

Our topic therefore is the convergence of two entirely distinct legal developments. One branch is dominated by "law and development", the other by "human rights." The first is concerned with economics, the other with justice. The first is concerned with enlarging the social surplus, the pie, so to speak; other, with how the pie is cut up and shared. The first is concerned with needs, the other with rights. The first is concerned with responsiveness by government, the other with accountability to the governed. And thus they converge.

Yet for the first forty years of the existence of the IMF and the World Bank, they always insisted that their charters prohibited them from taking into account political considerations, and had been oblivious to the grave human costs of their programs. A hydro-electric dam must be built to generate power, no matter that it will displace tribal communities from their ancestral homes. Electricity is good economics, tribal deaths are a side-story because they deal with human rights. Joseph Gold, then General Counsel of the World Bank, wrote an essay saying "political considerations are

prohibited by the charter of the World Bank." Besides, he said, these social questions are domestic in character, and an international organization has no business poking its nose into matters internal to the sovereign. (I wrote my entire LL.M. thesis arguing against this in 1985!)

Today, these IFIs sing a different tune. First, stated most plainly, their financial assistance was going down the drain – often, down the pockets of corrupt government officials – and they realized that their work would amount to nothing unless they first corrected the domestic structures that insulated government from the governed. Second, "human rights" concerns, though political in origin, nonetheless have economic consequences. Witness for instance tribal protests to sabotage the Chico dam project in northern Philippines. The political, indeed, has dollars-and-cents consequences. Finally, legal structures, they say, are also economic resources, value-generating or value-consuming in their own way. Hence they call for "stakeholder participation" (or what we non-bureaucrats would call "democracy"), "transparency" (or what we also call accountability), or "governance deficit" (or what ordinary people feel when they do not trust their government).

Our forum today thus breaches the wall between the political and the economic, the claims of justice and the ways of the market, the domain of the international and the realm of national sovereigns. But it breaches yet other walls. One is the dilemma of applying Western liberal legality in Asian contexts, where culturally-rooted notions of rights are not internalized and where the social infrastructure for the individual – the egoistic self in Rawlsian logic – does not exist. Witness Rawls, in A THEORY OF JUSTICE, saying that every person possesses rights that even the good of society cannot override, versus the collectivist notion that the good prevails over rights, that justice is always "situated" and contextual, that rights are not fixed markers but fluid, eternally negotiable bargains – all deeply ingrained Asian impulses. There is the danger then that by focusing on law, we examine the veneer of legality that sits atop a core of soft norms. The second dilemma is that of applying Western liberal legality in transition economies, socialist economies now partially marketizing, where what Western democrats hope is the rule *of* law becomes a vehicle for local elites' rule *by* law, i.e., the use of law as an instrument of state power, thus liberalizing the market without liberating its people.

Ah, yes, there is yet something else unique about this forum. It used to be that comparative studies about Asian legal systems were invariably done outside Asia, perhaps in Europe, often in America. One such international conference I attended was

held in Hong Kong, but it organized by Stanford Law School. Other meetings were organized by the Harvard Law School's East Asian Legal Studies Program. Finally, the Asian Yearbook of International Law is published – surprise – in Rotterdam, by a Dutch professor of Chinese blood and Indonesian descent. Today's gathering, therefore, is one of the very first forums on Asian law, development and justice to be held in Asia and be organized by fellow Asians. On that note, today's meeting is truly historic, and I am delighted that you have chosen my country for the honor.