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**November 15, 2005
Workshop on Legal Convergence and Development
Opening remarks**

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Ladies and gentlemen; good morning. It is a privilege for me to be able to participate in this conference, and to have the opportunity to discuss with such a prestigious group the topic of legal convergence and development.

Mesdames et Messieurs. C'est un honneur de participer à cette conférence, et de m'entretenir avec une assemblée si prestigieuse du rôle de la convergence dans le développement.

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Convergence is a concept that is difficult to define. To us, legal convergence implies a workable interface between diverse legal systems. It is a recognition and expression of underlying principles such as transparency, accountability, predictability, fairness and efficiency that are commonly understood as being important across all legal systems and are also fundamental to the rule of law. Convergence of law in itself is not so

much an objective of the World Bank's activity but a result of globalization and an evolving common understanding of what is important to economic growth, poverty reduction and equity.

From the World Bank's perspective, we see three vectors of legal convergence. The first vector of legal convergence is the shared view that an **effective legal framework that encourages the development of the private sector** is essential to sustain economic growth with equity. We believe that the private sector acts as a powerful catalyst for market-based development. For example, in infrastructure, studies have shown that in developing countries the public sector is currently spending only 2%-4% of GDP on infrastructure. This has moved the World Bank and other international institutions to articulate the elements of the "legal framework" common to many successful market economies. A country which possesses a stable and predictable legal system and has efficient justice sector institutions is better able to attract and compete for private investment. Indeed, while juridical security is not the only factor relevant to capital investors, there are multiple studies that show that all things being equal, a country that has a legal system that includes straightforward, consistent and predictable legislation, as well as transparent and efficient courts, will generally be in a better position to attract more foreign direct investment than one that does not. Additionally, whereas an inadequate legal system may not be decisive in attracting foreign investment, the lack of legislative and institutional reform is a significant barrier to retaining such investment.

The development of the legal framework of market economies has been an important focus of the Bank's activities, and my office has been very much involved in assisting clients countries develop an enabling environment for enhancing private sector growth, foreign investment, and access to finance. In this respect, the World Bank helps in the creation of an enabling environment through a combination of diagnostics and studies. They allow us to identify the weaknesses as well as the strengths of particular legal and judicial systems. We know that a specific legal system is not a determinant of development. Consequently, the principal objective of these tools is to create an awareness of existing problems and to support the political will in our member countries to generate the necessary reforms. For instance, the Legal Vice-Presidency of the World Bank carries out extensive evaluation of the credit environment in its client countries. These studies comprehensively evaluate the legal regime relating to secured transactions, contract enforcement, property rights protection, and insolvency and restructuring mechanisms. They benchmark legal systems with respect to international best practices and point out the areas with scope for improvement, with due regard to the peculiar needs of the countries that arise from their specific socio- cultural context. As part of this program, we have conducted extensive diagnostic work with many countries throughout the world which has led to technical legal assistance and capacity building efforts in these vital areas.

The second vector is **economic interdependence**. Growing internally is not sufficient. No country today can hope to expect robust and sustained economic growth without moving beyond domestic markets and opening up

to regional and international markets. The increasing number of regional free trade agreements and international organizations is a testimony to this fact. The flow of capital, goods, services and know how has increased the need to ensure that diverse legal systems can work together without impeding international commerce. The commercial necessity of cross border transactions has also given rise to common regimes established by treaties and transnational mechanisms for dispute resolution.

The third vector of convergence is the **recognition that there are certain common values and concerns** that transcend national boundaries – basic human rights, as recognized by the international community; concerns about our environment and irreversible changes that actions in one country or area may trigger across the world. These are reflected in the World Bank policies, such as those on environment and resettlement that form an integral part of all World Bank projects. However, as discussed by Philippe Sands in his latest book *Lawless World*, most of the international legal system which has been built during the last fifty years in trade, environment, and human rights is under severe challenge.

Human rights are also progressively becoming an explicit and integral part of the Bank's work. With the evolution of the Bank's work from bricks and mortar infrastructure to the large scale inclusion of social development, human development and institutional reform, the Bank has made major contributions to the substantive furtherance of a broad array of human rights in a range of fields. The "rule of law" itself includes access to justice,

recognition before the law, and the independence of the judiciary all of which are protected under international human rights law.

For any system of laws to be successful, there must be a recognition and acceptance of the primacy of the rule of law, and the need to address international crime. In particular, it is now recognized that corruption is undermining economies, corrupting entire governments, and diverting the benefits of globalization itself.² As Moisés Naim puts it in his latest book “*Illicit*”, globalization has also affected how crime is now organized and it requires countries to change their approach to new criminal patterns. We need to ensure that private investment is not hindered by these illegal activities by helping countries to modernize legal and judicial systems that fight crime effectively in its new global incarnation.

In spite of being a relatively new area for multilateral lending institutions, the World Bank has to date already been involved in 1,300 justice sector activities which form part of its regular lending operations on a world wide level. Moreover, we have developed 30 loans exclusively dedicated to support judicial reform activities and the rule of law. Perhaps the most important lesson is that justice sector reform is a multi-dimensional effort that requires an integral strategy, which by definition must be multidisciplinary, integrated, and coordinated.

² Moisés Naim, *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy*, October 2005.

In recognizing the importance of the rule of law to development, I would like to share with you a new initiative that we at the World Bank, propose to undertake, and which can be referred to as “Measuring Justice”. This project would develop empirically-based indicators that will help us to evaluate whether a country system actually delivers justice, and compare a country’s system to other countries across the world. For example, indicators such as case clearance rates and size of backlogs could be used to measure timeliness and efficiency of a justice system; indicators such as the quality and quantity of legal aid and public defender services could be used to measure fairness and accessibility of a justice system; and indicators such as the degree to which decisions are written and published and explain the legal reasoning on which they are based might help measure accountability of a justice system.

With this project, we aim to establish a baseline against which to measure the cumulative effect, at the country level, of the impact of reform efforts. It will contribute to country capacity to manage for results, and provide an organizing force for reform efforts.

These reflections describe our general approach towards law reform. As I mentioned in the conference organized by the Paris Bar Association in November 2004 and again in May 2005, legal reforms are most likely to be effective when they are undertaken with due regard for existing legal traditions and the principles of sovereignty that contribute to the diversity of systems that comprise the international community. Our role is to strengthen and empower the legislative and governmental institutions within

client countries. We provide comparative knowledge and tools for development of robust, informed and participatory legislative debates. We recognize that laws are a careful balancing of competing policy interests, which the institutions within the country are best suited to do. In the long run, this helps to establish the legitimacy of legislation, which is essential to help sustain the Rule of Law.

To conclude, our aim should be a workable convergence not at the level of uniformity of specific legislation but more at the level of underlying principles (such as transparency, accountability, predictability, fairness and efficiency).

Thank you very much.