INTRODUCTION

- Good evening. It is an honor to receive the Distinguished Service Award from the American Foreign Law Association.

- As an attorney who has practiced law – both in private practice and as part of public service -- in the United States and Peru, I recognize AFLA’s role in promoting, since its inception in 1925, the understanding and application of foreign, comparative and public international law among professional organizations, practitioners, and academics.

- I am particularly pleased to be receiving this award from Robert Helander, current President of AFLA and a friend and colleague for over 30 years. Bob and I first met in Harvard University, _____ [add info re your relationship with Bob Helander]

- I am also very pleased to be take this opportunity to share with you some thoughts about what the World Bank does, what we do in the Legal Vicepresidency of the World Bank, and what we can do together with organizations like the American Foreign Law Association.

- Most you already have some familiarity with the World Bank. Some of you are aware that the World Bank Group consists of several institutions, of which the World Bank is one. I’ll start now with a quick overview of the Bank’s challenge, and our legal practice, and then leave time for questions and discussion.
OUR CLIENTS

A major contrast between the World Bank and private practice is the clientele. Of the 6 billion people in the world, our clients are the:

- 3 billion people who live in poverty on less than $2 a day (1/2 the world’s population).
- 1.2 billion who live on less than $1 a day in what we call absolute poverty (1/5 the world’s population).
- 2 billion people (1/3) who don't have electrical power.
- 1.5 billion people (1/4) who don't have a safe water supply.
- 125 million children who can't afford to go to elementary school.
- 2 million children who die from vaccine-preventable diseases every year. That’s 4 children each minute.
- 42 million living with HIV/AIDS, 95% of whom are in developing countries.

OUR CHALLENGE

- The Bank’s mission as currently defined consists of the alleviation of poverty through economic growth and social equity. Our challenge is to fight all the elements of real poverty. It is not just the lack of physical resources. A major issue is how to attract foreign direct investment (FDI) when the basic infrastructure – roads, telecommunications, etc. – are lacking. From a legal perspective, we need to help our client countries put into place the appropriate legal and regulatory frameworks they need to support that infrastructure and to sustain economic growth and a healthy investment climate.

- Today, the Bank is working in more than 100 developing countries, in every region of the globe: Africa, East Asia and Pacific, Europe and Central Asia, Latin America, Middle East and North Africa, and South Asia.
Altogether, the Bank has 184 member countries – some borrowers, some lenders. These member countries carry ultimate decision-making power for the Bank through the Board of Governors and the Executive Directors.

During 2003, total World Bank Group financial operations were 23.8 billion.

- IBRD: 11.2 billion for 99 new operations in 37 countries
- IDA: 7.3 billion for 141 new operations in 55 countries
- IFC: 3.9 billion for 204 projects in 64 countries
- MIGA: 1.4 billion in guarantees issued.

OUR CHANGING PORTFOLIO

Over time, the World Bank’s lending portfolio has changed dramatically. We’ve moved from a focus on big infrastructure projects (such as dams) to more of a focus on the “soft” sectors (education, health, development of the private sector environment).

- 30 years ago, infrastructure accounted for the majority of our portfolio (58%). Agriculture projects were the next largest component (20%). Finance and private sector development was 15%. Human development (HD) and other sectors were very small.

- Today, HD is the single largest sector (30%). Infrastructure has shrunk to 22% - though it is now on the upswing again. Law and public administration – a category not even shown 30 years ago – is another 22%. Agriculture and rural development are now only 7%.

OUR DECLINE IN LENDING TO MICs

- The Bank’s investment lending to MICs has been cut nearly in half over the last decade, from $12.2 billion to $6.6 billion. The Bank has become too slow in effectively addressing our client’s needs.
The non-financial costs equal the financial costs. As a result, the Bank has lost ground among these borrowers, which can access other sources of financing from Wall Street.

**IMPACT ON LEG**

This evolution – from hard to soft and our shrinking portfolio among MICs -- has impacted what we do in the Legal VPU.

- Previously, we tended to hire primarily transactional lawyers from the private sector who specialized in infrastructure projects. Now, we need not only transactional lawyers, but also lawyers who can advise on regulatory frameworks (e.g., for utilities).

- Anti-corruption is another area of greater focus in recent years. Lawyers are needed to assist countries in strengthening their anti-corruption systems. Internally, lawyers also play a key role in working against fraud and corruption at the staff level and by firms or individuals involved in Bank-financed projects.

- To meet the challenges presented by our changing – and declining portfolio – I have identified four strategic priorities where LEG needs to aggressively pursue to reestablish LEG’s relevance and make it more responsive to the Bank’s needs. These four areas, which I will discuss in detail later, are:

  - Operational responsiveness
  - Advisory skills
  - Simplification and modernization
  - Decentralization

But first, let me give you some general background regarding the LEG VPU.
LEGAL PRACTICE AREAS WITHIN THE WORLD BANK

The World Bank Legal Vice Presidency has about 120 lawyers from around the world, representing about 60 different nationalities (including Oman, Nepal, Brazil, China, Turkey, Eritrea, etc.).

Our lawyers are divided into a 14 legal practice groups, which fall into 3 major divisions, all overseen by the Office of the General Counsel:

- **Five geographically-based Regional Practice Groups** handle the legal aspects of the Bank's lending and grant operations. This is the backbone of the Bank’s operations. These lawyers advise on the legal and policy aspects of Bank-financed operations, including project preparation and implementation; drafting and negotiation of legal documents for each project; and analysis of country legislation. They travel to client countries, and interact with government officials and local lawyers. It is an exciting area of work, dealing with the Bank’s core mission, on the ground.

- **Cross-regional Advisory Practice Groups** provide specialized sectoral advice and services:
  
  o The Environmentally and Socially Sustainable Development and International Law unit advises on environment and natural resources issues such as climate change, biodiversity, industrial pollution, international waters and water resource management; social issues such as indigenous peoples and resettlement; and international law issues governing our relationships with other entities. These lawyers advise other staff on operational policy issues of environmental or social safeguards. They also work closely with the Bank’s Inspection Panel. The Panel is an independent body, reporting directly to the Bank’s Executive Directors, that handles grievances from local peoples who claim to be adversely affected by the Bank’s failure to follow Bank policies in its operations (especially resettlement).

  o The Legal and Judicial Reform unit is dedicated to an area that is a priority for the Bank, and which I am seeking to expand. The
objectives are to strengthen legal and judicial systems and related institutions, ensure sound legal frameworks, and enhance access to justice in the Bank’s borrower countries. Activities run along the full spectrum of legal and judicial reform (LJR) issues and topics, including legal education, legal services, court administration, case management, judicial training and independence, access to justice, and alternative dispute resolution. We have projects in each region – Latin America and the Caribbean, East Asia and Pacific, Africa, etc. We work with the judiciary, bar associations, and other partners, and are looking to build further on our work through such partnerships.

- The Finance, Private Sector and Infrastructure Practice unit is responsible for handling all legal aspects of the Bank’s activities that relate to private sector, finance sector and infrastructure development. This includes advice on: the legal and policy aspects of investment climates; privatization and private sector development; financial sector reforms and assessments including insolvency and creditor rights regimes; central bank and banking law issues; corporate governance; capital markets and accounting reforms; telecommunications and the Bank’s e-strategy; and regulatory frameworks for infrastructure, including public water and other utilities;

- Corporate Practice Groups provide advice on corporate financial, administrative, and institutional matters for the Bank, including legal aspects of the Bank’s own borrowings and investments, financial terms of the Bank’s lending products, and disclosure and financial policy issues; litigation, fraud and corruption, intellectual property, employment law, and the Bank’s privileges and immunities; and procurement and debarment.
LEG’s STRATEGY TO MEET THE CHALLENGES AHEAD

Now then, let me share with you my vision for the LEG VPU. As I mentioned earlier, my strategy for making the LEG VPU more relevant and better positioned to meet the needs of the Bank, is based on four strategic priorities:

- **Operational Responsivess: “From Why Not to How To”**

  - To become more effective, we need to change our attitude. We need to stop focusing on “why not” and focus on “how to.” Need to provide solutions for our clients’ problems, not problems for our clients’ solutions.
  
  - We cannot just be policemen, blindly enforcing the rules. We need to go beyond that and provide proactive, value-added to our clients.
  
  - Client Survey

- **Advisory Services**

LEG needs to strengthen its skills to adequately serve the “Knowledge” side of the Bank. To this end, we are taking the following steps:

  - Focus on strategic areas for the Bank. Practice groups that correspond to each of the Bank’s Networks (ESSD, FPSI, PREM, including LJR activities, and Human Development (i.e., public health policy, education, and labor issues).

  - LMI Strategy

  - “HINGE” Lawyers

  - Must provide one-stop shop for the legal services required by the Knowledge Bank.
• **Simplification & Streamlining**

We operate in an outmoded policy environment. This is an area where LEG (and I personally) will be particularly proactive. Our efforts will concentrate in 4 fronts:

  o POLICIES (Expenditure Eligibility, Disclosure Policy, Extractive Industry Review)

  o PROCEDURES (LAC pilot for eliminating unnecessary LEG clearance requirements)

  o DOCUMENT MANAGEMENT (Hildebrandt International has been retained to improve LEG’s service standards and procedures)

  o LEGAL DOCUMENTATION
    
    ▪ Simplified model legal agreements (e.g, by moving more standard provisions to the General Conditions)
    
    ▪ Electronic drafting system, and Harmonization with other MDBs

• **Decentralization**

Decentralization is a crucial component to recover the market share IBRD has lost in the middle income countries. LEG is dramatically behind on this front. Only 2% of LEG staff are in the field. Closer contact of our lawyers with clients, both internal and external, should prove quite useful to improve LEG's responsiveness. Accordingly a decentralization strategy for LEG has been approved and is being implemented.

  o 7 lawyers will move to the field (Nairobi, Hanoi, Ankara, Belgrade, Buenos Aires, New Delhi, Cairo) before June 30th, 2004
o 8 more lawyers will move to the field (Dakar, Lima, Jakarta, Accra, Dar Es Salaam, Beijing, Mexico City, Islamabad) by end this year.

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○ ICSID

Another area which falls under the responsibility of the General Counsel is the International Centre for the Solution of Investment Disputes (ICSID)

Given the proliferation of Bilateral Investment Treaties containing arbitration provisions, the activities of ICSID have increased substantially:

○ 76 pending ICSID/Additional Facility cases by end of May:
  ▪ 69 ICSID arbitration proceedings (29 against Argentina)
  ▪ 1 ICSID conciliation proceeding
  ▪ 4 Additional Facility Rules proceedings
  ▪ 2 Annulment proceedings

○ 15 requests for arbitration being reviewed for possible registration.

To better position ICSID for this new institutional phase it needs to face, the following steps have been taken:

○ Client survey is ready to be launched
○ Promotion of conciliation, as an alternative to costly and lengthy arbitration
○ Reform of ICSID Schedule of Fees to increase its non-Bank income
○ Diversify & enlarge arbitrators pool
○ Knowledge management and outreach

LEG’S External Contributions
Simultaneously, in addition to the “bread and butter” projects in which LEG participates daily, during the first quarter of this calendar year, LEG has provided, I believe, substantive constructive, legal input in a very significant group of major policy and legal areas.

- Indigenous Peoples
- Sanctions Committee
- Voluntary Disclosure Program
- Sub-sovereign lending
- Anti-Money Laundering
- Human Rights
- Extractive Industry Review
- Legal Modernization Initiative
- Disclosure Policy
- Expenditure Eligibility
- IDA 13 Results
- Iraq
- Argentina

允我给你一个关于我们将在这些重要政策倡议中处理的问题的风味。

VOLUNTARY DISCLOSURE PROGRAM

- **Objective:** To obtain useable information about fraud and corruption in Bank-financed projects. Information would be used to debar other companies and to refer cases to member governments.

- **Status:** Pilot cases under implementation. LEGAL & INT begin the consultation process with MDBs and member countries.

- **Next Steps:** Finalize VDP, Board approval & begin implementation
• **Issues:**
  
  o Providing sufficient incentives to firms. Firms risk possible civil/criminal liability.
  
  o Providing evidence to member governments of involvement of government officials.
  
  o How governments treat firms that participate in the Bank’s voluntary disclosure program is critical

**LEGAL AND JUDICIAL REFORM**

Legal and judicial reform, which is one of our practice areas, is an area of particular interest and commitment for the Bank in recent years. Though this is a relatively recent development in terms of the Bank’s history, it is now accepted that legal and judicial reform is a pillar of the Bank’s work and sustainable development.

• **Rule of law requires:**
  
  o Independent, impartial and effective judiciary
  o Equitable laws that are readily transparent and effectively enforceable.
  o Justice must be accessible to all.

• **What has the Bank done until now:**
  
  o 1300 Bank-financed projects related to LJ
  o 16 active “freestanding” LJ projects in 4 regions, with 7 more in pipeline
  o Legal reform
♦ Development of International Principles for Insolvency and Creditor Rights
♦ Telecom Reform (world wide)
♦ Legal Education in Albania and Sri Lanka

○ Judicial reform

♦ Judicial reform in Ecuador
♦ Access to justice in Indonesia

• The way forward:

Greatest challenges for the Bank in this area:

♦ Moving beyond our fragmented approach in the delivery of the justice reform services. Our approach must be multidisciplinary and cross sectoral (including LEGAL, PREM, FPSI and ESSD).

♦ There are no easy wins in this area. This is primarily due to the fact that:

• it is a new, complex field;
• institutional reform is a long term goal;
• there are many players/institutions (e.g. courts, bar association, prosecutors etc).
• hard to measure results, especially with the externalities.

What else should the Bank be addressing in this area?

♦ Scale up in areas where Bank has a comparative advantage (i.e., case management, legal education, infrastructure, working with civil society)

♦ Consider expanding into selected new areas such as criminal justice reform, including institutional
reforms for law enforcement, but only if we can provide “value-added”

**Human Rights**

My analysis of the Bank’s legal framework relevant to human rights falls into three parts:

- **purposes,**
- **political prohibitions,** and
- **only economic considerations and the.**

These three I shall consider in turn in some detail.

**First and foremost,** all Bank activities must further its **purposes as set forth in Article I.**

As I mentioned earlier, the Bank’s mission as currently defined consists of the **alleviation of poverty through economic growth and social equity** – both of which have important human rights dimensions.

**Second,** there are two distinct **political prohibitions** which we are bound to respect:

(a) The Bank and its officers may **not interfere in the political affairs** of any Member.

(b) The Bank **cannot be influenced in its decisions by the political character** of the member or members concerned.

First, as is well known, the Bank interference in a country's political affairs is barred.

Second, Bank decisions cannot be influenced by the political character of the member country. The ban on political interference **requires the Bank to distance itself from partisan politics, from favoring political factions,** and from active participation in political life. The
prescribed neutrality with respect to political systems keeps the Bank from endorsing or mandating a particular form of government.

But neither of these limitations would prevent the Bank from considering political issues that have economic consequences or implications – so long as this is done in a non-partisan, impartial and neutral manner.

The significance of this for the Bank is that, in my opinion, it can and must take into account human rights violations in its process of making economic decisions. Moreover, because of the way international law has evolved with respect to concepts of sovereignty and interference, and the range of issues that are considered to be of global concern, in doing so the Bank will not fall foul of the political prohibitions of the Articles.

Globalization has forced us to broaden the range of issues that are of global concern. As President Wolfensohn noted in his Address to the Board of Governors in Dubai, we face an immense challenge in creating a new global balance.

Human rights lie at the heart of that global challenge.

Third, the Articles provide that only economic considerations shall be relevant to the decisions of the Bank and its officers, and these must be weighed impartially. When Bank lending is involved, funds must be used without regard to political or other non-economic influences or considerations.

What then constitute economic considerations for these purposes?

Although we are a development institution, we remain a financial institution, and in making decisions about the investment of limited public resources available, we must rely upon an analysis of all the factors that can affect the investment. These must include the “investment climate” in the recipient country.
We have already accepted the fact that issues of governance are relevant but, in my view, it goes further than this. Research has shown that lack of respect for human rights norms can seriously affect the economic rate of return or even the viability of investment projects.

This same line of analysis applies to the discussion of which human rights are relevant for the making of economic decisions. Just as there is no stark distinction between economic and political considerations, there is similarly an interconnection among economic, social and cultural rights on the one hand, and political rights on the other. It is generally accepted at the political level that “all human rights are universal, indivisible, interdependent and interrelated.”

The Way Forward

- Our focus as a development institution naturally involves the realization of human rights. Moreover, human rights have direct economic ramifications, and as such, impose themselves on our decision-making as a financial institution.

- However, we must respect our legal and institutional limits.

- We must not impose a double punishment on the peoples of our client countries – but rather exert a positive influence in those countries and thereby further the realization of human rights.

- The Bank’s role is not that of enforcer. Enforcement belongs to the mandate of other, non-financial entities. Our role is a collaborative one in the implementation of our member countries human rights obligations.

- The way forward in the area of human rights and development must be consistent with the mission of the Bank, that is to say, poverty alleviation through economic growth and social equity. The human rights content of this direction is beyond question.
• No rights-based approach.

• In sum, it is not only legal [legitimate], but appropriate for the Bank to have a role in the promotion of and respect for human rights.

IN CLOSING

The World Bank engages in a multitude of development areas with legal components, and we expect the scope of our work to continue to expand. In many of these areas, we rely upon external partners to share their expertise or resources. In the areas of finance and private sector development, infrastructure, and legal and judicial reform in particular, and in other of our practice areas, we welcome the involvement of individual experts, firms, or civil society organizations like bar associations. I would be pleased to discuss further with you some of the possibilities for collaboration between the World Bank and the American Foreign Law Association.