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International Finance, Foreign Investment and Human Rights: Some Concluding Thoughts

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Welcome to the post-program analysis. I have taken copious notes all morning, but in the interest of time, I will emphasize two points that struck me about today's presentations. The first point relates to Don Wallace's remarks regarding the inevitability of private participation in public infrastructure development. Several other speakers made this point as well and I agree with them wholeheartedly. Last fall, I traveled to Burma during a research sabbatical. Burma is one of the most isolated states in the world, and a noxious military dictatorship lords over its intimidated population. Nevertheless, considerable investment is occurring. The northern border of the country has effectively disappeared, and the northern states have economically integrated with China. Every tourist visiting Mandalay must climb Mandalay Hill to view the sunset over the Irrawaddy River. Native Burmese and hundreds of tourists make this climb every day. What do these people see when they look west at the setting sun? They see a luxury hotel constructed by Japanese interests, complete with an eighteen-hole golf course. My point is that even in the most isolated locations, in states subject to a multiplicity of economic sanctions, investment is taking place. Private participation indeed is inevitable.

The last panel raised the second point, which relates to human rights. I was pleased to hear reference to this issue. Carol Mates spoke of the need for sound social practices as one of the criteria in the decision-making process with respect to extending financing for international projects. Her remarks brought to mind the issue of liability for human rights violations. Various human rights instruments set forth human rights obligations that are applicable to both states and multinational enterprises. For example, the Universal Declaration of Human Rights specifically applies to all persons. Some of these instruments provide that states may not use economic development as an excuse for violations. These instruments also apply to multinational enterprises through U.S. law. The Alien Tort Claims Act, found at Title 28, section 1350 of the U.S. Code, authorizes aliens to sue for torts in violation of the law of nations. This particular law surprised a number of companies such as Unocal, Exxon, Chevron-Texaco, Talisman Energy, Rio-Tinto, Pfizer, Coca-Cola, Del Monte, and most recently

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Daimler-Chrysler. The issue that came to my mind in the financing discussion was, if multinational enterprises can be liable for human rights violations associated with their foreign investment activities, why not private lenders for their participation in such investments and resultant complicity in such violations? This is an area of potential risk for those firms involved in privatization and international finance.

To prepare for this conference, I read the U.S. State Department Report and the U.S. Commercial Service Guide. I was particularly struck by their characterization of China. The State Department Report notes a growing disconnect between the demands of a reform economy and a political system that is ill-suited to meet these demands. The report cited a number of factors, including the disparity between urban and rural incomes, a migrating labor pool, mounting unemployment and pervasive corruption. Corruption is especially pervasive in the banking and financial sectors. Nevertheless, a somewhat different conclusion is found in the Commercial Service Guide. It concludes that foreign investors should not be concerned because the risk of political violence or injury to their investments is low. This is due to the government's ability and willingness to repress any sizeable anti-government protests. I was surprised to read that comment so much that I had to go back and re-read both documents.

These two documents raise the issue of consistent promotion of democratic values, which is essential and must proceed hand-in-hand with economic reform, and minimizing risk to foreign investors and financial institutions. Apparently, in China, increased political repression is linked to increased security for investors. This is a troubling conclusion.

Thank you McGeorge School of Law, its faculty and administration, for granting me the privilege to participate in this year's conference. As a lawyer teaching in a business school, the finance, accounting and management people always outnumber me. It is nice to visit a place where the lawyers rule-at least for a day.