

# Wolfowitz, the World Bank, and Illegitimate Lending

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WHEN PAUL WOLFOWITZ VISITED INDONESIA in April 2006, he noted the importance of moving forward to tackle corruption through a range of new procedures, and then added that Indonesia was managing its debt well. In passing, he noted that when he was U.S. Ambassador to Indonesia twenty years before, he had been aware of massive corruption in the United States' cold war ally. Later, he admitted, "The World Bank first acknowledged corruption as a major impediment to development only ten years ago."<sup>1</sup>

He seemed to treat four points as unrelated—tackling present corruption, managing past debt, his own role when improper borrowing was carried out, and the Bank's failure to acknowledge corruption in the past. But for many in Indonesia, these factors are intimately linked. Indonesia now has a massive debt burden precisely because the World Bank, with the support of the U.S. government, lent to a known corrupt government, which stole and wasted the money.

Although the World Bank is finally addressing corruption, Wolfowitz is doing so in a way that puts all the responsibility on the people of the borrowing country. In Wolfowitz's system, the lender—his World Bank—carries no responsibility for improper lending, in the past or in the future. However, in domestic lending, and increasingly in corporate international lending, the lender has a whole range of responsibilities. This has led to the concept of "illegitimate debt"—loans which are so bad that by making them a bank has failed in its fiduciary responsibilities, and has no right to collect on those loans. The Indonesian case is a prime example of the World Bank's illegitimate loans.

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## INDONESIA AS A SPECIAL TEST

Wolfowitz's personal connection with Indonesia makes the country an important test and raises a series of questions about his present anticorruption campaign. In dealing with corruption, he only looks to the future. This is impossible though, because he and the World Bank do not come to the anticorruption task with clean hands.<sup>2</sup> The World Bank is still collecting repayments on loans which the Bank, and Wolfowitz personally, knew to be corrupt or improper, and which I define below as illegitimate.

Indonesia has a special relationship to the World Bank and the United States. In 1965 president Sukarno withdrew from the World Bank and International Monetary Fund (IMF). A military coup followed, with the backing of the U.S. government; more than 100,000 "communists" were killed, also with U.S. support, because this was at the height of the Vietnam War.<sup>3</sup> General Mohamed Suharto was named president in 1967 and remained as dictator until 1989. After Suharto was in place, U.S. President Lyndon Johnson's special advisor, Walt Rostow, talked with the president of the World Bank, Robert McNamara, a former U.S. secretary of defense, to gain substantial World Bank support. Rostow stressed that Bank support was essential "if Suharto is to stay afloat."<sup>4</sup> Massive World Bank lending followed, and the Bank's own history makes clear that it knew about the massive corruption and did nothing.<sup>5</sup> In a press briefing in Jakarta on 13 April 2006, Wolfowitz stressed that when he was ambassador, he and other diplomats knew about the corruption, but that "you really could not talk about the word in public."<sup>6</sup> There was a euphemism I think some of you know, 'the high-cost economy.'<sup>7</sup>

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Suharto was declared the most corrupt politician of the previous two decades by Transparency International in 2004.<sup>8</sup> The organization estimated that he stole \$15–35 billion. World Bank loans to the corrupt Suharto government totaled about \$30 billion between 1966 and 1998, and approximately a third of this, or \$10 billion, was systematically stolen with the World Bank's full knowledge. A World Bank internal paper in 1997 said, "We estimate that at least 20–30 percent of GOI [government of Indonesia] development budget funds are diverted through informal payments to GOI staff and politicians."<sup>9</sup>

The problem extended beyond corruption, to political lending by the World Bank intended to support a cold war ally of the United States. When Suharto moved millions of Javanese people to populate other islands in the "transmigration" program (including many of the militia members who fought against East Timor's independence), despite complaints about human rights and environmental problems, the World Bank provided nearly \$1 billion in loans.<sup>10</sup> Many of the migrants were put on marginal land

where they could not survive, so the World Bank lent more money to try to support them.<sup>11</sup> The transmigration program was still being implemented, and the World Bank was still making new loans for it, while Wolfowitz was ambassador there.

Thus Indonesia takes on a very special place in any discussion of Wolfowitz's anticorruption project in the World Bank. Not only does the World Bank not have clean hands, but Wolfowitz has personal knowledge of World Bank complicity in corruption. Yet his World Bank is trying to collect on those illegitimate and corrupt loans.

#### **WOLFOWITZ IGNORES CHANGING WORLD OPINION**

What is the responsibility of the World Bank for these loans, which were used for manifestly useless and political projects, and where money was knowingly siphoned off by the most corrupt leader in the world? Wolfowitz tries to wash his and the World Bank's hands, saying they have no responsibility or liability for past improper lending. Next, he shows he is only willing to consider the narrow question of corruption. Finally, he argues that the problem of corruption is purely an issue of improved governance in borrower countries which can be resolved by the traditional top-down approach of the World Bank imposing further conditions on borrowers.

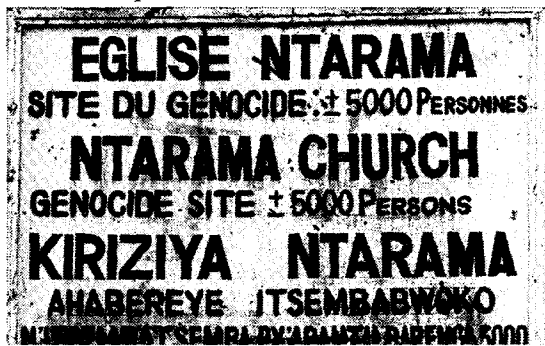
Speaking in Jakarta on 11 April 2006, Wolfowitz said, "Corruption is not just a problem for developing countries to deal with. The developed countries have an enormous responsibility. Indeed, every corrupt transaction has, unfortunately, at least two parties."<sup>12</sup> Regrettably, this statement does not mean that the World Bank agreed to share some of this "enormous responsibility" by writing off the debt incurred on loans it made to a ruthless and corrupt dictator. Wolfowitz's attack on corruption is, of course, necessary and welcome. But just as two decades ago when Wolfowitz saw no reason to intervene in Indonesia, and a decade ago when the World Bank was far behind other international agencies in recognizing the problem, so too now has Wolfowitz missed an important change in global opinion on the link between debt and corruption.

Two major changes in international thinking have made Wolfowitz's approach obsolete. First, there is a growing realization that lenders share responsibility with borrowers for improper lending. At the domestic level, the British Consumer Credit Act of 1974 defined "extortionate" debt as loans improperly made by lenders and determined that they can be cancelled by the courts. The British Consumer Credit Act of 2006 extended this to a new concept of "unfair relationships between creditors and debtors." These domestic consumer protection concepts have now spread to international lending. The Norwegian government recently accepted the concept of illegitimate lending for international debt, which is discussed below, and which potentially covers a broad range of improper lending—not only lending to corrupt leaders, but also to oppressive

dictators and for foolish projects (like transmigration).

Second, there is a realization that conditionality has not been effective in changing borrower behavior,<sup>13</sup> and that the World Bank's omniscient approach both to debt cancellation<sup>14</sup> and conditionality is no longer acceptable.

When Wolfowitz attended a joint press conference with Norway's International Development Minister Eric Solheim on 15 October 2006 he faced a demonstration and



*Photo Courtesy of Matthew Reichel*

A plaque in Rwanda commemorating the genocide.

strong questions regarding past World Bank lending. In his reply, he explicitly refused to cancel loans that had been made to dictators. Solheim then asked: "Why should the people of Liberia pay for debts made by these horrible dictators and people who completely destroyed their own country like Samuel Doe and the other warlords after him? Or why should the government of Rwanda pay

for debts made by exactly the same government who started on the genocide in Rwanda; it's simply absolutely unacceptable." In response, Wolfowitz stumbled, "I think certainly, I think in many ways, we give recognition to the fact that countries got saddled with debts that may not have benefited the people of those countries and it's the—it shouldn't therefore be the burden on them to pay those back but it's—you can't make—it gets quite complicated because each case is different. . . . [I]t's not a simple issue." Solheim was not convinced: "Ways must be found in these clear-cut cases and then after that we can discuss . . . not so clear issues."<sup>15</sup>

So far, then, Wolfowitz is willing to treat borrower corruption as an issue which can be handled in a broad and general way. Yet, he believes that lender participation in corruption is too "complicated" to be treated similarly and instead must be dealt with on a case-by-case basis. The World Bank itself must decide in each specific instance whether or not its lending benefited the people of countries once ruled by dictators. However, the Norwegian view is that, just as borrower corruption can be defined and addressed in quite general terms, so can improper actions by lenders. Can impunity for the World Bank continue?

#### CO-RESPONSIBILITY FOR BAD LENDING

Suppose a bank lends me money knowing that I am a chronic gambler and will gamble with this sum. If I lose all of this money and cannot repay my debt, by most domestic laws, the bank will not be permitted to collect from my children. A court would rule

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that the bank was ill-advised in lending me the money, and so the fault for the bad loan lies with the bank. Similarly, if a gunman forces me to sign a loan agreement, then the bank cannot collect from me even though I signed the agreement since it was signed under duress, and is clearly invalid. To collect would make the bank a partner in crime. For domestic lending it has long been established that the lender has some responsibility to act in good faith, and that foolish or corrupt loans should not be repaid. This understanding has been extended in recent years such that lenders are expected to assess the possibility of a loan being repaid, and when lending for a complex project, they increasingly bear a responsibility for assessing the viability of the project.<sup>16</sup> In British law, banks must respect the "ordinary principles of fair dealing" and must assess that borrower's "age, experience, business capacity and state of health." Moreover, they cannot lend if the borrower is under such financial pressure that they will accept unfair loan terms.<sup>17</sup>

This leads to a paradox: if private banks lend to relatively wealthy individuals and businesses in industrialized countries, then those banks take an increasing responsibility for the quality and integrity of that loan, but if the World Bank, supposedly a development agency, lends to a poor country, it has no fiduciary responsibility for the quality or honesty of the loan. In the past, the World Bank could lend to Mobutu Sese Seko and after his reign, expect the Congolese, who had been held in subjugation, to pay.

However, attitudes towards international lending have been changing: in 2003, even the U.S. Treasury Secretary John Snow could say, "Certainly the people of Iraq shouldn't be saddled with those debts incurred through the regime of the dictator who is now gone."<sup>18</sup> Until recently, international debt relief or cancellation depended entirely on the borrower. If a country was too poor to repay and was considered by the international financial institutions (IFIs) to be well-governed, then they would agree that repayment of some debt could be delayed or even cancelled. As the debt crisis continued, and the IFIs faced the Jubilee 2000 campaign, international programs such as the Heavily Indebted Poor Countries (HIPC) initiative cancelled increasing amounts of debt. But it was always at the initiative of the lender looking at the ability of the borrower to repay. It was, in effect, a charitable gift from development agencies.

The point that John Snow, Eric Solheim, and many others raise is that the spotlight should be turned on the lenders. The question is not whether the people of Iraq, Indonesia, or Liberia deserve debt cancellation. In many cases the loans should not have been made in the first place. This point has international precedent and was actually first established in international law by the United States 109 years ago. When it occupied Cuba in 1898, the United States refused to pay Cuba's debts because they had been "imposed upon the people of Cuba without their consent and by force of arms."<sup>19</sup> In particular, the United States declared that the creditors must have known that their

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loans were for "the continuous effort to put down a people struggling for freedom from the Spanish rule" and therefore accepted that the loan was an obvious risk.<sup>20</sup>

So far, the Wolfowitz Bank and international creditors have only been willing to grant cancellations on an ad hoc basis, without formally admitting liability. But an important step was taken when \$30 billion of Iraqi debt was cancelled on 21 November 2004 and \$18 billion of Nigerian debt was cancelled on 29 June 2005. Both countries are oil producers and neither qualifies for debt cancellation under present international systems. But both had waged international campaigns, saying the money had been lent to dictators and was therefore illegitimate, and that argument was clearly a factor in the size of the cancellation.<sup>21</sup> Cancellations for Iraq and Nigeria involved, for the first time, at least an informal and private acceptance of co-responsibility. But Western lenders have also been pushed toward a more public acknowledgement by pressure from China's increasing, unconditional lending to Africa. The IFIs see this as a threat to their monopoly of power in Africa, but they also see that some of the lending is exactly the sort they had made to corrupt dictators during the cold war. Establishing a doctrine of co-responsibility might make China a bit more cautious about propping up oppressive governments, making it harder for China to do what the West had done a few decades before.

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#### ACCEPTING RESPONSIBILITY

The first step for Wolfowitz's World Bank to responsibly address debts is to take the point of Eric Solheim and accept that there are at least some "clear-cut cases" where as lender the Bank must accept full liability for loans that should never have been made. A starting point might be to accept some liability for lending to the top three of Transparency International's most corrupt politicians. Number one on this list is Suharto in Indonesia, already discussed above. Number two is Ferdinand Marcos, president of the Philippines from 1965 to 1986, who stole \$5–10 billion. And number three is Mobutu Sese Seko, president of Zaire (now the Democratic Republic of Congo) from 1965 to 1997, who only stole \$5 billion. In all three cases, lending continued when the World Bank and the IMF knew money was being stolen from the public purse, including money from World Bank and IMF loans, making the World Bank and IMF complicit in corruption.

Marcos fled in 1986 when the Philippines owed \$29 billion, which included \$4 billion to the World Bank. The Philippines' largest single debt is for the Bataan nuclear power station. Completed in 1984 at a cost of more than \$2 billion, it was never used because it was built on an earthquake fault at the foot of a volcano. "Filipinos have not benefited from a single watt of electricity," said the national treasurer, Leonor Briones,

but the Philippines still pays \$170,000 per day for the power station, and the debt will not be repaid until 2018. Marcos received bribes of at least \$80 million, and much of the construction was done by companies in which Marcos had an interest.<sup>22</sup> The issue here is of fiduciary responsibility and good faith. It would be hard for any bank to say it was acting in good faith by lending to build a nuclear power station on an earthquake fault; even the most cursory evaluation would show this to be a foolish loan.

When Mobutu was overthrown and died in 1998, Zaire's debt was \$13 billion, of which more than \$1 billion was owed to the World Bank. In 1978, just over a decade after Mobutu took control, the IMF appointed its own man, Irwin Blumenthal, to a key post in the central bank of Zaire. He resigned in less than a year, writing a memo which said that corruption is so serious that there was "no (repeat no) prospect for Zaire's creditors to get their money back."<sup>23</sup> Shortly after, the IMF granted Zaire the largest loan it had ever given an African country; over the next decade, it gave Mobutu \$700 million. Zaire had virtually stopped repaying its debts in 1982, but in the next decade the World Bank lent \$1 billion to Zaire. The World Bank and IMF failed dismally to exercise even minimal fiduciary care in making the loan and should therefore accept full responsibility for the country's debts.

Once Wolfowitz accepts that the World Bank is somehow accountable for irresponsible lending, it will be possible to move on and try to define the level of responsibility that should rest with the lender. However, in accepting responsibility for bad loans Wolfowitz and the World Bank can no longer consider whether such countries now "deserve" debt cancellation. Lender liability effectively means that the World Bank and IMF have no right to collect on those loans.

As it stands, the basis of the HIPC initiative and the Wolfowitz debt cancellation approach is that the World Bank itself decides whether it will cancel debts. Clearly, no court in the United States or Europe would allow a bank to take such a position with respect to an improper domestic loan. They would say the bank made a mistake to lend and cannot collect.

## **ESTABLISHING A DOCTRINE OF ILLEGITIMATE DEBT**

Once creditors have accepted that they have no right to collect on at least some of the bad loans to Suharto, Mobuto, Marcos, and Doe—independent of whether the people of Indonesia, the Congo, the Philippines, and Liberia "deserve" debt cancellation—then it becomes possible to begin developing a doctrine of co-responsibility in deciding which debt should not be repaid due to lender culpability. Various concepts of "criminal"<sup>24</sup> and "odious" debt have been developed in terms of international lending, but it seems that these terms do not cover the full range of lender liability.<sup>25</sup> The broader concept

of "illegitimate" debt<sup>26</sup> has made some headway and was formally recognized by the government of Norway when it gave money in early 2006 to a very reluctant World Bank to try to develop a definition.<sup>27</sup> Norway then unilaterally cancelled the remaining debt owed by seven countries for ships that had been exported from Norway. The government statement on 2 October 2006 said, "It is now generally agreed that the Ship Export Campaign was a development policy failure. As creditor, Norway shares part of the responsibility for the resulting debts. By cancelling these claims, Norway takes the responsibility."<sup>28</sup>

Accepting that further work is needed to define illegitimate debt, the following functional definition may be used at present: illegitimate debt consists of loans which were improperly granted and are thus the sole liability of the lender. They are not to be repaid, independent of the status of the borrower. Under this definition, the following six categories of debt can be considered illegitimate:

- **Dictator's debt:** As the United States said in 1898, referring to Cuba, dictator's debt is "imposed upon the people . . . without their consent and by force of arms." This includes debts incurred by Saddam Hussein, Marcos, Mobutu, Doe, Suharto, and many others, including military rulers in Argentina, Brazil, Nigeria, and apartheid South Africa. This includes "odious" debt.<sup>29</sup> In 1998, the British House of Commons International Development Committee declared that "the bulk of Rwanda's external debt was incurred by the genocidal regime . . . and, ultimately, the people of Rwanda, should not have to repay these 'odious' debts." The committee concluded that the debts should be cancelled.

- **Debt incurred from corrupt and illegal loans:** These are loans which violate the laws of the borrowing country—typically, proper procedures are not followed and the lender fails to ascertain whether this is the case. An illegal loan is often directly linked to corruption and to moving part of the loan into foreign bank accounts. The Argentine military dictatorship did both, taking loans without parliamentary approval and then leaving some of the money in British bank accounts for personal use. Export credits, typically for arms, which involve corrupt and illegal commissions fall into this category.

- **Debt incurred from poorly planned, lender-linked projects:** World Bank loans are often linked to World Bank-planned development projects, which are often sophisticated and depend on the World Bank to supply expertise that the poor country does not have. The Indonesian transmigration program has already been mentioned. Dam projects all over the world have either failed or have not produced enough surplus to repay the large debts. The Tanzania Coalition on Debt and Development says that Tanzania owes the World Bank more than \$575 million for 26 failed agricultural projects. The World Bank takes no responsibility for its failures; instead, it simply

makes new loans to pay for the correction of mistakes. Clearly, there is a duty of care here—that the World Bank, as the body with the expertise, should assess the suitability of agricultural projects and undertake the risk if they fail.

- **Debt incurred from poorly designed conditionality:** For two decades, the World Bank and IMF imposed so-called “Washington Consensus” policies, both through imposing conditions on other loans (such as those for failing projects) and also through direct policy-based lending. It is now widely accepted that many of these policies were wrong, yet the World Bank and IMF expect the poor countries to bear the cost.<sup>30</sup> Surely, if a loan is linked to economic conditions and those conditions prove to be counterproductive, then there is co-responsibility, and the Bank should accept some losses.

- **Debt from loans that “contravene ordinary principles of fair dealing”:** This is a phrase in the British Consumer Credit Act 1974. The law and the courts have found that failing to assess the credit-worthiness of the potential debtor contravenes ordinary principles of fair dealing. Similarly, it is not fair dealing if the borrower had no choice in their financial circumstances but to accept the terms of the loan. This applies to many World Bank loans—they were made to countries that had no possibility of repaying and have been rolled over and rescheduled (under duress, because the country had no choice) in ways that capitalized interest (meaning that interest was paid on interest and the loan was repaid many times over).

- **Usurious Debt:** Usury is illegal in most countries, although its definition tends to be quite vague. Very high interest rates are at the heart of the ongoing debt crisis, which really began in the late 1970s and early 1980s when interest rates were pushed up by 12 percent in just a few years. Few countries could pay, which meant they took out new loans to repay the old ones. Many of the current debts of poor countries are loans which were taken out to repay loans which were taken out to repay loans taken out in the 1970s, which became impossible to pay due to the interest rate hike. It could be argued that since the original loans had negative real interest rates (i.e., below the international rate of inflation), the increase to such a relatively high interest rate was usury, and thus that the loans taken out to pay those interest charges are themselves illegitimate.

All of these issues require debate, negotiation, and study. In reality, loan cancellation will be settled by negotiation as was done with Iraq and Nigeria. But a starting point in negotiation should be a shift in the burden of proof—the debtor should be able to require the lender to prove that the loan does not fall into one of these six categories. It is interesting in this context that the British Consumer Credit Acts of 1974 and 2006 reverse the normal burden of proof; the 2006 act says that if “the debtor . . . alleges that the relationship between creditor and debtor is unfair to the debtor, it is

for the creditor to prove to the contrary.”<sup>31</sup>

Two fiscal issues need to be discussed here: fungibility and loan laundering. Goods are fungible if all components are identical and substitutable. All electricity is the same, and it is impossible to tell if your electricity came from a windmill or a nuclear power station, so electricity is fungible. Similarly, money is fungible; hundred-dollar bills are interchangeable. The fungibility of money means there is no guarantee that a loan really goes toward the purpose for which it was taken. If loan money is used to build a school, the loan may simply release a similar amount of money in the state budget to buy weapons. Apartheid South Africa in the 1980s became very skilled at raising Eurobonds for electricity generating stations, which could in fact be built with local currency, but the hard currency raised was then used for sanctions-busting arms imports. Fungibility means that if a country is run by a brutal dictator like Suharto, it is not possible to pick “good” projects and only lend for them because that simply releases money elsewhere in the system for repression or corruption. Thus, *all* loans to an odious dictator are illegitimate, even if the ostensible purpose is to help the poor.

The other issue, “loan laundering,” is similarly complex. The Democratic Republic of the Congo (DRC) was in arrears to the IMF because it was not repaying the debt of the old Mobutu regime. This blocked other aid since donors will not help a country which has no IMF program. In 2002, France, Belgium, South Africa, and Sweden gave the DRC a bridging loan of \$522 million to pay the IMF. The IMF immediately gave the DRC a new loan of \$543 million, of which \$522 million went directly back to the four countries to repay the bridging loan.<sup>32</sup> This is surely a case of “loan laundering.” The IMF will say that this was a new loan and had nothing to do with the odious dictatorship of Mobutu, whose loan has now been repaid. But it should be argued by analogy with money laundering and various attempts to trace the profits of drug dealers that the new loan retains the taint of the original one. This new loan is as illegitimate as the previous one. This is a much more general problem, because many illegitimate loans have been refinanced and rewritten several times. Loan laundering should be deemed as unacceptable, and these new loans should retain the illegitimacy of the original ones.

### MORAL HAZARD AND LENDER DISCIPLINE

The main purpose of the concepts of extortionate and unfair debt and linked consumer credit legislation, as well as the discussion of odious, criminal, and illegitimate debt, is to impose some checks on lenders in order to curb bad lending. It is not just to stop the lending to dictators like Surharto, but also to curb World Bank lending for foolish projects like transmigration. The World Bank is in the unique position that it has no


liability: it knows that borrowers are forced to pay, and its staff is promoted mainly based on the volume of lending. Thus, all the incentives are to lend as much as possible without considering the quality. The IMF pointed to the problem in 1998:

Moral hazard exists when the provision of insurance against a risk encourages behaviour that makes the risk more likely to occur. In the case of IMF lending, the concern about moral hazard stems from perceptions that the availability of financial assistance may weaken policy discipline, encourage international investors to take on greater risks in the belief that they will only partially suffer the consequences, or both.<sup>33</sup>

In other words, if lenders, including the IMF itself, can lend to the most corrupt and brutal dictator and be sure of getting their money back, that is moral hazard.

Banks and financial institutions are—necessarily—primarily concerned with money, and any discipline must therefore be fiscal. The only way to prevent the World Bank from continuing to make totally egregious loans is by penalizing it for past improper lending. Despite Wolfowitz's rhetoric, there is still political and banking pressure to lend to corrupt dictators; under Wolfowitz, the World Bank is making the same sort of improper loans it made to Suharto in Indonesia. Uzbekistan has one of the worst human rights records in the world, yet the World Bank's International Finance Corporation made a \$3 million loan to a local bank on 10 November 2006. The World Bank's "Uzbekistan Country Brief" cites the two biggest problems for the country as "liberalizing Uzbekistan's economy" and "sustaining macroeconomic stability."<sup>34</sup> Nothing is said about human rights. Human Rights Watch says that "Uzbekistan's disastrous human rights record worsened further in 2005 after a government massacre of . . . hundreds of unarmed protesters." It adds that "torture is widespread."<sup>35</sup> One might have considered torture and repression to be bigger constraints to business and economic growth, but the World Bank clearly does not think so. But the underlying issue is, as Wolfowitz admitted in Norway, that countries get "saddled with debts that may not have benefited the people of those countries and . . . it shouldn't therefore be the burden on them to pay those back." When Uzbekistan finally comes to democracy, and the government says it should not repay loans made to prop up the dictator and which did not benefit the people, how will the World Bank respond?

The World Bank has a real moral hazard problem. Despite all of the debate about loans to the Congo, Nigeria, and Iraq, internal pressures cause it to continue to make illegitimate loans. As Wolfowitz said, "Every corrupt transaction has, unfortunately, at least two parties." This applies more broadly to illegitimate lending, and the World Bank continues to be one of those parties. Wolfowitz looks to only one party, the borrower, but as Uzbekistan shows, the political and financial pressure to lend means that Wolfowitz's own staff does not put a priority on borrower conduct. Will he enforce

some discipline on his own World Bank and end the lender's moral hazard? That will only happen if the countries that own the World Bank follow Norway's lead, accepting that the World Bank is liable for some of its own bad lending. The World Bank cannot continue to be judge and jury of its own past misconduct, and its own staff will only take illegitimacy seriously for future lending if the World Bank is actually penalized for past bad lending. 

## NOTES

1. Paul Wolfowitz, "Good Governance and Development—A Time For Action" (speech, Jakarta, Indonesia, 11 April 2006; press briefing, Jakarta, 13 April 2006), <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/contentMDK:20883752-menuPK:34472-pagePK:34370-piPK:34424-theSitePK:4607,00.html>.

2. The "clean hands doctrine" requires that a person coming to court must not have done anything wrong in regard to the issue before the court. By analogy, we argue that the World Bank does not have clean hands because it knowingly made corrupt and improper loans, and that Wolfowitz does not have clean hands because in Indonesia at least he knew of that improper conduct and did not oppose it, and as head of the World Bank he has taken no action to rectify past misconduct by the World Bank. Because they do not come to the issues of corruption and illegitimate lending with clean hands, the matter cannot be left for them to adjudicate.

3. The U.S. Embassy provided lists of "communists" and covert funding to a group known to be killing "communists," according to an official "U.S. State Department History," *Foreign Relations of the United States, 1964–68*, Vol. 26, *Indonesia; Malaysia-Singapore; Philippines* (Washington, DC: U.S. State Department, 2001). The report was published, subsequently suppressed, and then posted on the website of George Washington University's National Security Archive. See <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB52/>. There were varying estimates of the actual number killed, with the government memos admitting it could be as high as 1 million. Most historians take a number between 500,000 and 700,000.

4. Memoranda from Walt Rostow, 17 November 1967 and 19 June 1968, from *U.S. State Department History, Vol XXVI*, items 249 and 259. The National Intelligence Estimate, 31 December 1968, item 262, points out that "It is noteworthy that the World Bank has decided to give special priority to Indonesia, having established in Djakarta its first permanent mission to any less-developed country." The same memo talks of the "blatant corruption" of the new government.

5. Devesh Kapur, John P. Lewis and Richard Webb, ed., *The World Bank: It's First Half Century*, Vol. 1 (Washington, DC: Brookings Institute, 1997). See also Jeffrey Winters, "Criminal Debt," in *Reinventing the World Bank*, ed. Jonathan Pincus and Jeffrey Winters (Ithaca, NY: Cornell University Press, 2002).

6. Press briefing with Wolfowitz in Jakarta, Indonesia, 13 April 2006, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/contentMDK:20897106-menuPK:34476-pagePK:34370-piPK:34424-theSitePK:4607,00.html>.

7. Two decades ago, at the height of the cold war and at a time when World Bank support for Indonesia was important to the United States, it is inconceivable that the U.S. ambassador was not in regular contact with the local World Bank representative. Furthermore, the United States is the largest shareholder in the World Bank and has an effective veto over its actions. Thus Wolfowitz as ambassador and the U.S. Executive Director of the World Bank must have been fully cognizant of the improper lending take place, and, at the least, did nothing to stop it.

8. Transparency International, *Global Corruption Report 2004* (London: Pluto Press, 2004).

9. Jeffrey Winters, "Criminal Debt in the Indonesian Context" (paper, delivered at INFID Seminar on Indonesia's Foreign Debt, 3 July 2000, which cites a memorandum of the then-director of the Resident Staff, Indonesia, Jean Baneth), [http://www.probeinternational.org/pi/documents/odious\\_debts/Criminal\\_Debt.html](http://www.probeinternational.org/pi/documents/odious_debts/Criminal_Debt.html).

10. Graham Hancock, *Lords of Poverty* (London: Macmillan, 1985), 133.
11. Catherine Caufield, *Masters of Illusion: The World Bank and the Poverty of Nations* (New York: Henry Holt, 1996), 118.
12. Wolfowitz, "Good Governance and Development."
13. See, for example, Stephen Browne, *Aid and Influence: Do Donors Help or Hinder?* (London: Earthscan, 2006).
14. At present, debt cancellation is entirely in the gift of the lenders, mainly the World Bank and IMF, which decide if the borrower is too poor to repay and deserves partial debt cancellation, under the Heavily Indebted Poor Countries (HIPC) Initiative and subsequent programmes. By definition, the process looks only at the borrower and not at the lender.
15. World Bank, "President Wolfowitz/Norwegian Development Minister, Solheim, 15 October 2006, Press Conference post CSO meeting Transcript," <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/contentMDK:21093849~menuPK:34476~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.
16. The United Nations Institute for Training and Research, *Debt and Financial Management (Legal Aspects) Training Package* states "that modern civil and commercial law has broadened contractual obligations in complex business transactions beyond the strict delivery of goods...to include dissemination of professional information, exchange of motivated opinions, discovery of special risks, and instructions and consultations, especially if one party is less knowledgeable than the other and therefore must trust the other's superior skills. Neglecting these accessory obligations may be considered a breach of contract...and should be all the more applicable if the lender is an official donor with the statutory obligation to finance and assist in the execution of development projects."
17. *U.K. Consumer Credit Act* (1974), Section 138.
18. John Snow, interviewed on "Your World with Neill Cavuto," Fox News, 11 April 2003, <http://www.foxnews.com/story/0,2933,83939,00.html>.
19. Patricia Adams, *Odious Debts: Loose Lending, Corruption, and the Third World's Environmental Legacy* (London: Earthscan, 1991), 164.
20. Daniel Patrik O'Connell, *State Succession in Municipal Law and International Law* (Cambridge, UK: Cambridge University Press, 1967), 460.
21. The Paris Club of bilateral creditors cancelled 80 percent of Iraqi debt, \$29.7 billion of \$37.2 billion owed (see <http://www.clubdeparis.org/en/countries/countries.php>) and about 58 percent of Nigerian debt, \$18 billion of about \$31 billion (see <http://news.bbc.co.uk/2/hi/business/4637395.stm>). Nigerian debt cancellation reflected an understanding that "the loans were never used for productive purposes and that it would be unfair to ask Nigeria to repay," according to Miles Wickstead, who had been head of the secretariat for the Commission for Africa, speaking at the Open University, Milton Keynes, England, 26 September 2005.
22. Adams, *Odious Debts*, 157–127; Susan George, *A Fate Worse Than Debt* (London: Penguin, 1988), 18–19; Adam Easton, "Phillipines to Scrap Nuclear Albatross," *Guardian* (London), 7 September 1999; "Monumental Plunder," Editorial, *Philippine Daily Inquirer*, 21 September 2004.
23. Karin Lissakers, *Banks, Borrowers and the Establishment* (New York: Basic Books, 1992). The bracketed phrase is in the original memo.
24. Winters, "Criminal Debt."
25. See Adams, *Odious Debts*.
26. Joseph Hanlon, "Lenders, nor borrowers, are responsible for 'illegitimate' debt," *Third World Quarterly* 27, no. 2 (2006): 211–226.
27. Development Minister Erik Solheim speaking at public hearings of the Norwegian parliament, 10 May 2006.
28. Royal Norwegian Ministry of Foreign Affairs, "Cancellation of Debts Incurred as a Result of the Norwegian Ship Export Campaign (1976–1980)" (annex to press release no. 118/06, 2 October 2006), <http://www.50years.org/cms/updates/story/344>. More detail on this is posted on the Eurodad website (see <http://www.eurodad.org/articles/default.aspx?id=737>).
29. House of Commons International Development Committee, *Debt Relief*; 3rd Report 1997–1998,

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House of Commons (United Kingdom, 1998), 11, 57.

30. See Browne, *Aid & Influence*.

31. A key step in codifying the concept of lender responsibility in international law was a landmark arbitration ruling in 1923 by U.S. Supreme Court Chief Justice Taft. The Royal Bank of Canada was trying to force Costa Rica to repay loans made to the overthrown dictator Frederico Tinoco. Taft ruled that for the loan to be collectable the Royal Bank had to show "the good faith of the bank in the payment of money for the real use of the Costa Rican government under the Tinoco regime. It must make out its case of actual furnishing of money to the government for its legitimate use. It has not done so... The Royal Bank of Canada cannot be deemed to have proved that the payments were made for legitimate governmental use. Its claim must fail." Again, the burden of proof is reversed—the lender has to show that the loan was legitimate. See Adams, *Odious Debts*, 168.

32. "IMF Approves US\$750 Million PRGF Arrangement for the Democratic Republic of the Congo" (IMF Press Release, February 2007, 13 June 2002), <http://www.imf.org/external/np/sec/pr/2002/pr0227.htm>.

33. International Monetary Fund (IMF), *World Economic Outlook 1998* (Washington, DC: IMF, 1998).

34. World Bank, "Uzbekistan Country Brief 2006" (World Bank Group, 2006), [www.worldbank.org/uzbekistan](http://www.worldbank.org/uzbekistan).

35. Human Rights Watch, "Human Rights Overview: Uzbekistan" (Human Rights Watch, 2006), <http://hrw.org/english/docs/2006/01/18/uzbeki12288.htm>.