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INDONESIA: INTERSECTION OF HUMAN RIGHTS, FINANCIAL MARKETS AND COMPETITION POLICY

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LAWRENCE M. SOLAN

My name is Larry Solan. I am on the faculty here at Brooklyn Law School and this is the last session of the Symposium. It is on Indonesia. The sessions so far have dealt with some very important phenomena. We focused in earlier sessions on the relationship between the growth of global markets and the concern for human rights.

This session is conceptualized a little differently. Here we are going to focus on a history, in many ways a sad history, in Indonesia, and ask what has gone wrong, what has gone right and perhaps most important how the state of affairs can be made better. This no doubt is going to get us back to many of the broader issues about the relationship between global markets and human rights that we have been talking about all day.

I have been following the situation in Indonesia since the early 1980s and I learned very quickly that if you want to learn anything about what is going on in Indonesia, you have to turn from the conventional press to the alternative press. The reason that you learn something there is because they quote Human Rights Watch and other such organizations that concern themselves with the terrible costs in human suffering of political repression in Indonesia. The repression is tied to a complex set of economic facts. Suharto's exit earlier in 1998 makes this an especially appropriate topic for this Symposium.

We are honored to have here two representatives of Hu-

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man Rights Watch. First we will hear from Sidney Jones who is the Executive Director of the Asia Division of Human Rights Watch and also an internationally recognized scholar on Indonesia.

And then Richard Dicker, who is associate counsel of Human Rights Watch, will speak. Among the various things that he does is to direct the campaign to enlist the corporate community as a force for human rights. What could be more relevant here?

Finally we are going to hear from Spencer Waller, who is Associate Dean of this law school, and is also a distinguished scholar recognized internationally in areas of international trade, international business transactions and antitrust. He is the author of the leading treatise in that area.¹

This combination of speakers should enlighten us about these issues. Embarrassingly, I am the one person who can't enlighten us about these issues, so I am going to sit down and listen with enthusiasm first to Sidney Jones.

SIDNEY JONES

Let me just start out by saying that Indonesia is a place where no cliché works. You can't say globalization is good, you can't say globalization is bad, you can't say economic development has brought about political liberalization, you can't say that democratic transition is going to speed up economic recovery.

The place is simply too complex. We are dealing with a country of 220 million people. This is the country that was worst hit by far by the Asian economic crisis—which has now become a global economic crisis—and there are a lot of issues that arise from the Indonesian case that are worth spelling out.

Before I turn to the direct impact of the economic crisis, let me just say a word about globalization. Indonesia was the darling of the World Bank, it was one of the up and coming tigers, and it was one of the Asian miracle countries. An oil rich state and a member of OPEC, it was a place which until 1986 had been almost totally dependent on oil income. But in

1. See JAMES R. ATWOOD, KINGMAN BREWSTER & SPENCER WEBER WALLER, *ANTITRUST & AMERICAN BUSINESS ABROAD* (3d ed. 1997).

1986 there was a collapse of oil prices, and that's the point at which the economy began diversifying and placing a very heavy emphasis on labor-intensive, export-oriented industries such as footwear, garments and textiles.

It was in the mid-1980s that some of the issues associated with both structural adjustment and globalization became major issues. But it would be very difficult to argue that the appearance of labor-intensive industries resulted in a net deterioration on human rights, for two reasons. One is that we were dealing with a situation that was already so bad with respect to human rights that globalization did not make it noticeably worse. There was a very repressive political structure in place, with a government that used economic development as a source of legitimacy. The development policies pursued, however, were very much Jakarta-centric and benefited a very small political elite. In the name of development, there was serious despoliation of upland areas and dispossession and marginalization of indigenous peoples and vulnerable groups in society more generally. That was happening even before these labor intensive industries took off. Indonesia was also a country that had forcibly annexed large swathes of territory, East Timor being one in 1975 and Irian Jaya, the province that occupies the western half of the island of New Guinea, being another.

So when the impact of globalization began to be felt, the problems that emerged almost paled in comparison with the other human rights violations that were going on.

Moreover, because at that time there were very strict controls on virtually all civil liberties including freedom of association, there was actually a useful aspect to globalization, because it led to the mobilization of workers. The focus on labor intensive industries led to the growth of industrial estates with the concentration of large numbers of workers, sometimes 20,000, sometimes 30,000, in one place. Many of them were women. Because they were all working in one place, they had the chance to talk to one another about the kinds of problems that they were facing, the kinds of grievances they had over low wages, and in some cases, over sexual harassment. For the most part, the conditions were not as bad as sweatshops, but there were serious violations of internationally recognized labor rights taking place.

That kind of concentration gave real life to a labor move-

ment in Indonesia, and workers became a force for trying to press at the edges, to try and increase freedom of association. Labor problems were far more visible in these export industries and industrial estates than they were in the largely rural areas from which the women workers came.

Another issue affecting Indonesia that related to globalization was the kind of labor migration that began to take place in the region in the mid-1980s. There was a huge export of workers around the region, and if Indonesians went to Malaysia to work, Malaysians went to Korea, and if Burmese went to Thailand to work, Thais went to Japan. The movement was always to the country that was one step up on the economic scale. (One of the interesting phenomena that relates to women was that as more and more Malaysian and Korean women entered the labor force they wanted more and more women to work as maids in their households, so that Indonesia became one of the biggest exporters of women as maids to other places in Asia).

There was also a major out-migration of men for construction and agricultural labor, again particularly to Malaysia, but to elsewhere as well. In some cases, the departure of male migrants left a social structure behind that served to empower women, and there were some fascinating social changes that took place in migrant-sending areas.

One of the things I find interesting is that despite this phenomenon of a growing labor rights movement in Indonesia that gathered strength through the mid-1990s, it never actually turned into a force that solidified across class lines. It tended to be very narrowly focused on the grievances of specific industrial estates, even specific factories, and there was very little identification with the plight of workers elsewhere. Indonesia has 13,000 islands, about 7,000 of which are inhabited, but the labor movement didn't succeed in building common cause from Java to Bali, or Java to Sumatra, or from Java to Sulawesi.

So, when the great economic and political crisis hit this year, one of the things you *didn't* see was workers at the forefront. Even if they played an important role in helping loosen up the system in the years that preceded the crisis, they played a very small role in the changes that took place.

Now, in terms of the causes of the crisis in Indonesia there is no question that international lending agencies played a

large role by pressuring Indonesia to open up to international capital markets without insisting on any kind of regulation or accountability.

That factor was important, but it wasn't the only one by any means. It was also the case that the political situation in Indonesia made it more vulnerable to the effects of economic crisis. The collapse of the *rupiah* coincided with a period during which political frustration with President Suharto, who had been in power for thirty-two years, had reached a peak. Suharto in March 1999 was about to run for—or be appointed to—a seventh five-year term as president.

What happened was that as the international investor community lost confidence, and as the *rupiah*, the currency collapsed, the political opposition was growing in such a way that economic turmoil fed off and into political turmoil. The confidence of investors began to collapse as they saw political opposition rising in the streets, led by the student movement. It got to the point where it was impossible to separate out what was economic and what was political.

International financial institutions like the IMF—whose policies almost everybody agrees made things worse—began to focus on political stability as a sine qua non of any kind of economic reform and that in itself was a very useful development.

In terms of the changes that eventually took place, it is interesting to see how the human rights situation was affected by the impact of an economic crisis on a long-entrenched dictatorship, although a dictatorship of the more moderate variety. And the crisis was dire: the economy was shrinking by fifteen percent or twenty percent, you have millions of people out of work, you have a whole generation of school children who dropped out because they couldn't afford school fees, and you even had food distribution networks begin to break down.

Suharto was forced to resign in May, and his hand-picked protege, President Habibie, took over. There were some human rights issues that were very easy to fix. Overnight there was freedom of the press. That was no problem, you can free the press with the stroke of a pen. Overnight, there was freedom of association. Workers were allowed to form unions. The number of political parties went from three to seventy-two parties within the space of three months, and the number continues to grow.

The new government wasn't as comfortable about lifting all restrictions on freedom of assembly, but there was still more freedom even there than many would ever have thought possible. Going back to Indonesia after Suharto fell was like going to a country that you didn't know any longer, because it was so much more open.

But that was the easy part. The difficult part is to undertake the structural reforms left over from thirty-two years of repression in a way that can actually bring about some kind of useful change and economic recovery at the same time.

First of all you have a legal system in a shambles. It was always extremely corrupt, and judges are civil servants who report to the Minister of Justice. There has never been independence of the judiciary. Now that there is interest in establishing the rule of law, the question is, how do you do it?

Secondly, you have the role of the Army which was deeply entrenched in Indonesia. As it became clear that the army had been involved in a lot of really nasty abuses, the prestige of the Army just evaporated. That prestige was largely based on fear, anyway, but it did just crumble.

And now as the economic crisis continues to deteriorate, there are more and more outbreaks of social unrest and the Army is almost afraid to go in and restore law and order, fearing that it will become a target of attacks. (It also may have an interest in letting civil unrest develop so that a nostalgia develops for the old authoritarianism). In many cases, therefore, the Army is simply standing by as attacks take place. The most notable example was the violence, largely against ethnic Chinese, in Jakarta and other cities in May that helped lead to Suharto's resignation. Now there are major killings going on in East Java which seem to be partly perpetrated for political reasons by rogue elements of the military. The conventional part of the military is very leery about going in and doing anything.

The police will probably come under civilian control for the first time in Indonesia, but there is a huge issue about how you reform an incredibly corrupt police force and start from scratch in terms of making it work.

Political parties have sprouted like mushrooms, but most have no clue about what political parties are supposed to do, no notion of the whole idea of building alliances and coalitions and basic functions of representing interest groups.

The Parliament has been a rubber stamp body for the last thirty-two years. Now there are going to be elections in June 1999 to get a real representative legislature. How do you create a workable legislative branch when there has not been one since the 1950s? Trying to build up these institutions at a time of economic crisis and when much of the political elite is still linked to the ancient regime is a real challenge.

Finally, there is another issue in Indonesia which is increasingly on the agenda with the economic and political crisis: the whole set of grievances in regions that are resource rich—oil producing regions, mineral producing regions, timber producing regions—which produce much of Indonesia's vast wealth but have received few of the benefits. These provinces and their governments want to hang on to as much as that wealth as possible, not send it all to a corrupt elite in Jakarta. But how do you acknowledge the regional grievances without exacerbating some of the centrifugal forces in a multi-ethnic society? How do you manage to avoid addressing some of the demands for economic autonomy without at the same time giving rise to political separatist movements?

All of these issues are now on the table in Indonesia. It is going to be very difficult for any government there to figure out a formula that will allow democratization and economic recovery to take place at the same time. Thank you.

RICHARD DICKER

It is always much easier following Sidney, who laid out a complicated picture in a very clear way. Happily for myself, I am going to focus on one discreet aspect of the picture. I want to draw on lessons about corporate social responsibility we have learned from research we have conducted in various parts of the world that have real relevance in applicability for a changing Indonesia.

We see that the greater mobility of capital and its penetration abroad has had profound human rights consequences in an overall kind of way. We recognize that corporations, as private entities, exist to earn profits for their shareholders and they are not human rights agencies, but nonetheless we believe the corporate sector has a duty to avoid involvement in government human rights violations.

The importance of corporate social responsibility for human rights has been underscored, not only by the opening of

markets worldwide and the international, national and local measures to attract capital investment, but also by the dramatic drop in government foreign economic assistance over the last several years. All of that together serves to highlight the role that corporations play.

I want to focus in particular on the extractive sector—oil, mining and natural gas—because in many, many instances these industries operate across large sections of territory, have close relationships with military and security forces, and unfortunately are all too often linked with the most serious kinds of human rights violations.

I want to say at the outset that private-sector entities like oil corporations are not, strictly speaking, governed by the international legal instruments that we in the human rights movement apply to governments. There is a gap conceptually and legally in the standards with which we hold corporations accountable for their actions in Indonesia, in Nigeria and Colombia. At Human Rights Watch we have tried to develop a responsible theory to fill that gap, this involves the concept of accomplice liability.

We have seen corporate complicity in Nigeria where corporations have failed to criticize governmental human rights abuses occurring when the authorities respond to corporate requests for security protection. I am thinking, of course, of Royal Dutch/Shell, which we found to be complicit in human rights violations in Nigeria when it summoned the security forces in the Niger Delta to respond to protests against Shell's environmental policies and practices. Then when those security forces embarked on a reign of terror against the Ogoni people in the Niger Delta, Royal Dutch/Shell remained silent.

That series of events culminated in the hanging of Ken Saro-Wiwa and other activists in the Ogoni movement. It was the reliance on government security forces which committed human rights violations, and the silence of the corporation in the face of those violations, that we found to be an instance of complicity.

In Colombia we investigated the activities of the British Petroleum Corporation and the Occidental Petroleum Corporation which have operated in partnership with the government petroleum company in a situation that admittedly is very difficult. There is an armed insurgency targeting the oil company facilities and personnel, and the companies have relied on a

human rights violative Colombian Armed Forces for protection.

They have gone beyond simply relying on the Armed Forces of Colombia, they have made direct payments to the Armed Forces of Colombia for security protection by units of the military that have a long track record of human rights violations and violations of the laws of war. We find those corporations to be complicit in serious governmental human rights violations.

In both those instances, Nigeria and Colombia, with Royal Dutch/Shell and British Petroleum, there was a public opinion firestorm ignited when their relationships with the military came to light. Those experiences have given both those corporations cause to think, and I want to credit both of them for doing a very serious and careful reassessment of their human rights practices. They are, however, at the very beginning phase of developing and applying policies that will make a difference on the ground.

Let me talk about some of the particulars in Indonesia to underscore the concerns we have about oil company operations there, and the need for oil companies, particularly Mobil, which is engaged in widespread natural gas extraction and natural gas liquefaction in the Ottay Region.

Mobil is a large player in Ottay with natural gas liquefaction. There are credible reports that fit the pattern we have seen in Nigeria, that we've seen in Colombia, where the company is responsible for environmental degradation which has led to social protest and efforts to gain redress for various forms of environmental degradation that have had a severe impact on the quality of life and livelihood of the people in the region.

It is this pattern of environmental degradation, that sparks social protest, that underscores the need for Mobil, among other oil companies operating there, to play a different role vis-a-vis the communities where they operate. This raises the question I want to focus on in the few minutes I have left. What kinds of practices and policies can oil companies adopt that will coincide with and enhance respect for human rights where they operate? These policies have to be developed in relationship to specific problems and practices that emerge on the ground.

First, I want to talk about the kinds of policies in those situations where there are widespread human rights violations committed by military forces. Then I will discuss another sce-

nario where police conduct is the source of the problem.

First and foremost, companies should insert a clause into any security agreement signed with the government that requires as a condition of contract that the state security forces operating in the area of company installations conform to the human rights obligations the government has assumed under the International Covenant on Civil and Political Rights, as well as other international human rights and humanitarian treaties.

Where formal arrangements exist between the company and the state, security agreements with state entities should be made public. In other words, in instances where there are agreements, we want those agreements to be transparent except for those details that might jeopardize individual security. We believe companies should insist on screening the military and police assigned to protect their facilities and personnel in consultation with the defense ministry and civilian government agencies in charge of investigating human rights violations. We believe the companies should make absolutely clear to police and the military defending them as well as to subcontracting companies, that human rights violations will not be tolerated.

So, there are a number of specific steps we believe companies can take in those situations where the stakes are the highest, where the dangers are the greatest, situations of internal conflict where the companies are depending on military forces to protect them and their personnel.

In less intense situations, where the company calls on the police to provide protection in the face of demonstrations and protests, we think similar measures can be enacted. In addition, we believe allegations that contractors the company used have made threats or have harassed individuals opposed to the projects, need to be investigated.

We believe high-ranking corporate officials should be appointed to monitor human rights in that project area and that those officials require training in human rights issues. We believe independent verification must take place of allegations of human rights violations in the area.

Let me conclude by focusing on a few other players that don't normally receive sufficient attention. For example, in the United States, entities like the Overseas Private Investment Corporation is often an important player in providing insur-

ance for corporations operating abroad. We believe the Overseas Private Investment Corporation should make public labor rights audits that they conduct. We believe the Export/Import Bank of the United States must verify and make public the information it considered about extending financing to the project. We believe the information the Department of State provided to the Export/Import Bank must also be made public.

In other words, in relation to several different situations on the ground, there are specific steps that companies can take, there are specific steps that government agencies can take that we believe will have an important positive value in enhancing respect for human rights. Thanks very much.

SPENCER WEBER WALLER

Thank you, very much, Larry. It's really humbling to be part of this program in a lot of different ways. Judge Weeramantry and Professor Henkin have been an inspiration to me and anyone who has worked in any of the fields that we have touched on today. I am really grateful for their participation. I am also grateful for everyone that we have heard from today, particularly everybody from Human Rights Watch.

Now, why me? I probably know less about Indonesia than a number of people on the panel, and I know I know less about human rights law than most people in the room. My theory is the hour is drawing to a close, people know I will speak loudly, try to be clear and that I will finish on time so that we could have room for questions and a reception to celebrate the discussion today.

I do have an interest in competition policy in the United States and around the world. And I want to make a little pitch to you that today that we can think of competition policy in a way and apply it to Indonesia, in a way that we don't think about it very much anymore in the United States.

We can think about competition policy in a broad sense and antitrust law in a narrow sense, as a way to control power, as a way to control private power, a way to control public power, and as a source of both public interest, democracy, and freedom and it may extend to the edge of what people conventionally think of as human rights as well.

We haven't thought about antitrust in this way in the United States for quite some time, but in a historical perspective it is not that long ago, 1888, that there was an anti-mo-

nopoly party that ran candidates for president of the United States and was taken quite seriously.

It is not that long ago that the Republican party and the Democratic party vied to see who could be the best friend of antitrust in their political platforms and the legislation that they sponsored.

Let me just suggest that, as a law about the control of power, antitrust has great applicability around the world and it is seen in this revolutionary way in a way that we don't look at it anymore in the United States.

The countries of the post-Soviet economies see antitrust and competition policy for their transformative powers to make their society freer, more democratic, more prosperous, and more efficient. Sometimes those goals conflict, but more often they are broadly sympathetic to one another.

The developing countries of the world are finding again transformative powers in antitrust, sometimes voluntarily and sometimes involuntarily. Indonesia is a country that has never been characterized in recent times by anything close to a competitive economy. The injection of a modicum of competition for both internally and externally driven reasons would be part of a process of alleviating suffering and misery, increasing democracy, freedom, and opportunity and maybe, I was thinking about Judge Weeramantry's remarks at lunch, maybe we can conceive of competition law as part of the successor to the spiritual constraints that were used to constrain business activity and power.

Let me give you three historical examples in addition to what Judge Weeramantry discussed that illustrate the different kinds of relationships that antitrust and competition policy have had to private and public power and then I will turn quickly to Indonesia.

One is in Athens, in the Athens of antiquity as democracy first flourished. In the Seventh Century B.C. a group of corn dealers, the most important staple of life, were found to have cornered the market. I don't mean the impersonal market that we think about today, but literally the market place. They cornered all the corn, and drove the price up. They were put to death.

This is the first, the earliest reported antitrust opinion I have ever been able to find. It is the only known death penalty involving the area of antitrust and I think an interesting issue

as we follow the events in Washington and the Microsoft litigation.

A little later in a very different kind of Greek society, Aristotle in *Politics* talked about a different kind of antitrust and its relationship to democracy. The dictator of Sicily found that foreign merchants had monopolized the iron ore market and the penalty was expulsion. The foreigners were thrown out of the country. This sounds good until you realize that the dictator of Sicily was primarily offended that foreigners had monopolized the iron ore market and if anyone was going to do it, it was going to be him and his cronies and his family, lessons for Indonesia, comparison shortly to follow.

Finally to fast-forward to the middle ages, again in the marketplace, not the impersonal market, people gathered in England to trade on market days. There were no distribution systems, there were no dealers or middle men, these were viewed as parasitic enterprises. The English common-law strictly forbid anything other than the buying and selling of people in a sort of face-to-face transaction. There was common law that barred the cornering of the market and various civil and criminal penalties applied to the parasitic buying up of supplies to the detriment of the ultimate consumers.

Well, how do all three of these examples relate to what is happening in Indonesia and what promise a modestly more competitive economy could bring?

Indonesia currently has an economy where the worst of all these examples could be found primarily tied to the family and the friends of the family of the Suharto regime and now its successor. This is against a background of a legal system that had very little elements of anything we would recognize as competition law or antitrust law.

There is a 1993 state policy guideline that describes monopoly as inimical to social justice, and I certainly agree with that, and provided that steps should be taken to guard against unfair and unhealthy competition. If anything, that has been perverted into the system that I am going to describe to you.

In addition, the 1995 small scale business law also talked about competition and assigned the government the task of promoting policies to cultivate a good business climate for small firms.

There are a couple of other similar provisions. If you look through the laws, you can tease out a few other mentions, but

even if there is technically something we can call competition law, it exists primarily on paper and free and competitive markets are largely alien to Indonesia's economy.

When Suharto seized power, many hoped that he would establish a more free market oriented policy. Indeed, there was some early evidence that he might have had some interest in doing so. But quickly the economy became dominated by family interests and friends of the family. Sort of the MCI friends and family program for the Indonesian economy.

Let me give you some examples that I find shocking, that truly impoverish the people at every possible level, and create misery in a climate in which they lack the material resources to enjoy some of the most fundamental rights.

Many of you know that the clove industry is a critical part of the Indonesian economy. In the old days, that is prior to 1990, it was flourishing in a number of senses. The farmers who grew cloves were being paid pretty well for the crops that they grew. They sold to primarily local cooperatives or traders who then stored and dried the cloves. These were not parasitic functions, but rather valuable distribution functions to get cloves grown in remote places processed, and then sold eventually to a combination of spice makers and primarily the clove cigarette producers.

We had several levels of people whose interests were being served once you put aside the complicated and depressing health issues associated with having to talk about the cigarette industry in this fashion.

Farmers were well off. In fact, the prices were so good that the farmers were able to buy televisions and refrigerators, often as status symbols, because in large part there was no electricity where these crops were being grown. The crops were sold at good prices to productive dealers and cooperatives who themselves were small businesses, who were able to then do the kind of functions that individual farmers couldn't do, turn around and sell them the dried and processed crops to cigarette producers, spice producers, who in some cases are large national and multinational businesses, and in other cases, are smaller more modest scale enterprises. Ultimately, the consumers purchased the items that were produced with the cloves.

All that changed in 1990, when a clove monopoly was established by President Suharto. It was created originally as

a privately run consortium to act as the sole middleman for the purchase and sale of cloves. The Buffer Stock Agency, known as the BPPC, was granted this monopoly. Its shareholder is a consortium of five companies that is controlled by Tommy Suharto, the former President's son.

Since the time when he took control of the clove industry, many ordinary farmers have found it impossible to survive, despite promises that this was all being done for the benefit of the farmers and the consumers. The BPPC, if anything, used its monopoly buying power to drive the price down that it paid to farmers. Not surprisingly, it also drove up the price to the cigarette companies. It became the only legally sanctioned entity that could buy or sell cloves, destroying the private run cooperatives and local traders who had previously done that productive function.

In the place of a reasonably competitive sector, you have the most parasitic monopoly, probably worse than anything we see in most countries, because it doesn't actually make or grow any of these items. It is solely there as the tollgate that you have to pay to get the stuff from one end of the economy to the other.

The changes that have come were not internally led, they were externally driven. As a formal matter they are dismantling the clove monopoly I have described to you. Why are they doing that? They were forced to do that by the IMF. You will not be surprised to know that the clove monopoly is mutating in various ways. It has a tremendous economic incentive to do so; it is stuck with a large supply of very high priced cloves for a variety of reasons. Although farmers technically now have the freedom to sell to anyone they want, the reality is, through a variety of official and unofficial means, they are still stuck with having to deal with the newly reincarnated version of the BPPC. One of the reasons is clove cigarette manufacturers have to show a proof of purchase certificate in order to get certain excise tax stickers before they can use the cloves and right now only the BPPC and its successors have the right to issue that certificate.

In addition, although farmers can now sell to anyone they wish, the clove monopoly is saying, if you don't deal with us, we are going to flood the market with this huge overhang that we have in our warehouses. The monopoly is hanging on with all its muscle to distort the economics and politics of this industry.

This pattern of domination of the distribution and little, if any, true economic value being added by a monopoly, is also present in several other key Indonesian industries. I will give you the shortest description of two others that give some flavor for the combination of private power and public power that you confront.

The formal and informal cartel that controlled Indonesia's plywood export industry was again run by one of the former President's best friends. This corporate group again does not produce the plywood and exists as the toll collector for those who produce it and want to sell it abroad. They have what is called a statistical research board where exporters have to pay a fee for every cubic meter of plywood exports and, in fact, exporters have to use the shipping company of the same individual who controls the cartel. Again, no choice, no real value, other than the extraction of profits from both ends of the transaction.

In some cases, there is not even a pretense of this being done by private enterprise. The Indonesian National Logistics Board, BULOG, regulated trade and distribution of a wide variety of commodities that include rice, wheat, sugar, garlic, and a variety of other staples and represented one of the largest and the most entrenched government monopolies. There are other state-owned agencies and other state-owned companies that dominate the vast majority of important industries including steel and oil. These privileges are being removed over time with the monopoly entity hanging on for dear life and mutating into various new forms.

The pressures are coming from primarily outside Indonesia. They are coming from the IMF, they are coming from the World Bank, they are coming from the nations that fund those agencies. They are coming from other organizations such as the OECD. None of this would have happened, none of the pressures that have the potential to make Indonesia economy a little better off, but for all of those groups that I have mentioned. None of those changes would have arisen but for the globalization of the economy and the liberalization of trade and investment regimes that gave these agencies and individuals the incentive and the leverage to force change. It is, if anything, a sort of silver lining of the cloud of the current crises that Indonesia is both more receptive and simply has less options to resist these changes.

How are the changes being made? There are people within Indonesia who understand the need for a legitimate competition policy to attempt to control entrenched public and private power. They are often the elites in the government, but they are not particularly the high level elites. More frequently, they are the elite technocrats who have seen how their foreign counterparts address these issues, have been educated in this tradition, find value and importance in this work, and form the cadre of what may someday be a reasonably independent Indonesian competition authority that enforces a true antitrust law. The law is being drafted both with the participation and the influence of all the national multinational, multilateral, governmental, and NGO groups who have an interest in these issues.

This is a large group of people who have played this game before. They played this game before in Eastern Europe with the post-Soviet economies. They played this game in Latin America as those economies opened up to the international trading system. There are only 100 or so people who do this work on a regular basis. It is kind of a movable feast. Sometimes you find them in Mongolia, sometimes you find them in Peru, and sometimes you find them in Indonesia. They are expert people who are working very hard with their Indonesian counterparts to craft a law that is simple, clean in terms of trying to address the problems of competition, and enforceable in an era where everybody knows whatever agency is going to be created will have limited funds, limited resources, and will struggle for political independence in its early years.

There are some striking successes around the world and some striking issues that have yet to be addressed. If you look at the work of someone like Bill Kovacic who is a Professor at George Mason, is heavily involved in these efforts around the world. He has written terrific articles that explain things we can barely conceive of. We tend to think of the FTC and the Justice Department who enforce our laws, have enough money, have more than adequate expertise and enjoy extensive political independence.

In contrast, the issue in Ukraine is, do they have enough telephones, do they have typewriters? Forget computers, do they have enough typing paper in Mongolia? In Brazil, will the agency be funded? Will the forty percent budget cuts that the rest of the government is going through also affect the sophis-

ticated competition agency in that country?

How many people does Indonesia need, how much money, will they have a chance at taking a crack at this kind of entrenched power? I don't know the answer. I do think they will have to take modest steps before they can take on any of the biggest issues. Let me just suggest that competition policy is a non-traditional way to think about the issues we have talked about today. Without being Pollyanish about it, there should be substantial agreement that the promotion of human dignity and economic competition are broadly consistent. I wish everyone involved in that project the best of luck and I thank you for your time and attention.

AUDIENCE QUESTION

Spencer, I think the other issue that is coming up in Indonesia is surely the competition policy, which is being pushed on Indonesia by the IMF and the World Bank, they have a law in place by the end of the year, otherwise they don't get their next funding. That's what structural adjustment is about, in addition to having a lot of frankly feminist programs they have to have in place as well by the end of the year.

But the question I have for you, Spencer, there is some concern that there is a minority group, a sort of ethnic Chinese minority group and that a competition policy might be a more efficient means of burning down the Chinese store? How do you reflect on that?

MR. WALLER: I think it is a tremendously complicated issue because as I understand it in the Indonesian economy Chinese business interests have been closely linked with the prevailing monopolies and dominant firms and cartels, and I certainly wouldn't want a system where that unleashes already-existing ethnic tension aimed at that community.

There are business elites that are often ethnic minority groups. South Africa is the most obvious one. They are going through a tremendous struggle that is now adding the competition element to all the other constitutional and structural changes that they are going through. To go after their dominant firms, is to go after the Africaaner minority interests that have run those companies, that are as entrenched as anything in Indonesia.

So, it is not a unique issue. It is an issue that I don't have an easy solution for. I will have to defer to those with addition-

al empirical knowledge which is probably Sidney.

MS. JONES: I just have a quick comment on that. The Chinese are about four percent of the Indonesian population and the general estimate is they control about seventy percent of the retail economy. But it is very important to realize that the violence that took place against the ethnic Chinese in the period from January up to the present, was not ordinary violence, not just an outbreak of social frustration and discrimination because there has been some anti-Chinese violence in virtually every outbreak of social unrest in Indonesia, where Chinese shops get stoned and so on.

The scale of the violence that took place first in January and February and then in the riots in May was the result of deliberate organized state violence, and that was confirmed two days ago in Indonesia in the report of a fact-finding panel. So, I think that's one thing that has to be distinguished.

Secondly, it is important to recognize that leading members of the Chinese community now are saying, yes, we do need to work out some kind of accommodation with the indigenous Muslim entrepreneurs in Indonesia, and maybe one way to do it would be to take a closer look at the new economic policy in Malaysia, agree that some kind of affirmative action for indigenous entrepreneurs is useful and work out programs that will bring more and more Muslim entrepreneurs into firms that are now largely Chinese controlled. But at the same time the Chinese are saying, we need to have our rights, so that trade is not the only area that we can go into, so that we are not relegated to one occupation.

MR. WALLER: One other thing. It is perfectly legitimate for a society in writing a competition law or any other kind of law to say there are other values that we care about. I think Indonesia is going to be under some heavy pressure to adopt a law that looks like the United States or that looks like the European Union depending on who is doing the speaking and the selling. I would urge them not to do either. I would urge them to take a thoughtful and indigenous approach to what they are trying to accomplish in terms of creating a more competitive economy and if there are any other values that they think are so important that trump competition and need to be included either in the competition law itself or in the other kinds of laws and accommodations that Sidney was referring to.

AUDIENCE QUESTION

I have a question for Richard Dicker. I find it interesting how you were talking about the kinds of solutions we can seek in terms of corporate accountability and the kinds of things that you could be asking for. I guess I am curious as to whether you have tried any of this out, what companies have you tried to engage it with and what countries? Where is the openness, where are the windows of opportunity there?

MR. DICKER: It is interesting in that there has been a real movement, and some of you may have seen the article in the *New York Times* this morning about the agreement involving a number of apparel and footwear companies and several NGOs. What we have seen is an interesting movement from apparel and footwear to the extractive industries, and I want to refer specifically to Shell and to British Petroleum. Those are companies that have, I think seriously wrestled with what it means to have a human rights policy.

Those companies have taken those steps because they have been forced to after a storm of public outcry involving both of them, Shell of course in Nigeria, British Petroleum in Colombia. I think it reflects an important trend that we are likely to see more of, but a trend that is really only at its beginning phase. I have characterized that phase as consisting of the adoption of human rights principles in broad strokes.

My point in answer to the question is, in some ways the companies have come to us, shopping around, if you will, their broadly formulated human rights policies or commitments. Our response to them has been that a good first step, but you have got to go much beyond that, in terms of developing specific policies that will address scenarios that you have already faced. I have to say, we have yet to see that kind of specific policy and practice develop, and that's why we focused a great deal of effort in terms of going beyond the general and really looking at concrete situations and trying to develop approaches that relate to the precise situations that these companies face on the ground.

I think we and others have to continue to hold their feet to the fire to go from the general to the particular because it is only in the particular that these policies will stand a chance of making a difference.

AUDIENCE QUESTION

I wonder if any of the panel members want to comment on the Freeport case in Louisiana?

MS. JONES: The Freeport McMoran is one of the biggest gold and copper mining corporations in the world and is the largest single taxpayer in Indonesia. It is certainly the largest firm that is in the country, and there are a lot of very interesting things going on. There has been pressure building on Freeport for the last three years or so to deal with human rights abuses that have taken place in its contract of work area, although thus far the abuses have been perpetrated by the Indonesian military with the help of logistical support from Freeport. There isn't a smoking gun thus far directly to Freeport employees.

But the most recent development was that an American political scientist, together with an Indonesian economist, charged that the current minister of finance in Indonesia and a number of other people very closely associated with the current government had actually benefited from practices in which Freeport had engaged—whereby it had loaned money to uncredit-worthy cronies of the Suharto family by giving them shares of stock which it then bought back after the stock prices had quadrupled—thereby subsidizing the cronies in question. Each of the cronies was given a project that was directly related to operational support of Freeport.

This is actually a very interesting example, first of the new freedom of the press in Indonesia, because this never ever would have been covered in the detail it was before May.

Secondly it is an indication of how seriously the Indonesian public is taking the corruption issue which is critical to some kind of accountability. The finance minister has been called to the police station for investigation. Freeport is going around now on a major public relations campaign now trying to explain that what they were really doing was helping the Indonesian public in a time of crisis and so on. We don't know what the outcome of it will be but if charges against the senior ministers in Indonesia and senior cronies stick, that will be a major development. The unfortunate thing is that they are also bringing a criminal defamation suit against the two who blew the whistle.

LAWRENCE M. SOLAN

That will end the session. I wish I had a parable as good as the goat story with which the last panel ended. I don't, but I have two very nice ways to end this session and the Symposium. First, everyone is invited to a reception and to continue the discussion. Secondly, I would like to say that the mark of a good Symposium is that the discussion that it generates is so stimulating that not only does it keep the attention of the people here, during the day, but it stimulates all of us to think about this for a long time to come. This Symposium undoubtedly has more than met that standard.

So, I would like to conclude by thanking all the speakers for a very exciting day. And I would also like to thank all those who organized this conference here at Brooklyn Law School from the members of the Committee and the Dean to all the students who participated. Professor Sam Murumba should certainly be given a special note of gratitude for all his efforts. Thank you all.