

**Lecture Given by Prof. Dr. Ahmed Fathi Sorour  
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**On  
The Role of Law in Resolving the Financial and  
Economic Crisis**

**Washington**

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## **Ladies and Gentlemen,**

Particularly two weeks later, we will commemorate the 80 anniversary of the landslide US meltdown in 1929 alongside the lapse of one and a half year for the startup of the financial crisis which is also American-sourced. As we all feel about it, the recent crisis, the fastest and most widely-deployed, was not sustained by developed countries alone but rather extended to developing and least-developed ones. The real estate crisis was turned into a deflation risk-strewn global financial and banking crisis in the US, Europe and all parts of the world.

According to UN expectations, the world gross product scaled down by 2.6% in 2009, an unprecedented reduction since World War II. The UN Food and Agriculture Organization (FAO) expects the number of under-fed and hunger-stricken population worldwide due to this crisis to exceed one billion, an unprecedented figure to begin with.

Developing countries could not be claimed responsible for this crisis to suffer its negative implications. The progress the developing countries have recently achieved in economic and social areas – especially in relation to development goals defined in the international plan with particular emphasis on the Third Millennium Development Goals- has become fragile especially in least-developed countries.

Relief calls echoed everywhere under this crisis has raised controversy between politicians and economists with a view to examine ways out of the dilemma. Discussions in this respect have opened fire on bank governors and directors of insurance companies who were after the fulfillment of their personal interests by granting expensive loans to

unreliable clients. The calls invoked the help of jurists as a result of the deficiency in running current system management mechanisms. The calls were more like sirens alerting to the potential occurrence of crises of this heavy magnitude, if banking transactions continue to be managed in accordance with rules that set off the given crisis.

Today – no matter how late we were, to be late is far much better than to remain monitoring and steer clear of moving -. We were assembled today for a redress of the economic crisis and the prevention of its recurrence.

Some attributed bad or good performances in connection with States' growth in terms of Law and Economy to different legal systems, especially Civil Law as applicable in Europe and Common Law or Anglo-Saxon Law in the US and the UK in particular. Some maintained that the Common Law is the most effective and best suited to markets and private contracts, claiming that the Civil Law enforced in Europe is more formalistic, slow-paced, dependent on governments and less equitable.

In fact, the European so-called Civil Law is founded on preventing outbreak of disputes, safeguarding legal security, protecting transactions and ensuring their effectiveness. It is also dwelt on early reasoning and knowledgeable rules rather than post-judge thought or deducted norms as in the Common Law. All these characteristics bring to light the value of this Law during times of crises such as the current world economic crisis. The Law we are talking about is pinned on contract insurance, mitigated dispute risks and effective fulfillment of parties' undertakings. It is the Law providing for stability, thanks to its balancing between individual freedom and the freedom of transaction initiative as well as its interest in the realization of legal security. It mainstreams principles like

"good intent", "head of the family minding its own affairs" or the synonym of the principle of adherence to familiarity of conduct of the ordinary person, which are all principles designed to observe better protection of freedom.

It is now high time for states applying the Civil Law (the European) to get together and agree on common grounds for drafting recommendations on multi-party solutions, recommendations that would serve to enhance States' capacities to get over potential crises likely to occur in the future and to renew the credibility of the merits of their legal systems.

However, caution should be there and faith in magic solutions dismissed. The belief that states could shift from years-long orders to newly-devised ones by waving a magic wand also should be abandoned. In other words, any transformation from a particular legal regime to another presumes in advance changes in behavior and in-depth metamorphosis of mentality, which can never practically happen overnight due to limited resources, the corruption of some institutions in charge and the inefficiency of organizational bodies.

The State, in the broad sense of the word, will have to undertake an extremely important role in this process, given its part in the protection of public interest overruling category-based or partial interests within the community. The State is the maker of legal rules and is chiefly responsible for monitoring their implementation, thus drawing support of banking machinery control over financial institutions.

### **Ladies and Gentlemen,**

The economic crisis was sparked due to severe imbalance, overstated liberalism, and non-compliance whether in terms of law or the state. The crisis has resulted from grave

drawbacks in regulating, monitoring and controlling the financial sector, to say the least of deficiencies of existing control and rapid warning bodies. This worsening organization is the outcome of ceaseless resort to built-in management of markets, lack of transparency and financial integrity, and irresponsible behaviors which all were conducive to uncalculated risks and temporary rises in assets' prices, irrational recourse to financial incentives and excessive consumption. Besides easy loaning, all these mechanisms can only lead to short-term results.

The crisis has impacted largely on the broad masses' confidence in the financial institutions. Along this line, the prime lesson we can draw from this is the necessity to reorient the market system management towards better governance with greater transparency. At the international level, we have to reconsider the role, set-up and management of economic and financial globalization and the rational advancement of regulations, plus essentially denoting that law must significantly have its part in controlling the financial system governing innovative financial tools. Further the strategic state system based on the indirect role of the state in the area of production and the enhanced capacity for better planning, guidance and economic regime, should be established.

As a primary stage along this path, Central Bank Governors in 27 major states last month have adopted measures for the promotion and monitoring of the crisis-affected banking sector. It is expected that such measures will substantially serve to restrain the possibility of any further economic crises and limit their scope" as indicated by the Bank of International Settlements in Basle. The agreement to improve the modified "Basle 2" measures rendering it a must for banks to scale up their capital has led to the redress of defects brought to the fore as a result of the collapse of financial markets last year. Under this

agreement, it is incumbent on banks to act promptly to raise the level and upgrade quality of their capital to factor into new rules ensuring stability of national banking systems and economy as a whole.

We pay tribute to this step; however, we underpin the fact that loans should not be decreased, leading thereby to slowdown of economic activity, growth of unemployment, cutting down of consumption, and sharp reduction in companies' profits. Therefore, good governance is elementary to this effect. On the other hand, sound organization in times of crisis is contributory to economic recovery. Meanwhile, numerous regulations certainly strangle the already exhausted economy. Nevertheless, complacency in good governance will by necessity trigger even more disastrous crisis.

It is a question of "timing" and control. Control in this direction should be doubled. On one hand, the state should be self-controlling in due respect of its obligations. On the other hand, the state should watch over different actors in the economic domain. Therefore it should be admitted that state control should never be missing.

Presuming that a state defaulted on meeting its obligation under the Basle 2 Agreement by mandating its banks to increase their capital, this would be detrimental to fair competition between its companies and those of other countries that honored their undertakings. This would make the latter's loans even more expensive and the possibility of taking measures more difficult.

Accordingly, each state is responsible in the first place for its economic and social development process. In the meantime, it will have to synergize with other states to put in place and regulate comprehensive, dynamic, coherent and integrated interventions in the face of crises, depending on the potential and liabilities of states respectively.

**Ladies and Gentlemen,**

Thank you for listening.