NOTE: LAUNCHING THE PHNOM PENH STOCK EXCHANGE: TOWARD A LEGAL FRAMEWORK FOR LAUNCHING A STOCK EXCHANGE IN AN UNDERDEVELOPED COUNTRY

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I. INTRODUCTION

The idea of launching a capitalist stock exchange in an underdeveloped country where capital was abolished just thirty years ago seems optimistically free-market, if not naively silly. However, examining the possibility of launching the Phnom Penh Stock Exchange can serve as a cipher for examining the problem of economic development in the so-called "third world" in general. Furthermore, such an analysis can be useful to thinking about how a generalized legal and regulatory framework can be customized to help a country address its economic development in the context of its own markets, culture, and brand of democracy.

Launching any stock exchange is a massive structural effort, and Cambodia is a prime example of the extra difficulties that a developing country faces in such an undertaking. The list of problems faced by developing countries is a long one: lack of initial capital, lack of investment opportunities, lack of reliable information, lack of infrastructure, corruption, and the difficulties (especially in former communist states) of learning capitalism from the ground up. But despite this formidable list, the experience of quite a few developing countries in the last thirty years has shown that launching a stock exchange is not only possible, but can be a boon to economic development.

All of the relatively underdeveloped countries that have launched stock exchanges have shared certain criteria: the backing of a strong government (not necessarily their own), a relatively stable government, an extant industrial base thirsting for capital, and the capital to invest. Such general criteria, however, are necessary, but not sufficient. Many developing countries around the world could use a stock market as a means of injecting capital into their stagnating industries, or as a means of allocating resources more efficiently, or even as an excuse (and vehicle) for privatization. Yet facing tremendous obstacles, they require tremendous assistance, both in terms of capital investments, and legal and regulatory frameworks.

These frameworks will inevitably come from the developed world, but all too often, they will be mere blueprints of "how things are done back home." In designing a legal framework for a stock exchange (indeed, in launching any major economic initiative), foreign drafters and designers must take careful account of the particulars of the country they wish to assist. Of special importance are the details of the local market and national culture that may differ wildly from their own. Without understanding the political and economic context in which they work, foreign drafters are likely to fail to take into account particulars that might threaten their grand designs.

In this article, I will explore the possibilities and difficulties of launching a stock exchange in a developing country, using Cambodia as the prime example. Part II of the paper provides a brief overview of the political and economic history of modern Cambodia, invaluable to understanding the cultural context of current economic reform. Part III examines why policymakers would want to foster a stock market in an underdeveloped country in the first place, drawing on three examples of emerging markets (China, Thailand, and Mozambique) that have recently launched stock markets. Part IV of the essay explains why Cambodia in particular might want to launch a stock market, discussing its particular risks, rewards, and chances of success.

Part V analyzes the many problems inherent in launching a stock market in any underdeveloped country, focusing on the problems in Cambodia as an example of difficulties that are likely to arise. Part VI discusses what laws or regulations could be enacted — and by whom — to enhance the chance for the success of such a market. I conclude in Part VII with a discussion of how plausible a Phnom Penh Stock Exchange would be, given the political and economic realities in Cambodia.

II. SHORT HISTORY OF POST-INDEPENDENCE CAMBODIA

As mentioned, it is crucial to consider the political and economic history of a country before suggesting a blueprint for its development. Failure to do so will not inevitably lead to failure of the economic policy, but the chances of disaster (or simply mere irrelevancy) are notably increased. The infrastructural loans that are a fantastic idea in one developing country are disastrous in a country where an autocratic leader can divert the proceeds to his Swiss bank account. An economic policy that depends on the success of an ethnic minority of business leaders can turn ugly when those business leaders are attacked by the ethnic majority, angry at perceived racism and unfairness. Since all too often what is past is prelude, it is important to examine the political and economic history of post-independence Cambodia.

A. *Political History*[1]

Cambodia gained its independence from France in 1953, and was immediately thrust into the Cold War. Prince Norodom Sihanouk, Cambodia's leader, had to balance his nation between the American and Communist influences in the region without making enemies on either side, since Cambodia was not strong enough to resist either force. The North Vietnamese army started launching raids from within Cambodian territory, and Sihanouk's army, about a tenth as large, could not stop them. In the late 1960s, America became annoyed with what they perceived as Cambodian cooperation with the NVA, so President Nixon approved secret bombing raids inside Cambodia. These raids were as destructive to the Cambodian countryside as they were ineffective in stopping the NVA.

Sihanouk, the man who promised he could handle both the Vietnamese and the Americans, failed in both respects, and fell out of favor with the Cambodian public. A year after the first American bombings, he was overthrown in absentia by a force led by Lon Nol. The Americans, knowing that Lon Nol favored the US raids to rid Cambodia of the Vietnamese, accepted the new regime. Sihanouk joined with his old enemies, the Khmer Rouge, vowing to take back the throne. Unsurprisingly, Lon Nol did no better sandwiched in between the powers than Sihanouk did. The Khmer Rouge, led by Pol Pot and using Sihanouk as a figurehead leader, staged a coup and overthrew Lon Nol, who surrendered unconditionally, at gunpoint, on April 17, 1975.

Declaring an end to history, Pol Pot "reset" Cambodia's calendar to the year zero. He murdered any possible threat to his Communist rule: former political and military leaders, intellectuals and professors, high-ranking businessmen, foreign-born laborers, and anybody else he felt like killing. He cleared out the towns, sent everyone back to the countrysides, revoked all currency, and erased the market. He enacted agricultural policies similar to the ones that caused thirty million Chinese to starve to death during the Great Leap Forward. In total, in a nation of only eight million, over one million people were executed, worked to death, or starved to death.

Pol Pot was also unpalatable to the Vietnamese. He executed or expelled the minority Vietnamese in Cambodia, and stationed his troops along the Vietnamese border, sparking border conflicts. The Vietnamese

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1. *See* Gottlieb, "The Cambodia Coup," at <http://www.suite101.com/article.cfm/389/8554> (June 12, 1998). The major sources for that article were DAVID P. CHANDLER, A HISTORY OF CAMBODIA (1983), for the events up to the Vietnamese occupation, and STEVEN HEDER AND JUDY LEDGERWOOD, PROPAGANDA, POLITICS, AND VIOLENCE IN CAMBODIA, 1-10 (1996), for following events.

wanted desperately to be rid of the Khmer Rouge, but they needed a replacement for him. They got their patsy in Heng Samrin, a defector from the Khmer Rouge army. On December 25, 1978, a force of over 100,000 Vietnamese invaded Cambodia. The invasion took only two weeks. The Khmer Rouge retreated into the jungles.

The Vietnamese decided they liked Cambodia enough to stay, and did so until the late 1980s, with an occupational force of over 200,000. Cambodia, which had been passed from European colonial master to tumult, regained a colonial master by proxy: the Soviet Union, which was strongly aligned with Vietnam, and dictated a great deal of economic policy in return for economic and military aid. The economic policy was Soviet-style Marxism, and was even less successful in Cambodia than it was in the Soviet Union.

Eventually the Vietnamese burden of carrying Cambodia's poverty grew to be intolerable, especially given the reduced aid from the Soviet Union on the verge of collapse in the late 1980s. The Vietnamese announced they wished to withdraw from Cambodia, which allowed parties with a claim to Cambodia to engage in peace talks. In 1991, all sides agreed to demobilize their armies and to hold an election in May 1993, to be observed by the United Nations.

The UN peacekeeping operation was the largest and most expensive ever. Sihanouk's son, Prince Norodom Ranariddh, was the big winner. His party, FUNCINPEC (a French acronym for the "National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia") won 58 of 120 seats in the National Assembly. But right behind him was Hun Sen and his Cambodian People's Party (CPP), with 51 seats. (Two other minor factions won 10 seats and 1 seat respectively.) Since neither party won a majority, many feared the nation would be ungovernable. Ranariddh and Hun Sen shared this reasonable fear, so they entered an agreement to be co-Prime Ministers, with Ranariddh being First Prime Minister, and Hun Sen being Second Prime Minister. This agreement was a blatant re-writing of the newly promulgated Cambodian Constitution, which had been hammered out during the preparations for the elections.

Their compromise worked for a few years, in which Cambodia enjoyed some economic growth. Then, in July 1997, while Ranariddh was out of the country, Hun Sen staged a coup. A brief and bloody conflict ended with many of Ranariddh's top men executed, and Hun Sen in firm control of the nation. The world refused to recognize Hun Sen's rule. The United States and the United Nations maintained their recognition of Ranariddh's government. The Association of South East Asian Nations

(ASEAN), which was about to initiate Cambodia as a member along with Laos and Myanmar, refused to allow Cambodia to join. Hun Sen sank Cambodia into isolation, again.

Japan, trying to keep the peace in Southeast Asia, brokered a plan with Hun Sen and Ranariddh, whereby Ranariddh would agree to stand trial for treason, arms smuggling, and plotting with the Khmer Rouge (who were still hiding out in the jungles). Ranariddh would undoubtedly be convicted, but under the plan, the King (Norodom Sihanouk, Ranariddh's father and a political figurehead) would pardon him with Hun Sen's political blessing. After the pardon, Ranariddh would be allowed to return to Cambodia, and new elections would be held. Ranariddh was convicted, sentenced to 35 years in prison and fined millions of dollars, and pardoned. Hun Sen agreed to drop the prison sentence, but insisted that Ranariddh pay the fine, essentially attempting to block Ranariddh's return. Ranariddh ignored him, and returned to Phnom Penh anyway, paving the way for new elections, to be held July 26, 1998.

Most independent observers said that the election was run freely and fairly enough to certify its results. This was surprising, considering that Hun Sen controlled the media (allowing competing parties five minutes of television and radio time a day), and harassed and jailed Ranariddh supporters. Unsurprisingly, Hun Sen won, but again without a clear majority, so he again returned to the power-sharing structure, with himself as first Prime Minister, and Ranariddh as second Prime Minister. The political atmosphere remains tense.

B. Economic History

Upon release from its colonial status, Cambodia embarked on a modestly successful growth program. In the first decade of performance (until about 1963), GDP was growing at 7% a year. Rice production increased enough to become a significant export crop.[2] Between 1963 and 1969, more state intervention and development of state enterprises slowed economic growth somewhat.[3] The effort was partially to spread wealth inequities, but also to develop Cambodia's industry; at that point, large-scale industry comprised only 3% of the labor force, whereas small private unincorporated enterprises were 60%.[4] Still, growth continued, if not quite so briskly.

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2. *See* ROBERT J. MUSCAT, CAMBODIA: POST-SETTLEMENT RECONSTRUCTION AND DEVELOPMENT 7 (Occasional Papers of the East Asian Institute of Columbia University) 1989.
3. *Id.* at 7.
4. *Id.* at 10.

Then, Pol Pot came to power and destroyed all growth, essentially eliminating the Cambodian economy. During his rule, he eliminated capital altogether, abolishing currency. He also worked to eliminate human capital — 65% of teachers, 50% of students, and virtually all doctors were killed. He destroyed 70% of the national road system, 70% of the country's motor vehicles, 80% of airport equipment, virtually all bridges, construction equipment, heavy ships, power plants, municipal water systems, postal and telecommunications facilities.[5] Between 1970 and 1974, rice production, the lifeline of the Cambodian people, declined by 84%.[6]

Under its Vietnamese foster-parent (and Soviet grandparent), the Cambodian economy was centrally planned, from the early 1980s to the signing of the 1991 Paris Peace Accord.[7] Vietnamese shadow-rule brought about a bit of recovery, about 3.5% per year.[8] By 1988, Cambodia had recovered to about $550M in total GDP; about half the size of its 1960s economy, and about one hundredth the size of Thailand's.[9]

The 1991 peace accords returned control of the Cambodian economy to Cambodia, and with the help of the International Monetary Fund (IMF), the country began a privatization effort. By 1997, less than 10% of GDP was comprised of state-owned enterprises.[10] Between 1993 and 1996, Cambodia's economy grew about 5.5% annually.[11] The service sector burgeoned, as tourism soared from 5,000 a month in 1991 to about 15,000 in 1996. As Naranhkiri Tith observed, "Responding to the surge in tourism, a number of well-known international luxury hotel chains, such as the Japanese Intercontinental group, the Singaporean Raffles group, and the French Sofitel group, have rushed to build large complexes in Phnom Penh and Siem Reap, a city near the famous ruins of Angkor."[12]

5. *Id.* at 16-17.

6. *See* SOPHAL CHAN, MARTIN GODFREY, TOSHIYASU KATO, VOU PISETH LONG, NINA ORLOVA, PER RONNAS, AND SAVORA TIA, CAMBODIA: THE CHALLENGE OF PRODUCTIVE EMPLOYMENT CREATION 53 (Swedish International Development Cooperation Agency Country Economic Report 1998:9). One should keep in mind that statistics from Cambodia, even through today, are difficult to obtain, and should be considered estimates with far less accuracy than measurements of industrialized countries.

7. *See* MARC QUINTYN AND MARIO DE ZAMARÓCZY, CAMBODIA: RECENT ECONOMIC DEVELOPMENTS 4 (IMF Staff Country Report No. 98/54; April 8, 1998).

8. *See* Muscat, *supra* note 2, at 25.

9. *Id.*

10. *See* Quintyn and Zamaróczy, *supra* note 7, at 4. It's unlikely much more will be privatized soon, since the largest remaining industries are the rubber industries, which are deemed too important to be given the chance to fail.

11. *Id.* at 5.

12. Naranhkiri Tith, *The Challenge of Sustainable Economic Growth and Development in Cambodia*, in CAMBODIA AND THE INTERNATIONAL COMMUNITY: THE QUEST FOR PEACE, DEVELOPMENT, AND DEMOCRACY (Frederick Z. Brown and David G. Timberman, eds., 1999).

Cambodia's comeback seemed even more impressive when compared with other former socialist countries, which experienced trade and budget collapses and hyperinflation during their early reforms. Cambodia, in contrast, recorded high and positive real growth rates.[13] Mostly thanks to the IMF and World Bank, it lowered its inflation rate from triple to single digits, despite "major financial and fiscal difficulties and major institutional weaknesses."[14] Exports also made a comeback, especially in forestry products like rubber and timber, along with a growing export market in textiles.[15] The fact that the currency was openly convertible assisted greatly in the growing export market.[16]

Then, 1997 brought two crippling crises. Hun Sen's coup, coupled with the Asian financial crisis that began in neighboring Thailand, slowed growth to 2% in 1997.[17] Tourism collapsed, leading to a sharp decline in consumer spending (and merchant income).[18] The coup brought a temporary end to Cambodia's efforts to join ASEAN, delaying the free-trade benefits of membership.[19] Cambodia's nascent efforts at rebirth had been seriously hampered.

As of this writing, the government has not yet been able to implement formalized income tax or capital gains tax systems, although efforts are underway, and the government is already collecting about half of its (relatively small) budget through taxes.[20] Cambodia is highly dependent on foreign economic and financial assistance, an unsustainable situation.[21] Cambodia needs to replace foreign assistance with domestic savings, but the probability of success in mobilizing domestic resources will depend on the establishment of a more stable government, an efficient banking system, an open trading system, an efficient and transparent judicial and legal system, and a vibrant private sector.[22]

The incidence of rural poverty currently averages 43%, as compared to 11% for Phnom Penh, and 36% in other urban areas.[23] A survey of even the richest quintile of households reveals depressing results. Just less than

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Internet version (12/26/99) <https://wwwc.cc.columbia.edu/sec/dlc/ ciao/book/ass02/ass02_d.html>.

13. *Id.*

14. *Id.*

15. *See* Quintyn and Zamaróczy, *supra* note 7, at 26.

16. *Id.* at 14.

17. *Id.* at 5.

18. *See* Chan, et. al., *supra* note 6, at 27.

19. Cambodia was eventually admitted to ASEAN in 1999, after the 1998 elections.

20. *See* Quintyn and Zamaróczy, *supra* note 7, at 10.

21. *See* Tith, *supra* note 12.

22. *Id.*

23. *See* NICHOLAS PRESCOTT & MENNO PRADHAN, A POVERTY PROFILE OF CAMBODIA ix. (World Bank Discussion Paper No. 373, 1997).

50% in this quintile have in-house plumbing, only 37% have electricity, and 33% have a radio. The poorest quintile, as one might imagine, is bleaker. Only 9% have plumbing, 1% have electricity, and 23% have a radio.[24]

Of particular importance to this study is the lack of capital in Cambodian households, especially among the rural poor.[25] Most families are already highly leveraged. The percentage of households with outstanding loans ranges from 63% to 92%. In the lowest quintile, between 89% and 94% have debt outstanding. The absence of enforceable usury laws leads to predictable abuses. The average interest rate ranges from 53% for upper quintile households to 170% for the lower quintile households. [26] Given such exorbitant interest rates, why would families borrow so heavily? Very simply, because they have to. The lower quintile uses 70% of their borrowing for rice, and 20% for health treatment.[27] Given that such a large number of Cambodia's families have to borrow at 170% interest simply to eat, the odds that they will become regular investors in a stock market are rather low.

III. STOCK MARKETS IN DEVELOPING COUNTRIES

The bleak economic situation is to be found not only in Cambodia, of course, but in developing nations all over the world. The drastic lack of capital for investment, along with the nagging thought that such a country should focus on basics like literacy and plumbing before leaping to sophisticated trading instruments, are factors that raise some important questions. Given the desperate need for capital elsewhere, why should a developing country invest its resources in launching a stock market? And how successful have such markets been in developing countries?

A. Justification for Stock Markets

The general arguments for a stock exchange in a developed country are familiar. An open exchange will provide deserving, well-run companies with the much-needed capital they require to operate. The malleable share price provides greater incentives for companies to perform, and their high performance is good for society as a whole: greater sales mean more capital, more employment, and higher standards of living for the employees (when profits are distributed through fair salaries, of course). Furthermore, the fact

24. *Id.* at 40.
25. *See* Chan, et. al., *supra* note 6, at 58.
26. *Id.* at 59-60.
27. *Id.*

that corporate officers' jobs are often linked with share prices gives greater incentives for both officers and individual and corporate investors to maintain a stable business environment.

Stability is key to the long-term success of a stock market (not to mention an entire economy). As the above history of Cambodia observes, political instability has been a direct cause of economic hardship. The Pacific Rim countries that have had the most economic success — Japan, South Korea, Taiwan, Singapore, and Hong Kong — all shared domestic political stability and stable macroeconomic and business environments as important factors in growth.[28]

Stock markets are not necessarily going to lead to stability. Markets can often inject instability into a macroeconomic system, when investors working with less than perfect information (as is always the case) make less than judicious choices. Such choices warp stock prices by creating artificially high or low prices. Furthermore, when a government is pushing its own macroeconomic policy onto the market, favoring one sector or one company over another (whether for good reason or not), share prices are further distorted. In developing countries, such government intervention is tempting, since the importance of industries can be disproportionately higher in a smaller economy, such as Cambodia's rubber industry. In another example, Malaysia was forced to suspend trading on the Kuala Lumpur Stock Exchange in November 1985, when just one company, Pan Electric Industries, collapsed from insolvency.[29] It would be tempting for a relatively autocratic government with a relatively young and weak stock market to rescue a company because it was "too important to fail," thus defeating the purpose of the market.

In a perfect market, share prices theoretically reflect the best valuation of everything that is known about a company. But when the publicly available information about a company is incorrect, share prices will be too. And when those prices are wrong, capital is inefficiently distributed. Some inefficiency is acceptable, even expected, in a market. But too much inefficiency was one of the problems the developing country launched the stock market to address. Too much inefficiency in a system can be disastrous, especially since a collapse of a capitalist market will tempt policymakers to experiment with less capitalist forms of government. The last time such an experiment was carried out in Cambodia, a million people

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28. *See* THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY 85 (World Bank Policy Research Reports, 1993).

29. *See* Khoo Boo Thek, *Democracy and Authoritarianism in Malaysia Since 1957*, in ANEK LAOTHAMATAS, DEMOCRATIZATION IN SOUTHEAST AND EAST ASIA (1997), at 64.

paid with their lives.

So, in a developing country, one question to ask is whether the stock exchange will help or hinder long-term stability. Before we analyze the risks in Cambodia in particular, a brief analysis of stock markets in some other developing countries is in order.

B. *Other Developing Countries' Experiences*

An impressive array of developing countries can boast bourses of various sizes. In Asia alone, developing democracies such as India, the Philippines, and Thailand have established exchanges, and even less-than-democratic countries like Indonesia, Malaysia, and China have developed markets for their underdeveloped economies. For the sake of comparison, I will briefly analyze the experience of the market and market regulation in undemocratic China, semi-democratic Thailand, and for a more apropos comparison to Cambodia, the recent launch of the stock market in Mozambique.

1. China

After Mao Zedong's death in 1976, China began to lurch away from its economically Communist past. The final indication that the past was indeed history was the opening of the Shanghai Securities Exchange (SSE) in late 1990.[30] In July 1991, the Shenzhen Stock Exchange, and smaller regional exchanges followed in Shenyang, Wuhan, Tianjin, and Talian.[31] China's securities markets are quite broad, with some relatively complex financial instruments having been introduced in the past decade.[32]

Shanghai remains the center of capitalist action. Partially due to its limited size, the SSE has had mixed success in terms of enriching investors or pouring capital into industry. But the obstacles it has faced are plentiful, forming a list that will become familiar in the course of this article: lack of initial capital, lack of investment opportunities, lack of reliable information, lack of infrastructure, corruption, and cultural difficulties such as having to learn capitalism essentially from scratch. Given this list, Shanghai's mere continued existence is impressive. The performance of the SSE is even more

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30. *See* ELLEN HERTZ, THE TRADING CROWD: AN ETHNOGRAPHY OF THE SHANGHAI STOCK MARKET 33 (1998).

31. *See* Todd Kennith Ramey, Comment, *China: Socialism Embraces Capitalism? An Oxymoron for the Turn of the Century: A Study of the Restructuring of the Securities Markets and Banking Industry in the People's Republic Of China in an Effort to Increase Investment Capital.* 20 HOUS. J. INT'L L. 451, 468 (1998).

32. *See* MEI XIA ET AL., THE RE-EMERGING SECURITIES MARKET IN CHINA 1 (1992).

impressive given that the government claims that China's securities markets are "experiments" in capitalism which may be dismantled at will.[33] Even the rocky instability of 1992 did not persuade the government to end its experiment, a good sign for the future existence of the market, as the securities market continues to become entrenched in the minds of the public, and the government, as an institution.

Of course, the SSE has had the backing of the government of the People's Republic, a rather strong (and heavy) hand. After some initial unsuccessful and counterproductive attempts to control the market itself,[34] the government has seemed willing to allow the market to float on its own. China attempted to establish a securities regulatory system, borrowing from various Western models, especially United States securities laws on stock registration, disclosure, trading, insider information, broker-dealers, and administration.[35] Although the recent past should have taught it that government attempts to control a securities market can backfire rapidly, China seems unwilling to let go of the market quite yet.

China is a relative success story in recently launched stock markets, but the SSE had several structural advantages that many developing countries' markets would not. Although political decisions were arbitrary (for all intents and purposes to investors) and thus seemingly unstable, China's large-scale stability was far superior to many developing nations. In Cambodia, even the recent change of rule in government brought about deaths, much less dispossessions, of many top officials. Also, China benefited from a base of industry. Even though most of China's flagship industries were state-run operations, these can be privatized and floated on the exchange, whereas most of Cambodia's economy is comprised of small businesses and farms, which are understandably harder to securitize.

2. Thailand

Thailand is another relatively recent entrant into the world of securities, and is closer to Cambodia in terms of its history of political instability and revolution. The Securities Exchange of Thailand was established in 1979, with the Ministry of Finance overseeing its

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33. *See* Sophie Roell, *Survey—China 1996: The Watchdogs Bark*, FIN. TIMES, June 27, 1996, at 6. Available at 1996 WL 10598248.

34. *See* Hertz, *supra* note 30, at 58-70.

35. *See* Andrew Xuefeng Qian, *Why Does Not the Rising Water Lift the Boat? Internationalization of the Stock Markets and the Securities Regulatory Regime in China*, 29 INT'L LAW. 615, 625 (1995). The result of China's attempts was a national securities law effective as of July 1, 1999, an analysis of which is unfortunately outside the scope of this paper.

regulation.[36] The requirements for listing on the Exchange were quite rigid at first, and as a result, the market listed less than twenty companies in its first thirteen years of operation.[37] In 1984, the Ministry of Finance amended the Stock Exchange Act to allow private companies to offer shares more easily. In 1992, the Stock Exchange Act was rewritten to bring regulation of the market under a Securities and Exchange Commission, whose independence was modeled on that of the Central Bank of Thailand, along the pattern familiar to the majority of countries with an independent commission.[38]

Since the regulatory history of the Thai capital markets is still so short, it is probably too soon to speculate on how successful the exchange has been. Certainly, though, the Asian financial crisis of 1997, which many believe began that June with the devaluation of the Thai baht, bolstered the skeptics' arguments. One of those skeptics, Malaysian Prime Minister Mahathir bin Mohamad, blamed the Asian financial crisis on U.S. financier George Soros' speculation on silver prices on the Thai market. When Soros cashed out with a multi-billion dollar profit, according to Mahathir's reasoning, the Thai government was forced to devalue the baht to make up the difference.[39] Regardless of the accuracy or logic of Mahathir's comments,[40] it will take time for Thai capital markets to gain experience under their new regulatory regime,[41] and setbacks are inevitable for such a young and newly regulated market in a country with an unstable political recent past.[42]

36. *See* Pises Sethsathira, *Securities Regulation in Thailand: Laws And Policies*. 4 PAC. RIM L. & POL'Y J. 783, 784 (1995). Chittima Duriyaprapan notes that the Securities Exchange of Thailand opened April 30, 1975, not in 1979. That two experts on South East Asian finance disagree by such a wide margin on such a basic fact only underlines the informational difficulties of a securities exchange in such a market. *See* Chittima Duriyaprapan, *Development of the Capital Market in Thailand*, in THE DEVELOPMENT OF CAPITAL MARKETS IN THE SEACEN COUNTRIES 294 (Ng Beoy Ki, ed., 1989).

37. *See* Sethsathira, *supra* note 36, at 784.

38. *Id.*

39. Mahathir also claimed that "recent speculative attacks on the ringgit currency could have been the work of Jews," and again singled out Soros. He later "explained" his remarks, blaming the media for misinterpreting him. In his clarification, he said, "I merely stated that incidentally this person (U.S. financier George Soros) is a Jew and incidentally we are Moslems," and then followed up with "We cannot make such wild accusations...they will twist our arms."

40. It is unlikely that Soros single-handedly launched the financial crisis by undermining the Stock Exchange of Thailand, since far more basic problems were endemic to the countries most affected, such as overvalued stock exchanges, and too many banks with impossibly high bad loans outstanding. It is true, however, that smaller markets in developing countries are much more susceptible to manipulation by wealthy investors (both private and corporate) in developed nations, a problem addressed in Section V below.

41. *See* Sethsathira, *supra* note 36, at 806.

42. Indeed, Thailand's political present is less than perfectly stable. The last military coup d'etat was in 1991, when in the midst of a recession, the military took over the government, wrote a new

3. Mozambique

Even Thailand is a stable and economically healthy country compared to Cambodia. After all, Thailand had an economy in which to have a financial crisis, whereas it is hard to make that claim for Cambodia. And yet, even one of the poorest countries in the world, Mozambique, has recently launched a stock market. Mozambique's bloody civil war ended only in 1992, leaving a per capita GDP of $60. Whatever was left of the economy was entirely centrally planned.[43] In the following years, under political stability and attempts at privatization, the economy actually did quite well, growing at nearly 10% per year (albeit from a low base)[44] on the strength of its extensive mineral resources, including oil and natural gas. By 1998, the GDP had risen to a much improved $900 per capita.[45]

Relying on extensive legal and financial support from Portuguese, South African and American investors, as well as the World Bank, Mozambique managed to assemble the resources to launch the Maputo Stock Exchange in October 1999. The government is aware of the difficulties it faces, and it is expected that the exchange will be hampered by a lack of infrastructure, regulation, and a shortage of not only investment capital, but also companies in which to invest.[46] Mozambique has privatized its largest cement, plastics, milling, soap, cooking oil and clothing manufacture companies, and expects to continue its privatization thrust in order to enable more companies to be listed, including the country's leading brewery, Cervejas de Mocambique.[47] The market also includes Treasury bonds and other government bonds, launched initially with a US$5 million offering.[48] The initial proposal for the market required a $3 million capital base for listing, but because of the weakness of the private sector, this figure

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constitution, and promptly held new elections under a reasonable democratic rule of law. In the week of September 15, 1997, a story appeared in *The Nation* (one of Thailand's two major English newspapers) declaring that despite the current recession, the military has no intention of overthrowing the government, and the populace should not worry about the tanks in the streets that week, which were just part of a military exercise. The story launched widespread speculation that a military coup was imminent, but as it turned out, the military really was just conducting an exercise.

43. *See* Mbendi Information Services, Ltd., *Maputo Stock Exchange* (12/22/99) <http://mbendi.co.za/exmz.htm>.

44. *See Maturing Mozambique*, THE ECONOMIST, Dec. 4, 1999, at 43.

45. *See* CIA World Factbook 1999 — Mozambique (12/26/99) <http://www.odci.gov/cia/publications/factbook/mz.html>. This GDP figure may be unimpressive by developed world standards, but it is a remarkable gain in terms of annual growth percentage, and the figure is even higher when purchasing power parity is considered.

46. *See* Mbendi Information Services, *supra* note 43.

47. *Id.*

48. *Id.*

was cut in half, allowing for more companies to be listed.[49]

If it is too early to assess Thailand's success with its stock market experiment, it is certainly premature to speculate about Mozambique's, especially with a still fractious government, widespread corruption, and deep rural poverty, despite rather admirable attempts to tackle all three problems. Yet the fact that the country was able to launch a stock market at all is a surprising and wholly positive sign. The market's startup attracted the attention of investors not only in Mozambique (whose investor pool is fairly small), but also in major markets like the United States. More importantly, South Africa looks to be a major player in this market, a sign that Cambodia (or another developing country) might take as a promise for regional cooperation. After all, Cambodia is an ASEAN member, and Cambodia will probably find cooperation from ASEAN more forthcoming and enthusiastic than South Africa's assistance in Mozambique.

Still, though, Mozambique has some advantages (however few) that Cambodia does not share. Mozambique's history of peaceful governance is short, just seven years, but even that is longer than Cambodia's uneasy peace. Furthermore, Mozambique clawed its way to this point by exploiting its wealth of natural resources, and although Cambodia has enough forests to make rubber and timber valuable exports, it does not share the same level of mineral resources. So, given that the most tentative and risky of the three stock exchanges analyzed in this section is still at an advantage next to Cambodia, why would that country consider a stock exchange?

IV. WHY CAMBODIA?

After examining the stock markets in China, Thailand, and Mozambique, an important question remains: why should Cambodia launch one? After all, China had a well-established and strong government to back its market, and Thailand's newer market is, for a young market in a young democracy, well-attended and well-regulated. Mozambique is the more appropriate comparison, and it is far too early to gauge any results from that country. So why would anybody argue that Cambodia, with its unstable political leadership, vague grasp on democracy, weak government, extremely poor capitalization, and lack of industry, could possibly be ready for a stock market?

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49. *Id.*

A. Rewards of Success

The rewards of a successful market to a developing country in general are much deeper than just the formal nicety of knowing how much a share of a particular company is worth. Potential rewards on the microeconomic level include personal enrichment and higher standards of living and a sense of involvement and belonging in the national economy.[50] The potential macroeconomic upside is not limited to the enablement of industry, or even its desired result, economic growth. Some political theorists venture that economic growth in a less than democratic country is the path to reform.

Samuel Huntington argues that the "most important" factor "contributing to the emergence ... of democratic regimes in previously authoritarian countries" has been "higher levels of economic well-being, which led to more widespread literacy, education, urbanization, a larger middle class, and the development of values and attitudes supportive of democracy."[51] Harold Crouch and James Morley list a simple formula: economic growth drives social mobilization, social mobilization drives political mobilization, and political mobilization drives regime change.[52] Cambodia might not need a regime change (an arguable proposition), but certainly, its method of transferring power between governments has been lacking. Despite the reports that the last election was relatively free and fair, it only happened in the first place because a violent coup expelled the rightfully elected leadership. Cambodia could stand a change, in at least that part of its regime.

B. Problems in Failure

Failure of any major economic reform plan could be disastrous for a country just getting back on its feet after such a violent change of government. The Cambodian government is unstable as it is, and pushing any new initiative through its parliament is difficult. Major initiatives are inevitably hung up by political wrangling, and when such wrangling carries the ever-present threat of violence, politicians try to minimize the in-fighting. Even if a major economic reform were to pass, its failure (or even

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50. *See* Hertz, *supra* note 30, at 155 et. seq.

51. SAMUEL HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY 106-7 (1991). A comparison of the East Asian countries previously mentioned, particularly Singapore, South Korea, and Taiwan, arguably supports Huntington's point.

52. *See* Harold Crouch and James W. Morley, *The Dynamics of Political Change*, in DRIVEN BY GROWTH: POLITICAL CHANGE IN THE ASIA-PACIFIC REGION 25-26, (James Morley, ed., 1993).

its lack of complete success) could be seen as a failure of the government, strengthening the opposition, and in a country like Cambodia, threatening to destabilize the government yet again.

This fear is especially true of a stock market launch, since such an undertaking would undoubtedly be assisted by capitalist foreign aid. The opposition, especially in a country like Cambodia where nationalism runs high, might blame the government for being in league with capitalist foreigners, who are interested only in their own finances, and not in the best interest of the country. Anti-capitalist accusations of government officials "selling out" would strengthen the opposition. In Cambodia and too many other developing countries, political threats do not stop at the parliament floor, but are carried out with violence.

Given the laundry list of problems a stock exchange would face, and the all-too-real threat of failure leading to violent destabilization, a rational observer might well decide that no matter what the rosy upside may be, a stock market is not in the future for Phnom Penh, or any developing country. But each country presents its own list of problems, and some are more surmountable than others, all depending on the country. Predictions of success or failure in a specific case are extremely difficult. And like Mozambique, a country may see the rewards of success and decide (sooner than analysts think) that it is ready to take its first steps into equities trading. Cambodia is probably not ready for a stock exchange quite yet, but the government might decide to try it sooner than would be thought possible. Perhaps the best approach for policy and legal analysts is to focus on the list of problems a developing country would face, as specifically as possible, and then suggest plausible and locale-sensitive solutions.

V. PROBLEMS FACING A PHNOM PENH STOCK EXCHANGE

Launching a stock market in a developing country is a problematic venture. Policy planners have to deal with a long list of thorny issues, including *inter alia* political instability, cultural barriers, lack of initial capital, lack of investment opportunity, lack of infrastructure, corruption, and unbalanced group dynamics. This section will attempt to analyze these problems, and tentatively suggest some solutions that can be applied in the Cambodian context.

A. *Political Instability*

1. Lack of Clear State Control

On July 5th, 1997, Hun Sen staged a coup d'etat, and the major funding source of Cambodian development, the United States Agency for International Development (USAID), immediately halted all development aid, and pulled all its workers from the country.[53] In late July, ASEAN, which had been considering Cambodia for membership, decided to suspend Cambodia's application. Admission (which was eventually gained in 1999) would have brought trading privileges and lowered tariff barriers that would make Cambodia a more attractive investment. No investor wants to pour money into a country where a new government can shoot its way to power, kill the old government, and steal its money. Political stability affects the investment environment very clearly and causally.

Stability is a crucial part of the development of an economy. The world's great economies enjoyed prolonged periods of political stability, and those nations in the 20th century that have risen from the ranks of the underdeveloped, such as Japan, South Korea, Taiwan, Singapore, and Hong Kong, have all enjoyed stability. The fact that these are all Pacific Rim nations may or may not be coincidence, but if any cultural explanations for economic growth are valid, they might be more valid as a cultural explanation for political stability, which helps lead to economic development.

Stability is hardly a sufficient condition to launch a market, but it is a necessity. The three emerging securities markets discussed previously provide strong examples. China, despite its warnings of its securities markets being "experiments" in capitalism, provides a relatively stable political environment. The Chinese government may not be predictable in terms of its interventions and meddlings, but there is little question of a coup leading to nationalization of investors' assets (although the nationalization fear is always present in the People's Republic). Thailand was able to install a market, but unable to sell it to the world until a few years elapsed without its seemingly regularly scheduled military coup. Mozambique was able to launch a market only after seven years of political stability. These periods of stability were relatively brief compared to, say,

53. Interview with Matthew Fisk, a USAID-funded lecturer in law at the Royal University of Phnom Penh at the time of the coup (March 1998). "One way to know when something is going down," Fisk said, "is watch to see when the wives of the high-ranking ministers are going to the airport. You should go too."

the political stability contextualizing the New York Stock Exchange, but they are significant in the shortened time-frame of modern development.

2. Too Much State Control

Another problem of instability, especially in formerly centrally planned economies, is state control of the markets. While it may seem that state control could add a measure of stability, since state-owned enterprises are not subject to shareholder demands for profit, that character is precisely what makes state control so unpredictable. The profit motives of private industry are generally transparent and predictable. But a government may have different interests, including protection of sunrise or sunset industries, protection of "national" industries, rescue of those "too important to fail," or simple interest group pressure that has little to do with efficiency.

Such state control is not always disastrous; and protectionism is often necessary or beneficial, especially in the early stages of economic development.[54] However, state control of an industry necessarily warps the market, adversely affecting the information (already minimal and distorted in emerging markets) available to investors. A price-to-earnings ratio is meaningless if the state industry has no incentive to earn. State attempts to control the direction of the market are also counterproductive,[55] since they distort information even further, creating artificial bubbles that will inevitably burst.

Some state regulation is probably necessary; the American Securities and Exchange Commission regulates extensively, and most newer stock markets have taken the regulatory framework of either the United States or European markets. But these regulations (generally) protect the fairness and transparency of the market, instead of warping it. They set the rules of the game, attempting to do so fairly, instead of picking winners. The aim, as with attempts at political stability, is to provide an environment that is predictable, so investors will not fear the market. The proper role for the state in the market is one that each country will have to determine for itself. But a transparent regulatory framework, coupled with as minimal intervention as possible (and where intervention is necessary, it should be publicly announced and explained in advance), will provide the best starting point for an emerging economy.

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54. Japan is a prime example of how early protectionism and state control can develop an economy. *See* CHALMERS JOHNSON, MITI AND THE JAPANESE MIRACLE (1984).

55. *See* Hertz, *supra* note 30, at 174-187.

B. *Cultural Barriers*

Quite often, there are significant cultural barriers to the successful installation of a stock market, especially in a society that is not entrenched in capitalism. Cambodia, at least modern Cambodia, certainly qualifies. A 1960s World Bank paper reported that in the Khmer culture, "Social development takes precedence over material production. Buddhism supports a quietest attitude to exterior circumstances in life.... And the Khmer farmer is widely known for his remarkable self-sufficiency, pleasant nature, and happiness."[56] This was probably an Orientalist view of Southeast Asian society, rooted in a history of European colonialism.[57] However, culture is important in at least two ways. First, capitalism must be learned, and second, cultural ethnicity is a key factor in sorting out the tensions between the capitalist marketplace and democracy.

1. Learning Capitalism

It might seem presumptuous to assume that Cambodia wants to become capitalist — it is possible, after all, that the Khmer farmer really does wish for "self-sufficiency" over material production. But Cambodia's long campaign to join the proto-capitalist ASEAN can be taken as a symbol of its desire to develop under some form of a capitalist system. And it is not Orientalist to remember that Pol Pot erased capital, and so capitalism might not be second nature to the Cambodian people. Capitalism is a trait — a skill? — that must be learned. Roberta Karmel relates the following story:

> There was a group of Russians who came to the New York Stock Exchange several years ago and were given a tour of the Exchange and instruction on the development of a stock exchange in Russia. They visited the trading floor and were given a comprehensive explanation of trading floor activities. At the end of this long day of education, one of them asked one of the specialists on the Stock Exchange floor, 'Well, there's one thing I don't understand: In the morning when the opening bell rings, how do you decide what price you're going to start the stocks out at?' This was someone who needed more than an education in the mechanisms of stock exchange trading, he needed an education in market-based pricing. This is

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56. Muscat, *supra* note 2, at 14.

57. "A way of life that may have existed only for lack of alternatives is extolled as a virtue. Peasants who had little or nothing to eat are assumed to have had a rich spiritual life....Somehow, what might only have been the necessities or oppressions of one era come to be interpreted as traditional values during the next." SAMUEL POPKIN, THE RATIONAL PEASANT: THE POLITICAL ECONOMY OF RURAL SOCIETY IN VIETNAM 3 (1979).

> changing, but change is slow; in many former Communist countries there is still heavy reliance on government direction of the economy.[58]

In countries where there is a history of government-set pricing, the whole idea of market-based pricing is, to borrow a word, revolutionary.

On the Shanghai Stock Exchange, decades of Marxist indoctrination disadvantaged the Shanghainese in terms of the education required to play the market well. This problem will vary widely from country to country. South African blacks may have been disenfranchised for decades, but healthy and thriving open markets in Soweto during those decades have ingrained the basics of capitalism, if not the latest operational theory of derivative trading. It may be much more difficult to teach these basics to those for whom capitalism is new. Capitalism, and its attendant features that most investors in developed nations take for granted, is not a natural state of being — it seems entirely artificial that two friends cannot discuss business simply because one is a regulator and one is a businessman. The stock exchanges at Rangoon, Havana, and Phnom Penh, should they come to exist, will have to deal with this problem first and foremost.

2. Ethnicity, Democracy, and Markets

What are the possibilities that economic growth could spur democratization in Cambodia? Anek Laothamatas sees distinct groups of countries in East Asia. [59] In the first group (Thailand, Taiwan, and South Korea), economic development led to democratic reform, as they followed the Crouch and Morley formula: economic growth to social mobilization to political mobilization to regime change. In Laothamatas' second group (Malaysia, Singapore, Indonesia), economic development led to stronger authoritarianism, since the credibility of the authoritarian regime increased with its ability to deliver prosperity.[60]

The difference, he suggests, may be the presence or absence of ethnic tensions. Countries in the first group were largely homogeneous, and thus, economic prosperity was fairly evenly spread. When the populace reached a certain point of prosperity, it was able as a whole to lobby for

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58. *See* Mulan Ashwin, *Capitalism in Transition: The Role of International Law*. 89 AM. SOC'Y INT'L L. PROC. 103, 112 (1995). Karmel is the Director, Center for the Study of International Business Law, Brooklyn Law School.

59. *See* Laothamatas, *supra* note 29, at 15-17.

60. Laothamatas' third group is the exceptions: lack of economic development triggered Myanmar's democracy movement in the late 1980s, and the Philippines' economic success in the 1950s and 60s led to the collapse of the postwar democracy and paved the way for the Marcos dictatorship, which eventually collapsed in part due to its poor economic performance.

change. In the second group, one ethnic group (in all cases, the ethnic Chinese) prospered more than the "indigenous" population. The regimes in each country of this second group reckoned, perhaps accurately, that democratization might have led to redistribution. Thus, the ethnic makeup of a country affects its level of democratization through its marketplace.

Amy Chua makes three observations on the relationship of democratization and marketization in the developing world in terms of cultural composition. First, when an ethnic minority reaps disproportionate amounts of the market's wealth, envy and hatred among chronically poor majorities can arise. Second (and especially when the first tension occurs), democracy can lead to powerful anti-market pressures toward redistribution, undermining the very purpose of the free market. Third, as the above two effects combine, the simultaneous pursuit of free markets and democratization can actually undermine both.[61]

Ethnicity counts, certainly in Southeast Asia, where the economic success of the ethnic Chinese in Malaysia, Singapore, Indonesia, and other countries has led to jealousy and violence. Cambodia has had its share of ethnic violence. During the Pol Pot regime, ethnic Vietnamese (perceived to be capitalists) were killed by the thousand, and over 200,000 Chinese, about half of Cambodia's Chinese population were killed between 1975 and 1979.[62] Today, after the ethnic Chinese were all killed or expelled, and the significant Vietnamese population largely retreated after the Vietnamese abandoned Cambodia in the early 1990, Cambodia is far more ethnically homogeneous, with 90% of the population Cambodian Khmer, only 5% Vietnamese, and about 1% Chinese.[63] Even as recently as 1993, deliberate massacres of ethnic Vietnamese were reported, the presence of the United Nations peacekeeping operation notwithstanding.[64]

A combination of anti-Khmer sentiment and low Khmer capital would be nitro and glycerin mixed in the barrel of a stock market. Cambodia does not share the situation of other Southeast Asian countries, where an ethnically Chinese majority controls a majority of the capital. However, it is quite likely that the majority of capital initially injected into a Phnom Penh Stock Exchange would come from outsiders, and those outsiders would very

61. *See* Amy Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm For Law and Development*. 108 YALE L.J. 1, 6 (1998).

62. *See* Chou Meng Tarr, *The Vietnamese Minority in Cambodia*, in RACE AND CLASS, Oct.-Nov. 1992, at 34; quoted in Chua at 54.

63. *See* CIA World Factbook 1999 — Cambodia (12/26/99) <http://www.odci.gov/cia/publications/factbook/cb.html>.

64. *See* David Ashley, *The Nature and Causes of Human Rights Violations in Battambang Province*, in Heder & Ledgerwood, *supra* note 1, at 178.

likely be the hated ethnic Chinese, former colonial masters like France, or the United States, whose bombing raids did not endear.

It is unlikely that a democratic Khmer government (should one come to exist), under pressure from a largely impoverished Khmer society, would be able to resist the temptation of redistributing some of the foreign wealth. And such redistribution would provide short-term relief at the expense of long-term investment, since investors fearing nationalization of their profits would likely venture into safer markets.[65] Furthermore, allowing foreign investors to expatriate all the profits will only exacerbate ethnic tensions. Some redistribution is necessary, and probably beneficial. But the legal regime governing such redistribution, through progressive taxation, has to be transparent, predictable, and most importantly, steady, since frequent changes (even minor ones) will signal to investors that the rules can be stacked against them at any time.

C. *Lack of Initial Capital*

In a country where capital itself is scarce, a capitalist market is extremely difficult to start. Even more difficult is raising capital in countries where capital has been abolished. The rampant poverty of Cambodia, especially its ruralities, suggests that a large sector of society will be shut out of the market, followed by the inevitable perception that their national market is being exploited for the benefit of others, usually foreigners. This problem will only feed the nationalistic and ethnic tensions discussed above. How can the impoverished citizens of a country participate in their stock market?

To begin with, policy planners need to have reasonable expectations (a theme which cannot be understated). Even in the wealthiest countries, the majority of citizens do not have extensive interaction with their stock markets, and the poorest quintile of even a rich society are generally not active investors. It is unlikely that a stock exchange in a developing country is going to draw investors from anywhere below the wealthiest quintile, much less the lowest. Still, though, in the often corruption-ridden developing world, there is a tremendous difference between offering market access to the wealthiest quintile, and offering access only to friends and

65. This analysis might be taken as a defense of a stronger government, one that is resistant to electoral pressures. Not so. Authoritarians might be more likely to resist pressures of redistribution to the general populace, but tend to favor redistribution into their own bank accounts, as the experience of Marcos, Duvalier, and countless others testifies. And given the unpalatable choice between bilking investors for the good of the people and bilking them for the good of the wife's shoe collection, it is better if redistribution is actually distribution.

relatives of the President.

The lottery solution adopted in Shanghai,[66] giving out initial shares and options by lottery, is probably the best of a collection of bad solutions to this problem. It is a bad solution because it disadvantages those who cannot take place in the lottery, such as those who live in rural areas far away from the market, and those without the ability to take the time away from employment to apply for such a lottery. However, even though it seems odd to begin a game supposedly of pure skill by pure luck, it is probably the fairest way to begin, and it can help launch a more broad-based participation in the market, which is an important step in avoiding ethnic or class tensions. Even under the lottery system, however, the initial capital has to come from somewhere, and it is probably inescapable that such a jumpstart would have to come from foreign aid, as in the Mozambique example. Thus, the risk of the "greedy foreign capitalists" perception is virtually inescapable.

D. *Lack of Investment Opportunity*

If Cambodia had a stock market, what would be listed on it? After years of destruction, followed by years of foreign-assisted state planning, followed by years of political infighting, Cambodia has little real industry in which to invest. Other developing countries share this problem. Even in Thailand, which is a far more advanced market than is Cambodia, there is a problem of limited supply in securities, which has become a larger problem in recent years due to the nature of equity ownership. Most enterprises are largely family businesses, and are often reluctant to hire outside professionals, and resistant to non-family equity ownership.[67] The problem is often exacerbated in formerly state-run economies, since governments and public enterprises have first claim on what little capital is available from lenders,[68] leaving little seed money for the development of private firms larger than the traditional family-owned small business.

The answer to a lack of industrial base is to build one, which of course begs more questions than this paper (or any) could possibly address. A stock market might be able to help address these problems by allocating resources more efficiently, but the initial investments involved in starting a stock market might raise questions about whether the government would be better off spending that money by directly aiding its industries.

66. *See* Hertz, *supra* note 30, at 51-52.

67. *See* Duriyaprapan, *supra* note 36, at 327.

68. *See* ROBERT CLARK, AFRICA'S EMERGING SECURITIES MARKETS: DEVELOPMENTS IN FINANCIAL INFRASTRUCTURE 5 (1998).

Again, expectations are important. Even listing just a few companies, small ones in the beginning would be a major step, and is probably the only step that a developing country should take at first. Especially in countries where a privatization effort is underway, the stock market allows a government to float its formerly private companies in a controlled manner, and one that is more transparent than selling it on the cheap to presidential cronies.

E. Lack of Information

As if state control of the market didn't warp information enough, there are much deeper problems of imperfect information. The paramount need of investors, especially foreign investors, is transparency of information, which is important for two reasons: first, to assure the efficient allocation of capital, and second, to give investors confidence so that they will invest in securities.[69] In many developing countries, not only a method of communicating that information, but the information itself, is lacking.

In terms of communicating information, a better telecommunications infrastructure is necessary (see below). But the larger problem is developing that information in the first place. Some form of disclosure standard is necessary to enable investors to make choices that will efficiently allocate their resources. Standards for information production and dissemination can be set either by the marketplace itself through a self-regulatory organization like the stock exchange, or can even initially be a product of the government itself.[70] Although a government is more likely to alter information to suit its purposes, it might be the only agency capable of disseminating information on that large a scale at first. Some information, even if not entirely accurate, is probably better than no information. At any rate, self-regulatory organizations in emerging markets don't always deliver accurate information (unsurprising, given the numerous obstacles they face). Despite a surprisingly up to date information system, the Shanghai stock exchange suffers from severe problems in information flow.[71] But even with these problems, as long as some agency exists that can disseminate information at reasonably close to the same level of efficiency as the government, it should do so.

Another informational problem is a flow of unfounded rumors, exacerbated by insufficient transparency and information dissemination, and

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69. *See* Ashwin, *supra* note 58, at 110.
70. *Id.*
71. *See* Hertz, *supra* note 30, at 164-168.

made all the more plausible when a strong government accustomed to central planning so often intervenes in the market. Enforcing civil and criminal penalties for fraud can go a long way to squelching purposefully bad information. But rumors, whether started innocently or purposely planted by agents of state industries, can do serious harm to the markets, whether the bad information is an incorrect earnings forecast or a promise to intervene where no intervention is forthcoming.

The information problem needs to be addressed through a combination of transparency, and disclosure regulation, with close attention paid to the ability of the country to provide that information. Especially important is which organization will be responsible for such oversight; the government, or some private organization like the exchange itself, and if the government will initially provide such guidance, how long it will continue to do so.

F. *Lack of Infrastructure*

Professor Karmel, who related the previous anecdote about the Russians visiting the New York Stock Exchange, tells a tale about her experience working to develop the Indian regional exchanges:

> I visited the head of the Calcutta stock exchange whose office had a desk in it that was about as big as a grand piano and covered with 150 telephones. In the course of our conversation, the head of the exchange said to me in complete disgust, 'Look at all these telephones — only about half of them work and we have special arrangements with the telephone company to get working telephones.' Thereafter on this trip, whenever anybody would talk to me about whether or not there should be a national market system in India to link up all their stock exchanges, I would say, 'First, you need to do something about your telephone system.' My point is, that establishing a national stock market ... is completely inappropriate in a country where the head of a stock exchange cannot have a reliable working telephone.[72]

William Kovacic tells a similar story, recalling an instance when a Mongolian official gratefully accepted stacks of documents on United States securities laws from an American delegation, asking the Americans for more documents, also photocopied on one side of the page — in order to alleviate his office's chronic paper shortage.[73]

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72. Ashwin, *supra* note 58, at 110-111.

73. *See* William E. Kovacic, *The Competition Policy Entrepreneur and Law Reform in Formerly Communist and Socialist Countries*, 11 AM. U. J. INT'L L. & POL'Y 437, 438 (1996).

Many developing countries suffer from a basic lack of infrastructure that makes more advanced trading options moot. This problem goes beyond simple poverty as an obstacle to investment. If a stock exchange has no way to communicate its prices, trading is rather difficult anywhere beyond the floor of the exchange (and even then). This situation disadvantages both foreigners and those living away from the market (usually the poorer rural population).

Again, expectations are important, and foreign assistance must keep this in mind. Sophisticated investors working with advanced financial instruments through laptop computers on an extremely time-sensitive basis must remember that when giving advice to a developing country like Cambodia, half of even the richest quintile of society lacks an indoor toilet. Calling a broker is difficult when, at last reliable count, there were only 7,000 telephones in a country of 11 million people.[74]

Foreign aid is a good start toward solving this problem, but foreign engineering is also required. Cambodia, along with many other developing countries, lacks adequate facilities for telecommunications, roads, sewage, water, and electricity. Again, a stock market might be able to help address these problems by allocating resources more efficiently than foreign aid, but launching a stock market before addressing problems of basic needs will (and should) raise some serious concerns about the priorities of policymakers.

G. *Corruption*

Foreign aid must be accompanied by foreign engineering and oversight because too often, foreign aid has been "diverted" away from its intended recipients, and to associates of the country's leader. Cambodia is not alone in this problem, but is certainly symbolic. In September 1997, the IMF suspended a $120 million loan to Cambodia because of "problems in governance which concern corruption and logging."[75] Another analyst describes corruption in Cambodia as "pervasive, demoralizing, and detrimental to good governance."[76] The IMF is attempting to address these problems by attaching conditions to its loans that directly address corruption and bribery.[77]

74. *See* CIA World Factbook, *supra* note 64. Note that this estimate of 7000 phones is extremely old, from 1981, and is likely much higher, although certainly still woefully inadequate.

75. A. Timothy Martin, *The Development of International Bribery Law*. 14-FALL NAT. RESOURCES & ENV'T. 95, 101-2 (1999).

76. Tith, *supra* note 12.

77. *See* Martin, *supra* note 75, at 102.

But the problem runs deep, and is very likely to scare off investors. Corruption blurs transparency, hides information, and affects the dispute resolution process in a way that undermines investors' trust.[78] It diverts much-needed resources to support the rebuilding and rehabilitation of the economy. Moreover, it has a "pernicious effect on society"[79] by undermining the sense of trust or faith people have in their economy and legal system, which in turn lowers the levels of work a populace is willing to put into developing rule of law. The perception of lawlessness will only reduce foreign investment, and since foreign investment is a major way of rehabilitating the infrastructure necessary to development, corruption can undermine potential solutions to that and other problems.

H. Group Dynamics

1. Big Player/Small Player Problem

The problem Hertz (as an anthropologist) focuses on most closely is the group dynamic of Shanghai's investors. She accurately points out that if everyone behaved the same on the market, there would be no net advantage, since making money at stocks depends on a given investor buying when others are selling, in order to sell when others are buying. If there are several "big players" playing against each other, someone can profit. Likewise, if there are many groups of "dispersed investors" playing, the possible disparity is even greater. This phenomenon does not seem to be much of a problem on the Shanghai market.

Yet it could be a tremendous problem in the start of a new market in a developing country that shares a lack of information and trading education. If only a few trading groups form, and especially if some have advantages over others (insider information, greater resources), such groupings could prove extremely destabilizing or destructive to the stock market as a whole. The market would be seen as unfair, or rigged, and in a society as fractious as Cambodia's, such a perception could lead to violence.

In the Cambodian context, violence could occur in two ways. First, if the trading groups form around current political ties, which seems likely, then there would be two major groups playing against each other, to the exclusion of any minor players. Tensions between these groups, already high, would be exacerbated. Second, it is possible that the big groups will essentially "team up" against smaller players, especially if a lottery system

78. *See* Ashwin, *supra* note 58, at 110.
79. Tith, *supra* note 12.

were used to launch the initial capitalization of the market. Whether through fair trading aided by superior resources, or simply by threats of violence, it is likely that the bigger groups would eventually dominate the market. This result could either provoke the smaller players into violence, or lead back to the first possibility of competing major trading groups. Either way, an imbalance in the market could be dangerously destructive. Yet government interference in the market to redress a developing imbalance could prove similarly damaging to the market, especially when the government is perceived to be intervening in favor of one group over another — quite a quandary.

2. Foreigner vs. Cambodian

Even more destructive, if that is possible, could be a failed interaction between Khmer Cambodians and "foreign" investors (whether actually foreign, or just ethnically so). The four most influential political parties are all Khmer, comprising the entirety of the vote in the Cambodian parliament. The majority Khmer population tends to carry a very strong bias against non-Khmer, especially Vietnamese and Chinese,[80] who would likely be two major investors in a Phnom Penh Stock Exchange. As previously mentioned, the Cambodian people are understandably wary of European and American influences as well. The nature of a stock market is to sell pieces of ownership in exchange for capital. Yet Cambodians will likely feel uneasy about relinquishing control in their own industries. Cambodia will naturally be suspicious of foreign investment in the stock market, but due to the low levels of local capital, that foreign investment is likely to be the only way a market could be launched.

Making the problem worse is the fact that relatively low average annual income and capital levels makes the economy highly susceptible to manipulation by outside funds. William Shawcross explains how even the United Nations Transitional Authority in Cambodia, a mission with the best of intentions, contributed in this way to the problems of the Cambodian economy:

> The continuing arrival of UNTAC troops and civil administrators had an enormous impact on Cambodia's economy, especially Phnom Penh. UNTAC's international officials were paid a per diem of $145, while the average annual income in Cambodia was approximately $160. Land value, rents, and the prices of services and utilities soared, with no commensurate increase in government wages. As a

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80. *See* Heder & Ledgerwood, *supra* note 1, at 19 et. seq.

> result a double economy quickly developed and a large proportion of civil servants left their desks in order to profit from the private sector boom. In Phnom Penh inflation, corruption, and nepotism became ever more pervasive.[81]

A large influx of foreign capital would undoubtedly spark inflation, making standards of living for the average Cambodian even lower. Even the low amounts of foreign capital that such a stock market could expect to see would have to be carefully monitored in order to reduce the impact of inflation on the local economy, since such inflation tends to lead to a lower level of foreign investment[82] (which might help solve the problem of inflation, but not quite in the desired manner even if successful). Given the lack of a strong central bank, and the outrageously usurious interest rates noted above, the typical American response, the macroeconomic technique of raising the interest rate to combat inflation, would be completely useless.

Furthermore, there is no fair and competent judicial system to adjudge the inevitable disputes between locals and foreigners.[83] It is an open question whether a judiciary would side with a Cambodian (for nationalistic reasons) or a foreigner (who is better able to pay the desired bribes). But in either case, justice would not be done, and the uncertainty surrounding the judicial process will further compound the problems of instability and lack of transparency.

VI. LEGAL FRAMEWORKS FOR SUCCESS

Just because the problems are many and the risks are serious does not mean that a stock market is impossible to launch in a developing country. After all, many of the problems listed above are problems not just of a developing stock exchange, but problems inherent to a developing economy as a whole, and few analysts suggest giving up on development simply because it is difficult. But development of a stock exchange requires serious policy and legal planning, both to minimize business risk and political risk. Business risk can be reduced through improved national law and regulation, and political risk can be reduced through changed international norms and cooperation.[84] The law that is developed not only should address local concerns, but also should be as complete as possible, encompassing contract and property law, labor law, environmental law, tax law, etc. These laws form the relationship between business and society.

81. WILLIAM SHAWCROSS, CAMBODIA'S NEW DEAL: A REPORT 15 (1994).
82. *See* MAXWELL FRY, FOREIGN DIRECT INVESTMENT IN SOUTHEAST ASIA 52 (1993).
83. *See* Tith, *supra* note 12.
84. *See* Ashwin, *supra* note 58, at 106.

Their transparency of creation, stability, and completeness would "obviate the need for ad hoc arrangements, including special negotiations, renegotiations and, ultimately, expropriations."[85]

A. Domestic laws

As alluded to previously, the financial sector does not stand alone, but is just one part of the overall economic system.[86] A plethora of domestic laws are necessary to ensure a strong economic framework for a stock exchange, and an exhaustive listing of all the necessary laws and regulations would (in fact, does) fill volumes. A good beginning would be to list the goals of a young stock market, and then to examine some legal tools established in other young, developing markets.

1. Some Goals

In general, a primary target in developing the framework for a new stock market should be establishing and maintaining stability. Orderly markets can be maintained through regulations designed to safeguard the markets' reputation, prevent overheating or collapse, and determine or advise government policy on foreign portfolio investment. Additional regulatory concerns should be how to regulate takeover activity and merger and acquisition activity by listed companies, approving the quality, size, and timing (but not the pricing) of new issues, approving changes in stock exchange and other market practices, and regulating cross-listing activity and cross-border trading in securities.[87]

These goals are all fairly complicated, and the way to achieve them is even more so. For example, how can a country "safeguard its markets' reputation"? The typical answer is to ensure that market participants possess the business, legal, and technical knowledge, experience, and qualifications appropriate to their activities, and that they conform to acceptable ethical standards.[88] That is a helpful beginning, but still begs the question. Educating investors and regulators requires more than a mere regulatory regime, and speaks to the very heart of some central problems in development. Still, though, a regulatory framework is indispensable.

85. *Id.* at 108.

86. *See* David Cole and Betty Slade, *Reform of Financial Systems*, in REFORMING ECONOMIC SYSTEMS IN DEVELOPING COUNTRIES 315 (Dwight Perkins and Michael Roemer, eds., 1991).

87. *See* LOFTUS NDZINGE AND ALPHIOUS NCUBE, EDS., A SPECIAL ISSUE OF THE RESEARCH BULLETIN FOCUSING ON CAPITAL MARKET DEVELOPMENT AND ECONOMIC DIVERSIFICATION IN BOTSWANA 40-41 (Research Department, Bank of Botswana Research Bulletin 12:2, 1994).

88. *Id.* at 41.

2. Some Possible Regulatory Solutions

One of the major problems of the Shanghai Stock Exchange is that officials were reluctant to enforce regulations for fear of losing business to other Chinese exchanges.[89] The revisions to Thailand's Stock Exchange Act were explicitly aimed at enhancing its regulatory framework, and the revisions included guidelines on management, prohibited activities, antifraud provisions, and various procedural regulations that clarified a tricky market.[90] In Botswana, legislative reform has tackled qualifications for adequate capital for listing, international supervision, secrecy rules, settlement of disputes, and electronic transfer of funds,[91] all necessary tools for a market.

Some goals are more easily achievable through regulatory fiat. Botswana also established up and down limits, accompanied by technical suspension of trading when those limits are met (or before major policy announcements as well), in order to prevent market overheating or collapse.[92] Such a regulatory intervention is certainly obtrusive, and interferes with both the free market ideal, as well as the explicit government position that "exchange control regulations were found to hinder development and growth of capital markets.[93] However, given that markets are occasionally prone to irrational investor behavior, temporary suspension of trading to allow for dissemination of more complete and accurate information (as well as allowing investors the chance to think more carefully about their trades) is a tool that the regulatory agency of a young stock market can employ to positive effect.[94]

Of course, there needs to be some agency to make those sorts of decisions, and that is another area where a regulatory framework can assist. Malaysia, another relatively young securities market, maintains a strong and nominally independent Securities Commission.[95] While that may work well in a relatively politically stable country, the idea of a strong central Commission in a country like Cambodia raises the important question of who could be trusted to operate the Commission impartially. Again, a

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89. *See* Xia, *supra* note 32, at 300.
90. *See* Sethsathira, *supra* note 36, at 793 et. seq.
91. *See* Ndzinge and Ncube, *supra* note 87, at 24.
92. *Id.* at 41.
93. *Id.* at 25.
94. The authors also suggest a temporary injection of liquidity to stabilize the markets during times of turmoil, but that suggestion is problematic, not least for a government with little capital to inject.
95. *See* Ndzinge and Ncube, *supra* note 87, at 56.

possible solution can be found in Botswana. Although in general, the country's policymakers believe that a "self-regulating system" is best, "as it is likely to balance the interests of the participants," [96] it has established a Securities Commission under the regulation of its Ministry of Finance, overseen by Ernst & Young, a foreign accounting firm.[97] As much as local government officials might rile at allowing foreigners to oversee their operations, the idea has its appeal, since major accounting firms are presumably impartial, and have little stake in local political disputes.

Another way in which a reliance on foreign systems can help is to establish that local courts can and will apply well-known foreign law (such as that of New York or London, for example) in settling disputes. Such a clause could reassure investors that at the very least, they are familiar with the law governing their agreements. The application of foreign law is likely to be uneven, especially as local judges are not likely to be well trained in it. Such training should be part of foreign assistance packages, and in fact, USAID has already undertaken such efforts in Cambodia (see *infra* section VI.B.1).

It is important to note that the range of possible regulatory solutions is endless in both range and depth. The best way to design a regulatory framework for a developing country's stock market launch is to examine both major developed markets (for some kind of "ideal") and to examine other developing markets in countries that are similarly situated in terms of GDP, regulatory and industrial preparedness, and even geography and culture. A synthesis of ideas gleaned from these systems, coupled with a creative and particularized application to the country in question, is the difficult but necessary route to take.

3. Other Industries

Since the stock market is inextricably linked with its country's accounting and banking industries, some legal reforms in these areas might be advisable as well. An important part of the solution to the information problem is a standardized and predictable accounting and auditing, which can give investors the information, and confidence, they require to commit to a risky market.[98] The International Accounting Standards Committee (IASC) is attempting to develop international accounting standards, but the going is slow, in part due to the lack of knowledge of capitalism previously

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96. *Id.* at 25.
97. *See* Clark, *supra* note 68, at 34.
98. *See* Ashwin, *supra* note 58, at 110.

addressed.[99] In terms of banking, Botswana initiated a review of the Botswana Banking Act to further detail who is authorized to perform the licensing process, the quality of applicants to the market and investment bank, the capital structure of a bank in compliance with the requirements, the nationality of the entity, and matters pertaining to the relationship of the bank's branches and its head office.[100] Such regulations, even if only partially successful, will help the banks perform better on the market, and instill confidence that the major players are skilled investors.

4. Foreign/Local Imbalance

One interesting possible solution to the foreigner/local problem is the "dual-market" system Chinese officials created in their implementation of the Shanghai market, where one class of stock is available only to foreigners, and one only to Chinese nationals. Such a system would be unheard of in a liberalized Western economy, and its suggestion may easily provoke observers (especially Americans) to scoff at the idea of a Chinese stock market in the first place.

But the dual-stock system might not be such a bad idea, at least temporarily. It prevents wealthier foreigners from dominating the stock market, bleeding its potential gains away from the nationals it is meant to help. It may also help control the inflation problems previously discussed by "quarantining" stronger foreign currency. Furthermore, in a country with ethnic tensions as strong as Cambodia, the dual-stock system might help insulate foreigners from domestic criticism, in turn muting the chances of violent protest.

However, like all protectionist measures, there comes a point at which the protections must be lifted. Without that initiative, the foreigners will become discouraged at the lack of opportunity and invest elsewhere (compare foreign investment in Shanghai to that of Hong Kong). Furthermore, domestic investors will never learn how to be competitive on the global market, which will limit the growth of the market and its investors as individuals. Those launching a stock market in a developed country might not be overly concerned with global competitiveness at first, however, and so the drawbacks of a dual-stock system seem far in the future for a country like Cambodia, and the time frame for lifting the system does not even have to be considered too closely at its creation.

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99. *Id.*
100. *See* Ndzinge and Ncube, *supra* note 87, at 24.

5. Speed of Reforms

Whatever laws are eventually enacted, it is probably important to control the speed of reforms. China is often criticized for its governmental heavy hand. But its frustratingly slow pace of reform has (if you ask Chinese officials) helped China avoid the fate of the Soviet Union in its rush to free market reform. William Overholt writes:

> No policy has been more criticized in the West than this slowness to privatize. No policy, however, has been more central to China's success than its gradual but steady emplacement of the foundation stones for successful privatization. Spasmodic privatization of major industries followed by collapse of production deters foreign and private investors. In contrast, China has focused on stimulating an explosion of investment and production by foreign and private investors, then using the new production to alleviate its people's poverty to fund the solution to the problem of the state sector.[101]

It is possible that a country is able to undergo reform at the vaunted "shock therapy" speed forwarded by Jeffrey Sachs and other economists. But it is more probable that each country, and each sector within each country, will only be able to reform at a different pace. Great care should be taken to ensure that the pace of reform is not so hot that the country's economic infrastructure will melt.

B. *Foreign and International Assistance*

China was able to launch its stock market on the back of its own strong government. China, however, is an exception, and most developing countries will not have such ability. Thailand received aid from the United States and Southeast Asian countries. Mozambique had help from South Africa, Portugal (its colonial benefactor), and the United States. Foreign assistance will likely be necessary for a developing country to launch a stock market.

1. Governmental Assistance

The most powerful assistance will probably come from the governments of foreign allies. Cambodia's instability, which might be expected to limit the influence of foreign assistance, can actually help. As Jacques deLisle relates, Cambodia's "extreme political instability and

101. WILLIAM H. OVERHOLT, THE RISE OF CHINA: HOW ECONOMIC REFORM IS CREATING A NEW SUPERPOWER 44-45 (1993).

extensive dependence on foreign economic assistance have made Cambodia especially open to the influence of international organizations and programs," including American-funded programs operated through the Asia foundation, and even the ABA (a project providing technical advice on constitution drafting.[102]

The United States, through its Agency for International Development (USAID), is quite active in this area, and indeed, was quite active in Cambodia until the 1997 coup. USAID promotes a wide variety of development projects around the world, including promoting the "rule of law," supporting programs to make democratic legislatures more competent and independent, garnering support for market-oriented reforms, enhancing the capacity and accountability of judicial systems, increasing access to justice for ordinary citizens, promoting protection for "due process" values, and supporting the development of market-oriented commercial law.[103] Continued governmental assistance, whether directly government-to-government, or coordinated through inter-governmental agencies such as the IMF and World Bank, continues to be the best source of support for developing countries.

2. Regional Assistance

Depending on its location, a developing country might also do well to petition its neighbors for assistance. Cambodia, for example, is the newest member of ASEAN, and stands to benefit greatly from its economic and technical assistance. Singapore, Malaysia, and Indonesia already have stock markets of their own. Even if they were unwilling to invest in creating a potentially competitive stock market, they will be willing to invest in strengthening the Cambodian economy for their own trading benefit. Cambodia would be wise to improve its diplomatic and economic ties with its actual and potential trading partners as quickly and resolutely as possible. Other developing countries should do the same if they have regional neighbors they can petition.

3. Private Institutions

Private institutions, although generally able to assist in smaller scale than their host governments, are also important sources of assistance. The

102. *See* Jacques deLisle, *Lex Americana?: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond.* 20 U. PA. J. INT'L ECON. L. 179, 217 (1999).

103. *Id.* at 185.

Asia Foundation has run programs to bolster legislative skills and to support democracy and legal reform on a multinational level in East and South Asia and in individual countries, including China, Vietnam, and Cambodia.[104] Other private organizations, such as the Ford Foundation and George Soros' Democracy Project, have been instrumental in funding programs not only in Cambodia, but in many other developing countries as well.

4. Cultural Sensitivity

Any foreign assistance must take into account the local culture and its particularities, especially where the general prescriptions of the assisting foreigners collide with local traditions. Professor deLisle relates that there are many "derisively told anecdotes about American lawyers and law professors who have claimed to have 'written' the constitution of a former Soviet Bloc nation, and to have done so with, at best, minimal familiarity with the country and after, at most, a few short visits," while urging "strikingly American-style arrangements" such as separation of powers, courts' powers of constitutional review, and protection of individual liberties.[105] Critical race theorists have been quick to remind law and development scholars that strategies designed to develop legal institutions rarely consider the cultural setting of the country to be aided. The failure to consider the cultural context leads to a situation where "decolonization and development continue to perpetrate...the underlying premises of colonialism, albeit in a different form and with different rhetoric."[106]

Although critical race theory can easily be taken too far, it is certainly important to keep in mind that one culture might react differently to laws that work in another. The result could be one of simple inefficacy. In Mongolia, for example, the best efforts of American regulators allowed local regulators to have office paper. In China, "chaotic economic and institutional environments and deep popular resentment against apparently corrupt and unfair modes of privatization likely have made U.S. prescriptions seem relatively irrelevant in theory, as well as unimplementable in practice."[107]

The result of ignoring the cultural context could also be far more destructive. For all its problems, the Shanghai dual-stock system prevents

104. *Id.*

105. *Id.* at 246.

106. Ruth Gordon, *Saving Failed States: Sometimes a Neocolonialist Notion.* 12 AM. U. J. INT'L L. & POL'Y 903, 962 (1997).

107. deLisle, *supra* note 102, at 301.

foreigners from overwhelming the local market, possibly leading to the inflation mentioned above. This result might benefit those foreigners who helped create the system, leading them to turn a deaf ear to local complaints that the system is failing. In a country already as unstable as Cambodia, an attention deficit that blatant could easily result in violence.

Before applying solutions that are taken for granted in a developed Western country, foreign analysts must ensure that their solutions make sense not only economically, but socially as well. Such proposals should be consistent with existing structures to the extent possible. This requirement might force foreign planners to leave their usual framework. For example, many Chinese securities regulations are completely incongruent with United States securities law.[108] As Professor deLisle explains, "the existence of such serious gaps would suggest that U.S. models and advice would fit especially badly with official Chinese aims, and that could explain...the relatively limited influence of U.S. ideas and ideals."[109]

No stock market in a developing country will thrive unless it has assistance from foreign investors and planners. But no such market will thrive if it is designed in a way incompatible with the local culture. When the culture is one that is relatively unknown to Western policy experts, it is unwise for them to begin planning before extensive consultation with experts on the culture, polity, and economics of that country — preferably, of course, experts from the country itself. It seems an obvious and patronizing reminder, but given the experiences in Mongolia, Russia, and India related in this paper, the reminder is unfortunately a necessary one.

VII. CONCLUSIONS

How likely are successful laws and regulations given the political and economic realities of Cambodia? How likely is the implementation of a stock market in any seriously underdeveloped country? The quick answer, after comparing the list of obstacles to the list of possible solutions, is that launching a Phnom Penh Stock Exchange is not very plausible or likely at all. But there are a few points to remember that will hopefully leave the reader feeling not quite so depressed.

First, the obstacles faced in launching a stock exchange are problems facing any developing nation for development in general. Since virtually every nation appears to desire economic development,[110] these challenges

108. *See* Matthew D. Bersani, *Privatization and the Creation of Stock Companies in China*, 1993 COLUM. BUS. L. REV. 301, 309 (1993).

109. deLisle, *supra* note 102, at 301.

110. There are, of course, exceptions. As odd as "Phnom Penh Stock Exchange" sounds,

are being taken up anyway. The stock exchange, like the financial instruments traded on its board, is just an instrument, and not an end in itself. A stock exchange, through its ability to gather resources and distribute them efficiently, can be of some use in boosting development even at low levels, if executed properly.

Second, the expectation involved in such an endeavor is not to create the next New York Stock Exchange, and not to be able to trade complex derivatives on the Phnom Penh Stock Exchange over the internet at the touch of a mouse-button. For a brand new stock exchange, even just a few companies selling very simple shares to local institutional and private investors can make a big difference. Starting small and slow is probably the best way to launch a stock exchange, since it can build investor confidence, teach basic lessons in capitalism, and have a chance to become institutionalized in the economy. Botswana, for example, started its exchange in 1991, has only 12 firms listed, and trades only equities and government bonds, with no plans to institute derivative trades.[111] Once basic lessons are learned at their own pace, the market can grow more naturally and painlessly, and will probably do so without outside intervention or unnecessary goading.

Finally, when desperation at Cambodia's political and economic situation sets in, as it inevitably does after a good stretch of thinking, remember that Cambodia is one of the world's unluckiest countries in terms of its political leadership, its state of economic development, its human capital development, and its prospects for the future. This paper used Cambodia as an example of everything that could possibly go wrong in launching a stock exchange in an underdeveloped country, but if even partial solutions can be imagined for Cambodia's problems, there is all the more hope for the many other developing countries that are more stable, more economically advanced, and more ready. Thailand was probably not ready in the early 1970s, and China was probably not ready in the early 1990s. Mozambique probably was not ready this year. But ready or not, they took the plunge, as more and more developing countries are. Uganda launched its stock market in 1997, and Tanzania started its own in 1998.[112]

In July 2000, Vietnam opened a stock exchange in Ho Chi Minh City.[113] To date, only four companies have listed.[114] Day trading is

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"Pyongyang Stock Exchange" is even stranger. At least, for now.

111. *See* Clark, *supra* note 68, at 32-33.

112. *Id.* at 218-9. Further study of these markets, in terms of the legal framework of their launch and their everyday regulatory operation, could be invaluable research for policymakers looking for a more detailed blueprint on launching a stock exchange.

113. For an analysis of the problems facing the Vietnamese Stock Exchange, and some of the

prohibited and stocks can only trade within two percent of the previous day's close, in order to maintain a tight control.[115] The band keeps prices stable, but at a cost: few shareholders want to sell, reducing liquidity and distorting the market. Buyers outnumber sellers, and many investors are dropping out. And according to Johan Nyvene, head of foreign investor accounts for HSBC, government rules for foreign investors remain unclear.[116] But the first step is often the most difficult. All stock exchanges in developing markets will have their fair share of problems, often quite serious — Thailand's market provided the site of the first domino in the 1997 Asian financial crisis. But a financial crisis can only strike when there are finances, and it seems to have become generally accepted that the possession of a financial system is, at least in our current world economy, a desirable goal.

In the end, a stock market is not a magic bullet that can ingrain capitalist values and democratize the developing world. But with careful nurturing from local officials, regional cooperatives, and international sponsors, and with a well-thought-out legal and regulatory framework that is sensitive to the cultural context in which the market exists, a stock market may be a useful tool for assisting in the development process. No country that is unable to develop without a stock market will be able to develop with one. And no country that is able to develop will be able to do so past a certain point, without a central trading locale for the efficient valuation and allocation of its resources.

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measures of redress proposed by the Vietnamese Government, *see also* Cindy Nguyen, Comment, *The Vietnamese Stock Market: Viability in Southeast Asia and Appeal Around the World*, 21 LOY. L.A. INT'L & COMP. L.J. 607 (1999).

114. *See* T. Tran, "Vietnam Tiptoes Into Stock Market," <http://biz.yahoo.com/apf/001115/vietnam_s_.html>, as of November 5, 2000.

115. *Id.*

116. *Id.*