

ECCC's Tarnished Legacy and the UN

By Peter Maguire

After spending more than three years and \$200 million, the Khmer Rouge war crimes court--the Extraordinary Chambers in the Courts of Cambodia (ECCC)—is making significant progress in their trial against senior Khmer Rouge leaders Noun Chea, Ieng Sary, and Khieu Samphan.

However, all is not well in Phnom Penh. Laurent Kasper-Ansermet, a Swiss ECCC reserve judge who resigned last week over the Cambodian refusal to support investigations for cases 3 and 4 blasted the court's "egregious dysfunctions." UN chief Ban Ki Moon announced that the organization would not tolerate "impunity for the crimes committed during the period of the Democratic Kampuchea." United Nations brass and their advocates in the human rights industry have decided to take a principled stand, rather than complete one the most significant war crimes trials since Nuremberg. However, it is too late for the UN to reclaim their political virginity in Cambodia as they entered this Faustian "mixed tribunal" arrangement with open eyes. Rather than express "concern," "serious concern," or "grave concern," the UN should make good on years of hollow threats and withdraw once the second trial is complete and relegate the "mixed tribunal" model to the dust bin of history.

The UN has not earned the right to such sanctimony given their history in Cambodia: A short history lesson is in order. After the Vietnamese toppled the Khmer Rouge in 1979 and it was clear that the Chinese-sponsored Maoists had committed the worst atrocities since World War II, the UN allowed the genocidal regime to retain Cambodia's seat in the General Assembly. During the UN's remarkably unsuccessful, two-year multi-billion dollar occupation (1991-1992) that sent more than 20,000 troops and 5,000 civilian advisers to Cambodia, there was no mention of war crimes or any form of accountability – the 1991 Paris Treaty did not contain the word genocide or crimes against humanity, only a single Orwellian sentence that vowed "the non-return to the policies and practices of the past." However, in stark contrast to the successful reconstructions of Germany and Japan, this one would be run by civilians, and the Khmer Rouge would be treated as one of four legitimate political parties in an effort to create "a neutral political environment." According to the UN's "expanded peacekeeping" model, neutrality was the highest political virtue; military affairs were viewed dismissively as another facet of police work. The UN made no effort to disarm the Khmer Rouge, much less collect any evidence of war crimes or provide any form of accountability; in fact, they did the opposite and treated them like a legitimate political party.

The job of collecting evidence during this unresolved conflict fell to a number of disparate NGOs like the Campaign to Oppose the Return of the Khmer Rouge, the Photo Archive Group, the Yale Genocide Project, and finally the Documentation Center of Cambodia. The only goal these groups shared was a desire to preserve historical evidence of the Cambodian genocide. Why was this so important during the 1990s? Because the Khmer Rouge remained a potent political and military force and they were successfully revising their history by blaming the atrocities on Vietnam. In the end, the Khmer Rouge was not destroyed by fear of the long arm of "global justice" but a deft combination of military force and diplomacy carried out by Cambodian strongman Hun Sen. It was only after all the heavy lifting was done that the UN reentered the picture and, after years of negotiations, formed an incredibly complicated mixed

Cambodian and UN court that granted the Cambodians a majority at every level. It comes as no surprise that the Cambodian government refuses to support more trials – Cambodia Prime Minister Hun Sen has never wavered from this position. However, due to the revolving door between the United Nations and international humanitarian law NGOs, upper tier UN officials appear more intent on appeasing foreign “international legal experts” and upholding so-called “international standards” than completing the trials.

During the 1990s, the UN proved unwilling to stop crimes against humanity and genocide in civil wars throughout the globe and instead shifted their efforts from war-crimes prevention to war-crimes punishment. War crimes, human rights, and post-tragedy justice have become an industry – complete with stars like David Scheffer, power brokers like Arieh Neier and even a Don Corleone – George Soros. All aggressively advance the idea that a Nuremberg-derived system of international criminal law would soon take root. The only consistent thread between the post-Cold War and post-9/11 periods is the disproportionately large role played by civilians in rewriting the laws of war. For centuries war crimes trials were the domain of the professional soldiers.

If the UN’s leadership insists on making the perfect the enemy of the good, they will not complete Case 002. Cambodia’s “mixed tribunal” should be deemed an expensive, overcomplicated experiment that should never to be tried again. International criminal law is messy by its political nature; it is anything but the simple application of laws to facts, and no amount of time, money, or procedural correctness can change this fact. Just as the Nuremberg trials were tainted, but not discredited, by the Soviet courtroom presence, their bogus Katyn Massacre charges, and the secret release of convicted war criminals, the ECCC’s legacy has been tarnished by dueling investigative judges, the chaotic “victim’s unit,” and incredibly naive false assumption that Cambodian and international judges would work in good faith to safeguard the court’s integrity.

The court’s reputation can be salvaged if they can complete the case against the senior Khmer Rouge leaders while they are still alive. The ECCC will end on a high note that even longtime critics like myself will concede.

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