

The Boston Globe

In Cambodia, the power of imported justice

By Peter S. Canellos

November 18, 2012

A remarkable war tribunal could mark a new type of American diplomacy.

PHNOM PENH — When President Obama’s motorcade wends its way through the clogged streets of Phnom Penh as planned this week, the first-ever visit to Cambodia by an American president, he will see remnants of America’s past and glimpses of its future.

Cambodia was collateral damage for much of the Vietnam War, the target of secret bombings designed to disrupt supply lines to communist North Vietnam. Political upheavals followed. The maniacal Khmer Rouge, which ruled Cambodia from 1975 to 1979, played on bruised emotions: Its greatest genocidal act—the forced evacuation of Phnom Penh, in 1975—was presented as an exercise to protect civilians from US bombing. Instead, almost 2 million ended up dead, some in urban death camps, others in the swamp-like “killing fields,” and still others in rural encampments, where they were left to starve.

Now, Cambodia again stands between the United States and a powerful geopolitical rival, China, which is seeking to cultivate its own sphere of influence. But this struggle doesn’t involve arms, only money and values. The vast preponderance of money is coming from China, which is flooding its southeastern neighbors with cash. The values are arriving from the West, with strong American backing, and have the potential to leave a lasting legacy.

The forces of Western-style openness and justice are massed at an unlikely site, a nondescript government complex on the distant outskirts of Phnom Penh. Here, in a court known as the Extraordinary Chambers in the Courts of Cambodia, or the ECCC, the international community has been working closely with local authorities since 2007 to make sure that any top leaders of the Khmer Rouge who are still alive are made to pay for the regime’s unfathomable crimes.

At first glance, the court, which was promoted by senior US officials and is overseen by the United Nations and the Cambodian government, appears similar to other war-crimes tribunals, which since the ’90s have sought to punish crimes against humanity in Bosnia, Rwanda, and elsewhere. It confronts the same criticisms that are applied to those tribunals, of slowness and bureaucracy; of punishment that comes too late and too gently for the horrors that it seeks to redress.

But in an important way this court also represents something new. While those courts try murderous dictators thousands of miles from the scene of their crimes, the ECCC operates in the country itself, with Cambodian lawyers and judges working side by side with their international counterparts. Funded in large part by the United States and its closest allies, the court seeks to plant the seeds of Western-style justice in Eastern soil, transforming an entire legal system rather than merely putting aging war criminals behind bars.

As such, it can be seen as a tool of diplomacy as much as law enforcement. And at a time when the United States has massive, expensive commitments around the world, and power has become synonymous with boots on the ground, this little-heralded project has a very different kind of potential. It isn't a form of government that the United States and its allies are promoting here, but something more fundamental: the rule of law, a currency that could bind the United States and Cambodia for generations.

If there's a whiff of cultural imperialism about the proceedings, it's of a type that even the most multicultural of American liberals can embrace. And if it succeeds, it could provide a model for future joint national-international prosecutions in places like Libya, where the new government hopes to try Moammar Khadafy's son and the former dictator's inner circle.

"When you have egregious crimes of this character, they sweep across society," says David Scheffer, the former US ambassador for war crimes in the Clinton administration, who was a key instigator of the court. "Achieving the rule of law is a means of addressing the challenges of corruption, and land rights, and human rights. With Cambodia, sustaining a court of this character has an effect on the entire society as it confronts other challenges.

"It's one of the cheapest ways of projecting American values in the world."

Like Phnom Penh itself, with its pockmarked French Colonial buildings and 500-year-old temples, amid which grows the occasional faceless skyscraper, Cambodia is wrestling with its past. The government of Prime Minister Hun Sen, a former Khmer Rouge battalion commander who quit and joined the resistance, has traded violence for corruption. There's less repression and more economic ambition these days, but development remains slow. The majority of Cambodia's roughly 14 million people live an agricultural life; about a quarter work in factories for wages low enough that some jobs get outsourced from China.

On a recent Tuesday, about 200 villagers, many with weathered faces, gathered under a corrugated roof to await that morning's proceedings of the Khmer Rouge trial. They wore sandals, dark pants, and white shirts. Few of them spoke; all had awoken early that morning for a bus ride over rutted roads from their country village to the courthouse in Phnom Penh, part of the court's effort to showcase its work to average citizens. In total, since 2009 more than 90,000

Cambodians have attended ECCC hearings, and more than 120,000 others have seen videotapes or school lectures.

Gravely, the spectators filed into the observation area, as a curtain opened on a grand stage before them: More than a dozen berobed lawyers, including prosecutors, defense attorneys, and, in a unique twist, civil attorneys representing the victims, were arrayed on either side of a towering bench. To the audience's right, two of the four defendants—86-year-old Nuon Chea, the “Brother Number Two” to the late Khmer Rouge leader Pot Pot, and regime diplomat and propagandist Khieu Samphan, who is 81—sat among their attorneys. The two had vastly different demeanors: Khieu, who is mounting a defense on the grounds that he was out of the loop on murderous decision-making, paid rapt attention, murmuring instructions to his lawyers. Nuon, however, wore a rakish pair of sunglasses and scanned the proceedings with an air of dictatorial contempt.

That day's witness was a 67-year-old former railroad worker, testifying that the Khmer Rouge had provided no food for victims of the 1975 mass evacuation. “I had no thought of helping other people because I was starving myself,” he stated, as officials translated his words from Khmer into a variety of languages. “I was absolutely afraid to say anything at all because I was instructed to stay silent.”

The villagers sat in quiet contemplation, gazing at the giant production; most Cambodian trials aren't even recorded in writing, let alone dwelt upon by translators, videographers, and court reporters. Indeed, the ECCC is elaborate even by American standards: In addition to investigators, prosecutors, defense teams, civil attorneys, pretrial judges, and trial judges, there is a seven-member Supreme Court that sits over this single trial, just in case an evidentiary issue comes under appeal.

That bureaucratic bulk attests to higher ambitions. The court isn't merely aiming to put a handful of elderly perpetrators in prison; it's seeking to record for posterity the Khmer Rouge atrocities. That's no small task in a nation where, just 33 years after the mass killings of roughly 20 percent of the population, many young people either haven't heard of the crimes or ascribe them to outside forces, such as the Vietnamese.

The court's agenda is forward-looking, as well. It aims to teach Western-style trial procedures and courtroom advocacy to a nation whose lawyers and judges were almost completely wiped out by the revolutionary government. “After 1979, there were less than 10 people who were judges and lawyers in the whole country,” recalls He Kranh Tony, the acting chief administrator who is the main link between the court and the Cambodian government. “There is [still] no real administration in the national courts.”

At each level of decision-making, Cambodians work alongside colleagues from the international community—including judges from New Zealand, Austria, Australia, and France. Local officials make up the majority of each panel, but procedures require a super-majority; thus, at least one international jurist must be aligned with the locals before a decision gets made. This was the outcome of a decade of discussions between Cambodian and international officials that began as Cambodia finally emerged from the shadow of the Khmer Rouge, after Pol Pot's death in 1998.

For average Cambodians and jurists alike, the court has been a revelation, says He Kranh Tony. “They see that we are doing it properly. They see the due process. They see the judges. They see the defense.”

The whole notion of former leaders being forced to answer for their offenses in an open court, rather than being called in secret before the military—or, more likely, simply slipping into exile in a nearby country—is unusual in Cambodia. It's unusual among many of its neighbors as well. Even in China, where a top official was recently purged for corruption and hiding his wife's murder of a British businessman, the focus is on political retribution first, justice later. The notion of courts as an independent check on government is literally foreign.

This makes the tribunal a fragile experiment. There are signs that Cambodia's leaders want the approval of the international community—and the cachet and credibility that go along with a more modern system of justice—but not at the expense of their own ability to control the outcomes. Hun Sen, whose 1997 coup put the country on the path to stability, if not good governance, is officially a supporter of the trials. In a court brochure, he proclaims that “now is the time for those responsible for planning and directing this horror to be held accountable.” But doubt about his level of commitment is rampant.

So far, the court has succeeded in convicting Kaing Guek Eav, alias “Duch,” the warden of the notorious S-21 death camp in Phnom Penh, where at least 13,000 people were murdered. Now, the court is trying Nuon, Khieu, and the other top political leaders. None of these defendants have direct links to the Hun Sen government. But prosecutors are preparing two more cases—against members of the military and provincial authorities who have not yet been named—and the Cambodian government hasn't yet agreed to let the cases go forward.

Hun Sen is said to be leery of having international investigators probing the military and provincial governments. Former Khmer Rouge collaborators are still in power in many places. There is also the shadowy influence of China, which isn't comfortable having its former Khmer Rouge allies tagged with genocide. China gives the Hun Sen government an undisclosed amount of aid, which presumably dwarfs the roughly \$70 million in direct foreign aid contributed by the United States.

And in the broader effort to create an international consensus on justice, there are fundamental obstacles. Some court observers say the ECCC is fighting against an Asian tendency to bury the past and refuse to revisit it. Social barriers, including a rape stigma that renders any victim subject to immediate divorce, complicate the investigative process. Most Cambodians share a religious conviction that ultimate justice is meted out in the afterlife; the ECCC asks witnesses to take an oath that proclaims: “If I answer truthfully, may the sacred spirits assist me in having abundant material possessions and living in peace and happiness with my family and relatives forever....”

These factors fuel legitimate doubts about whether an American-style system of accountability can take root in a culture like Cambodia’s—and whether future diplomatic forays will be merely transactional, or if the nations can truly cultivate common ground.

For Americans, Europeans, and other foreigners revisiting the Khmer Rouge era, the ECCC inevitably calls up memories of the misadventures of the 1970s. The velvety Cambodian countryside, with its rice paddies, houses on stilts, and villagers with straw hats, recalls familiar images of Southeast Asia from nightly Walter Cronkite broadcasts. Cambodians of a certain generation remember that era, too, as they fish in the “bomb ponds” that dot the countryside—sections of paddies hollowed out by B-52 ordnance.

Back then, the United States was fighting to prevent a communist takeover in Vietnam but ended up creating one in Cambodia. American bombing of North Vietnamese supply lines in Cambodia in 1969 rocked the neutral government of Prince Norodom Sihanouk, leading to a coup by strongman Lon Nol. But the ultimate beneficiary was the Khmer Rouge, which overthrew Lon in 1975. Bou Meng, a 71-year-old artist and survivor of the S-21 death camp, recalls that he was rounded up by the Khmer Rouge because he once painted posters to advertise Western movies. “They asked if I was CIA, a foreign agent,” he says.

Such suspicions aren’t visible today. Cambodians express genuine excitement over Obama’s visit. But the extent to which memory, both expressed and repressed, plays on the Cambodian mindset is a crucial question underlying both the war-crimes tribunal and recent diplomatic overtures from the United States.

The Obama administration feels the time is ripe to forge closer American ties to Southeast Asia, whose independence provides a buffer to Chinese ambitions. Obama’s decision to visit Cambodia for the annual conference of Southeast Asian nations shows his desire to engage more fully in Asian politics; it’s of a piece with his initiative on India and his decision to build a US military base in Australia. All are aimed at creating a balance of power against China.

In that context, the forces behind the war-crimes tribunal believe that Cambodians can separate their 1970s-era fears of American incursion from their awareness of the very real crimes of the Khmer Rouge. This time, the Western powers are both preaching freedom and offering a model for it. That's the idea driving the global commitment to war-crimes tribunals: Justice is different from money and arms and other tools of imperialism. It's a universal language that unites, rather than divides.

Those hopes are reflected in the curiosity of the villagers who visit the trials, and the commitment of the Cambodians who work there.

"If you talk to people here, their cultural differences are not so great," says Andrew Cayley, the British subject who is the international co-prosecutor of the ECCC. "People know truth and lies. It's the same wherever you go. People understand good and evil. They see it the same way we do. They may not express it because of social limitations here, but they know it. They get it."

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