

**‘Differing Views’ on Judge
Mary Kozlovski and Vong Sokheng
January 25, 2012**

Deputy Prime Minister Sok An and recently appointed United Nations Special Expert to the Khmer Rouge tribunal David Scheffer have “differing views” on the interpretation of the 2003 agreement that established the court, according to a statement released late yesterday.

“Although the Deputy Prime Minister and the Special Expert have differing views on the interpretation of the ECCC Agreement, they intend to continue their close discussions ... and both remain optimistic that the court can achieve its mandate,” read the statement, which was released following a meeting between Scheffer and Sok An.

The interpretation of that mandate, however, which broadly states that the ECCC is to try “senior leaders of Democratic Kampuchea” and “those who were most responsible” for the crimes committed under Khmer Rouge rule, has been a point of contention since negotiations dating back to 1997.

In a 2009 opinion piece in the Post, Scheffer addressed the issue of which, and how many, suspects the court would prosecute, stating there had been “no serious negotiation” embracing the view of some Cambodian officials that a small pool of suspects be brought to trial, as it would have been “intolerable” for non-Cambodian negotiators and also “fatally undermined the integrity of the court”.

Scheffer also said in the piece that a compromise should be reached for “not too few defendants and not too many”, taking into account resources and a “reasoned application” of the ECCC’s mandate.

In an article published on the Cambodia Tribunal Monitor website this past May, Scheffer expressed dismay that “vast confusion” over this issue was “even crippling the investigation of four or five additional suspects”.

In the past, Cambodian officials have publicly indicated that they oppose prosecutions beyond Case 002, in which only four suspects were initially charged.

Last week, the UN announced that it had appointed Scheffer to the position of UN Special Expert advising on the United Nations Assistance to the Khmer Rouge Trials. Scheffer served as the US’ first Ambassador-at-Large for War Crimes Issues and has been a long-time observer of the ECCC.

The announcement came in the midst of uncertainty over the stalled appointment of reserve international co-investigating judge Laurent Kasper Ansermet. Kasper-Ansermet was nominated for the position of international co-investigating judge by UN Secretary-General Ban Ki-moon shortly after the abrupt resignation of international co-investigating judge Siegfried Blunk in October.

In a statement released on Friday, Martin Nesirky, spokesperson for the UN Office of the Secretary-General, said that the UN had been informed by the government on Thursday that the Supreme Council of Magistracy had refused to appoint Kasper-Ansermet and declared that the decision breached the 2003 agreement.

Article 5 of the agreement states that when there is a vacancy in the post of international co-investigating judge, the person appointed “must be the reserve co-investigating judge”.

Kasper-Ansermet has sparred publicly with national co-investigating Judge You Bunleng in recent weeks, over issues including the public release of information regarding the court’s third and fourth cases.

Martin Nesirky yesterday referred questions to the UN’s Friday statement. ECCC legal affairs spokesman Lars Olsen said he had “nothing to add” to the statement.

Representatives from the Council of Ministers declined to comment.

Clair Duffy, a tribunal monitor for the Open Society Justice Initiative, said that while she was encouraged by Scheffer’s engagement with the government, more information was needed.

“I think what’s going to be needed very quickly to restore the public’s confidence in this institution are some answers about how this is going to be resolved and where the court is going from here,” she said.