

Investigate the Khmer Rouge tribunal

John A. Hall

November 17, 2011

The scandal-plagued and U.N.-backed Khmer Rouge Tribunal is finally on the brink of beginning the trials of four elderly senior members of the regime responsible for the deaths of an estimated 1.8 million Cambodians from 1975-79. Unfortunately, the credibility of the tribunal has been rocked by the serious judicial misconduct of the two co-investigating judges, German Siegfried Blunk, and Cambodian You Bunleng. An independent investigation is now desperately needed to restore confidence in the legitimacy of the legal process.

Messrs. Blunk and You had responsibility to investigate five additional suspects accused by the international prosecutor of mass murder and serious crimes against humanity. It is hard to imagine a remit more serious for any judge. Yet they persistently undermined the investigative process.

The two judges closed down the investigations prematurely without having summoned, charged or questioned the suspects; without meeting with key witnesses; and without having conducted significant field inquiries. Their Cambodian staff reportedly stuffed paper into the case files just to give the illusion that investigations had taken place. In short, they presided over an egregious violation of their legal and judicial duties in violation of U.N. standards and international legal norms.

Thankfully, Mr. Blunk resigned last month. But that cannot be the end of the matter.

The New York-based Open Society Justice Initiative, a long-time watchdog of the tribunal, has just released a report concerning the allegations of judicial misconduct and political interference, and has called on the U.N. to appoint an independent panel of three international judges to conduct a full inquiry into the allegations. This is exactly what is needed. It is doubtful, however, that the U.N. has the stomach for it.

This is a shame, because until this matter is properly investigated, the allegations will continue to cast a shadow over the tribunal. An independent investigation can address not merely what happened, but why. If there was indeed political interference, was it solely from the Cambodian side?

It is not too difficult to appreciate why Mr. You would wish the investigations to be stymied. Cambodian Prime Minister Hun Sen and other senior officials have repeatedly stated that broadening the tribunal to include additional defendants beyond those already in custody would not be permitted. In Cambodia's non-independent judicial system, judges like Mr. You are dependent for their employment on continued political patronage. Joining those dots is simple.

But what remains a mystery is why Mr. Blunk, a U.N. official, acted as he did. What would induce an international judge to stifle the investigation of suspects alleged by the international prosecutor to have been responsible for some of the worst crimes of the 20th century?

There are several possible explanations. Perhaps Mr. Blunk was incompetent and did not understand the implications of what he was doing. That is plausible—though if true it reflects poorly on the U.N.'s judicial selection procedure. Perhaps he "went rogue" and decided independently that it would be best if thorough investigations were not carried out, or was unduly influenced by his Cambodian counterpart.

Mr. Blunk might have bowed to the pressure being applied very publicly by the Cambodian prime minister and others. In his resignation statement Mr. Blunk acknowledged that statements by Cambodian officials could indeed be perceived as an attempt to exert undue influence. But Mr. Blunk was not dependent on Mr.

Hun Sen for his job, and he would have been largely immune to pressure exerted by Cambodian officials. Indeed, he said as much in his resignation statement.

There is another, far more worrying explanation. Did Mr. Blunk's own organization, the U.N., conclude that attempting to broaden the number of defendants would jeopardize the ability of the tribunal to complete the trials of those already in custody?

Mr. Hun Sen has publicly stated his vehement opposition to broadening the tribunal on many occasions. He met in person with U.N. Secretary-General Ban Ki-moon in October 2010—shortly before Mr. Blunk assumed his position as co-investigating judge—and stated that further prosecutions would not be "allowed" for the sake of the country's stability. The prime minister also took advantage of that meeting with Mr. Ban to demand the removal of the head of the U.N. human rights office, which had a record of criticizing the Cambodian government's dismal track record.

This was the political reality facing the U.N. at the time that Mr. Blunk assumed his judicial position in December 2010. Mr. Ban may have been unwilling to walk away from the tribunal at such a late stage, aware that the Cambodian government might pull the plug on the undertaking if additional defendants were charged. This could help explain Mr. Blunk's egregious behavior.

To date, the U.N.'s response to this matter has been less than impressive. Patricia O'Brien, the head of the U.N.'s Office of Legal Affairs, was dispatched to Phnom Penh to scold the Cambodian government and tell them not to interfere in the tribunal. There have also been a few general statements about the need to respect judicial independence. It's not enough.

An independent, credible and transparent investigation into the allegations of judicial misconduct, incompetence, and lack of judicial independence by the co-investigating judges is needed to establish the facts. The stakes are too high for anything less. With the tribunal poised to begin the trials of the existing defendants, it remains unclear just how big this scandal will become.