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No Way to Fund a War Crimes Tribunal

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After months of riveting testimony, a war crimes tribunal in Cambodia is struggling to continue its own Nuremberg-style trial of former senior Khmer Rouge leaders Khieu Samphan, Nuon Chea and Ieng Sary.

It is inconceivable that the international community would imperil this historic trial midstream and undermine justice for the estimated 1.7 million Cambodians who perished under Pol Pot's rule from 1975 to 1979.

The survivors have not forgotten what they endured. An astounding 150,000 Cambodians have visited the trials of the tribunal in Phnom Penh — a number that exceeds the public spectators of all of the other war-crimes tribunals combined.

The tribunal, known as the Extraordinary Chambers in the Courts of Cambodia, is an internationalized Cambodian court partly staffed with foreign jurists, investigators and administrators, guided by principles of international law and managed through a treaty with the United Nations.

The governments that traditionally supported the Cambodia tribunal since it started operations in 2006 have been constrained by recession, the euro crisis and, in the case of the largest donor, Japan, the priority of recovering from the 2011 tsunami.

However, a decade ago the U.N. General Assembly insisted on voluntary contributions as the funding source for the Cambodia tribunal. Many key governments backed this plan with the clear expectation that they would generate sufficient financial support.

The tribunal could do its job much better, with strengthened independence for its mission of international justice, if it were not dangling on the financial precipice. Judges, prosecutors, investigators and defense counsel should be liberated to undertake their important work without the pressures of “donors’ fatigue.” The international standards of due process required in the work of the tribunal can only be met when sufficient funding enables all parts of the court to function efficiently.

The hiring freeze that the United Nations had to impose in July due to the paucity of funding slows down the investigative and trial work as vacancies in key positions mount. This only compounds criticism by court observers who demand higher standards of performance and speedy trials.

After speaking with many governments, I sense that donors' fatigue arises not only from their financial troubles at home but also the difficulty of keeping finance ministries and parliaments focused on and enthused about slow-motion trials, year after year, in a far-off country like Cambodia.

It also does not help that there are perceptions of Cambodian government interference in the work of the tribunal — an issue that merits constant vigilance. Yet with sufficient long-term funding the Cambodia tribunal is in a far better position to shield itself from outside influences.

Several nations have pledged sufficient funds to finance the tribunal for two more months, and that is good news. But at least \$4 million must be raised to cover November and December expenses. (The Cambodian Government's smaller portion of the budget has been covered with the help of foreign aid.) And then there is 2013 to worry about — immediately.

This is no way to fund a major war-crimes tribunal with a historic mandate to achieve accountability, finally, for one of the 20th century's worst slaughters of innocent civilians. Voluntary government assistance for war crimes tribunals is a speculative venture at best, and depends on so many unpredictable variables as years roll by that the original objective is sometimes forgotten.

Once a tribunal is given a mandate and launched by the United Nations, it has a life of its own. There arise political and moral imperatives for nations to do everything within their power to enable it to continue to function as an independent and impartial judicial body. That includes meeting international standards that member states have established under U.N. authority to see the job done. To allow such a court to falter for lack of funds would fly in the face of the "no impunity" message that has developed progressively through nearly two decades of international criminal tribunals.

Such an outcome would send entirely the wrong message to would-be perpetrators of international crimes.

The major war crimes tribunals — covering atrocities in the Balkans, Rwanda, Sierra Leone, Cambodia and seven nations being investigated by the International Criminal Court — have been criticized as being too expensive for the seemingly small number of defendants prosecuted for genocide, crimes against humanity, war crimes and egregious domestic crimes.

Yet given the magnitude of the crimes involved and the fact that annual budgets cover the entire cost of the judicial enterprise (massive investigations, judges, prosecutors, defense counsel, court facilities and staffers, witness expenses, victim rights and educational outreach), the tribunals' costs are remarkably small compared with nations' investigative and judicial budgets for common crimes.

The most acute challenge today is to sustain governments' support for the Cambodia tribunal. A modern-day Andrew Carnegie also could help fund it. In 1903 Carnegie contributed \$1.5 million (equal to about \$35 million today) to construct the Peace Palace in The Hague where the Permanent Court of Arbitration and the International Court of Justice still resolve and adjudicate legal disputes. That is a legacy worth investing in, even more so today.

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