

## **UN Holds Firm On Judge**

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Judge Laurent Kasper-Ansermet “has clear authority to fulfill” his role as a co-investigating judge at the Khmer Rouge tribunal, regardless of the refusal by Cambodia’s Supreme Council of Magistracy to appoint him, a United Nations expert said yesterday.

UN Special Expert to the Khmer Rouge tribunal David Scheffer told a press conference that under the 2003 treaty establishing the court, the decision to appoint the judge was strictly up to the discretion of UN Secretary-General Ban Ki-moon, not Cambodia’s SCM.

Scheffer said he had made this position very clear during talks with Deputy Prime Minister Sok An on Tuesday night – which followed strong condemnation from Ban’s office of last week’s revelation that the SCM had refused to appoint Kasper-Ansermet.

“So I made that very clear, that our view is that this particular individual, Judge Kasper-Ansermet, has clear authority to fulfill his duties in this country and we look forward to him doing so,” he told reporters, adding their position had not changed on the SCM’s refusal to appoint.

“We object very strongly with that rejection, and we state that regardless of it, he had the authority under the treaty,” he said.

During talks, the deputy prime minister did not object to his position but “was not affirmatively accepting my point of view”, Scheffer said.

Scheffer also said that Kasper-Ansermet, who has had a rocky relationship with national Co-Investigating Judge You Bunleng “does not need You Bunleng with him to undertake these investigations”.

The SCM’s refusal to appoint Kasper-Ansermet was reportedly based on ethical concerns about the Swiss judge’s use of the social-media site Twitter, on which he has indicated his determination to investigate the court’s controversial cases 003 and 004.

Scheffer said his expectation was that Kasper-Ansermet’s duty to investigate the court’s cases 003 and 004 – which are opposed by the Cambodian government – would be respected.

Judge Kasper-Ansermet, who could not be reached for comment, told the Post last week

he had made several important decisions on cases 003 and 004, but had been effectively “walking in shackles”.

Since arriving as the UN-selected replacement for former co-investigating judge Siegfried Blunk, who resigned in October citing perceptions of political interference in cases 003 and 004, Kasper-Ansermet has publicly sparred with You Bunleng.

You Bunleng has refused to allow his reserve counterpart to publicly release information related to cases 003 and 004 and has claimed that procedural actions taken by Kasper-Ansermet are legally invalid until he is appointed by the SCM.

You Bunleng could not be reached for comment yesterday, but Ek Tha, a spokesman at the Council of Ministers Press and Quick Reaction Unit, said the name of the tribunal – the Extraordinary Chambers in the Courts of Cambodia – made it clear the SCM’s authority to appoint judges had to be respected.

“If someone wants to work as international co-investigating judge at the ECCC without legal appointment by the Supreme Council of Magistracy, that does not make sense in terms of the legal authority of the Supreme Council of Magistracy,” he said.

Should Kasper-Ansermet proceed with investigations unlawfully, it would be up to the ECCC to decide what action to take, Ek Tha said.

ECCC spokesman Neth Pheaktra referred questions to his counterpart Lars Olsen, who could not be reached for comment.

Anne Heindel, a legal adviser at the Documentation Centre of Cambodia, said the 2003 treaty made it clear the function of reserve judges was to immediately fill the shoes of their predecessors, without the need for reappointment.

“If, under Cambodian national law, it’s required that the SCM re-appoints [the judge] . . . that’s fine, but the UN made sure the agreement with Cambodia would be a binding treaty and they can’t use provisions of national law to subvert a treaty,” she said.

More importantly, without Cambodian co-operation, Kasper-Ansermet’s investigations would be incapacitated by a lack of local expertise and support, as well as the necessity for both judges to sign off on certain actions, including the making of arrests or the issuing of indictments, Heindel said.

“Whether he has You Bunleng’s approval or not, there is nothing he can do in that position until he has the support of the Cambodian side, and this is why the issue goes much deeper than his mere appointment,” she said.