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## OPINION

## A Tribunal Worth Paying For

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For years, the United States withheld funding from Cambodia's Khmer Rouge war crimes tribunal. Before opening its wallet, Washington insisted that the court meet international standards for fairness and anticorruption measures. That stance has now paid off, contributing to international scrutiny that has led to dramatic improvements in the tribunal's operations. It's now time for the U.S. to contribute funding and preserve the gains its earlier policy has helped foster.

This matters because the tribunal represents Cambodians' last best hope of healing the wounds they suffered under decades of Khmer Rouge rule. Roughly one in three Cambodians perished under the Khmer Rouge's Maoist experiment to send the country back to what they called "Year Zero." If Cambodia is ever to find its way to economic growth and a stable, democratic political system, it's important for its former leaders to stand trial for their alleged crimes. The tribunal's failure would be a blow for the long-suffering Cambodian people themselves, but also for the credibility of the United Nations. And it would be a black mark against the U.S. to stand idly while the tribunal America helped birth 10 years ago falters.

By pouring money into the U.N. Development Program without adequate oversight, donors for too long effectively handed their money straight to the Cambodian side of the tribunal, with predictable results. Auditors have uncovered fiscal problems, serious mismanagement and bloated salaries. The Open Society Justice Initiative, a New York-based NGO, raised serious allegations of widespread corruption and kick-back schemes among Cambodian appointees. After three years of operations, only five defendants are in custody and no trials have begun. The tribunal still lacks a credible anticorruption plan.

But major strides have been made over the past six months. The U.N. has brought in David Tolbert, a former prosecutor with the Yugoslavia tribunal, as its "special expert" to act as a much-needed coordinator between the tribunal, donors and the U.N. It boasts a new management team led by Norwegian lawyer Knut Rosandhaug, a veteran of the U.N.'s mission in the Balkans. Day-to-day judicial operations like filings and hearings increasingly adhere to basic standards of transparency and fairness. And a revised budget features more prudent expenditures, and better controls over where and how donor money is spent.

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The biggest threat to consolidation of this progress now is lack of funds moving forward. The tribunal is currently seeking almost \$100 million to allow it to complete its mandate. Without additional donor support, the tribunal could close its doors in a matter of weeks. And even if the tribunal did manage to secure adequate funding, the U.S. would have lost its prime leverage to push for improvements.

So far, the desire to address serious U.S. concerns and win its support has been a prime driver of improvements to the tribunal process. More than any other country, the U.S. has consistently expressed skepticism about the Cambodian government's purported efforts to cooperate with the tribunal and has championed transparency and effective anticorruption measures. Mr. Tolbert's appointment was a direct result of U.S. pressure.

That U.S. leverage only works, however, so long as people have reason to believe American money might be forthcoming if participants can satisfy the U.S. concerns. If the U.S. holds back now, despite the progress of the past few months, it will lose this advantage.

In contrast, donating now as the tribunal moves into a new, improved phase of management, would allow the U.S. to bring enormous diplomatic weight to the table. The U.S. then could exert pressure on the Cambodian government and the U.N. to ensure that the tribunal continues to focus on anticorruption policies and meeting international standards.

For example, Mr. Tolbert is crafting such a plan right now, and it would be to America's advantage to maximize its say over the proposal. As a donor the U.S. could offer powerful support to Mr. Tolbert's push to include mechanisms for participants to report suspected corruption (including whistleblower protections), greater anticorruption investigative capacity on the part of the tribunal's management, and changes to the code of conduct for judges that would spell out explicitly what constitutes corrupt activity.

Some of the fiercest opposition to funding the tribunal originates in the U.S. Congress, which is understandable, given the tribunal's troubled history. It's also healthy. The "blank check" approach adopted by the UNDP and other donors created the tribunal's problems in the first place. It is vital that the U.S. not be that naïve, let alone willfully deaf, blind and dumb in its own funding.

Instead, the type of scrutiny and attention that the U.S. could and should bring to the court as a donor will be one of the critical safeguards for progress. Particularly if America becomes a member of the tribunal's steering committee by committing \$2 million or more, it will be in a position to play a powerful role in the tribunal's future.

Meanwhile, the U.S. could target its donations to specific budget items, such as victims' rights and witness protection or even the operating budget for the international side of the tribunal, and make payments over time rather than as one lump sum. Washington could use its new leverage to force the tribunal to process cases more efficiently, ensuring proceedings don't drag on for years until already-elderly defendants simply die. The U.S. would also be in a position to mandate independent and transparent accounting procedures that would not only track American dollars but aid in

improving the tribunal's operations overall.

The U.S. was instrumental in negotiating the creation of this tribunal 10 years ago, and has all along affirmed its commitment to helping the Cambodian people seek justice. Up to now, the most effective way to do that has been to withhold U.S. money pending reform. But as the tribunal moves into a new phase, and with its management improving, donating will become the more effective tool for the U.S. to follow through on its promise to Cambodia.

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