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The Negotiating History of the ECCC's Personal Jurisdiction

By

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The Extraordinary Chambers in the Courts of Cambodia ("ECCC") face two considerable challenges, one by convicted defendant Kaeng Guek Eav (alias "Duch") and the other by the Co-Investigating Judges and the Co-Prosecutors. The first is a straight courtroom brawl that should be easily settled by the judges. The second is far more contentious and has led many observers of the ECCC to challenge its very legitimacy and future. But now both of the Co-Prosecutors and the Co-Investigating Judges have begun to battle among themselves publicly. The integrity of the ECCC hangs in the balance. The pathway is discoverable, but it will take some common sense and courage to find the markers and act responsibly. As I have listened to oral arguments and read and studied the publicly available documents and media reports on these two situations, I am struck by how a distorted view of the personal jurisdiction of the ECCC still appears to deeply influence the work of those whose responsibility lies with an accurate reading of the ECCC Law and the UN-RGC Agreement.

A brief recap of where things now stand: International Co-Prosecutor Andrew Cayley has challenged (see http://blog.cambodiatribunal.org/2011_05_09_archive.html) the April 29, 2011, decision of the Co-Investigating Judges not to further investigate a number of suspects identified by Cayley in Case 003. That challenge led the Cambodian Co-Prosecutor Chea Leang to disagree with Cayley and pronounce the individuals as not falling within the personal jurisdiction of the ECCC (see http://blog.cambodiatribunal.org/2011_05_10_archive.html). The Co-Investigating Judges then demanded that Cayley retract parts of his May 9th statement (see http://blog.cambodiatribunal.org/2011_05_18_archive.html). Does everyone clearly understand the personal jurisdiction of the ECCC?

I wrote an article for *The Phnom Penh Post* on January 8, 2009 (available in the January 2009 section of "News" of the Cambodia Monitor Tribunal, accessible at

http://www.cambodiatribunal.org/images/CTM/how many are too many defendants at the krt.pdf), that explained the character and possible number of suspects who would be prosecuted by the ECCC, and how both definition and number were discussed during the negotiations leading to the constitutional documents governing the ECCC. Despite this reality check, here we are, almost 29 months later, and there still seems to be vast confusion about the ECCC's personal jurisdiction that is even crippling the investigation of four or five additional suspects. There remains a critical need to return to the fundamentals of the negotiations and summarize what transpired in terms of how to describe the personal jurisdiction of the ECCC and the number of individuals that the Cambodian Government, the U.N. lawyers, and, among others, the United States Government (as an important participant in the negotiations) anticipated would be prosecuted.

Detailed discussions about the scope of the ECCC's personal jurisdiction did not commence until 1999. During 1997 and 1998, the target list was spoken of more generally, with the focus on the surviving senior Khmer Rouge leadership (and we, the negotiators, had no idea whether Duch was still alive). There was much focus on how to ensure the apprehension or surrender of Pol Pot, Ta Mok, Ke Pauk, Ieng Sary, Khieu Samphan, Nuon Chea, Ieng Thirith, and other senior Khmer Rouge leaders rather than nailing down precisely how many would be prosecuted before the ECCC.

I recall as early as January 1999, following a fresh round of talks in Phnom Penh, visiting Beijing and proposing to China's assistant foreign minister, Wang Yi, that the tribunal's targets would be about ten of the senior most Khmer Rouge leaders and that the Cambodia government could suggest names of such leaders to the tribunal for investigation. The estimate of ten did not include by that date either Pol Pot, who died in 1998, or Son Sen, who died in 1997. But Ke Pauk (who died in 2002) and Ta Mok (who died in 2006) were still alive at that time and were definitely in our sights. So a fair estimate of how the personal jurisdiction was evolving in early 1999 would have identified Ke Pauk, Ta Mok, Khieu Samphan, Ieng Sary, Noun Chea, and Ieng Thirith, and shortly would include the notorious Kaeng Guek Eav (alias "Duch") once he was discovered alive and fell into Cambodian custody in mid-1999. That number of seven likeliest suspects still afforded some room for expansion of the suspect list if one works with an estimated number of ten defendants before the ECCC. This would be the most conservative understanding of personal jurisdiction, which I used to try to persuade the Chinese Government to support the prospect of an international criminal tribunal for Cambodia.

Two months later the U.N. Group of Experts for Cambodia delivered their long-awaited report to the U.N. General Assembly and Security Council (U.N. Doc. A/53/850, S/1999/231 (March 16, 1999)). The Group of Experts recommended that, "the independent prosecutor appointed by the United Nations limit his or her investigations to

those persons most responsible for the most serious violations of international human rights law..." There clearly was no effort on the part of the experts either to specify who should be on the suspect list or the maximum number of suspects who should be investigated and prosecuted. The Group of Experts report influenced the negotiations (triggering opposing views by the Cambodian Government and supportive responses by U.N. and U.S. negotiators) and focused all parties on how to nail down critical issues, including the character of the tribunal itself and its personal jurisdiction. Within a few months, however, the Group of Experts' recommendation for a Security Council Chapter VII international criminal tribunal, similar to the International Criminal Tribunals for the former Yugoslavia and Rwanda, was abandoned in the face of stiff Cambodian resistance.

On July 30, 1999, the U.N. Secretariat briefed the Security Council on the U.N. officials' proposal for a mixed tribunal for Cambodia to be established under Cambodian law, but with international assistance. One of the proposal's main pillars was to establish the tribunal's "personal jurisdiction reaching the major political and military leaders of the Khmer Rouge and those most responsible for the most serious violations of human rights." There also would be an effort, to the extent possible, to jointly prosecute the top leaders in Nuremberg-style trials.

Cambodian Prime Minister Hun Sen rejected the U.N. plan shortly thereafter and criticized both the U.N. call (long registered) for the arrest of 20 to 30 suspects and the notion of Nuremberg-style joint trials (which should more easily facilitate prosecution of the number of suspects being proposed by U.N. lawyers). With both Ta Mok and Duch in Cambodian custody by then, U.N. negotiators visited Phnom Penh in late August 1999 and one of them, Ralph Zacklin, left with the impression that Cambodian authorities only wanted to prosecute those two suspects. That impression would be overtaken with a more willing attitude by Cambodian authorities as the negotiations progressed through the rest of 1999 and all of 2000.

My own involvement in the negotiating process, both to represent U.S. interests and to serve as a de facto mediator between the Cambodian and U.N. negotiators, intensified. In late October 1999, I stressed to the Cambodians that the U.N. proposal for 20 to 30 suspects was a firm position that had to be reckoned with. I also emphasized that the prosecutor must retain the discretion of whom to indict, as this would be critical to his or her independence and integrity. We agreed that Ieng Sary was a viable candidate for prosecution although he presented some novel issues to be ironed out in the tribunal law. By January 2000, Ieng Sary's prospect as a future defendant before the ECCC was assured and would be further confirmed in the months thereafter.

The drafting of what ultimately became the ECCC Law shifted into high gear in late 1999 and early 2000. In late 1999 I prepared a draft of the ECCC Law for

consideration by Cambodian authorities. In that draft I described the personal jurisdiction of the ECCC as "the senior leaders of Democratic Kampuchea *and all persons* responsible for the most serious violations of Cambodian law [etc]…" (Emphasis added.) This draft clearly foresaw two groups of suspects. But I was too ambitious to refer to "all persons," which I wrote to give the prosecutor the widest discretion. The January 14 and 25, 2000, drafts presented by Cambodia describe the personal jurisdiction as "senior leaders of Democratic Kampuchea and those who were responsible for serious violations of Cambodian criminal law, international law and custom, and international conventions recognized by Cambodia, and which were committed during the period from April 17, 1975 to January 6, 1979. Senior leaders of Democratic Kampuchea and those who were responsible for the above acts are hereinafter designated as 'Suspects.'" (The January 25, 2000, draft has a lower case "suspects.") Note that the term "most responsible" had not yet been injected in the draft. The standard was recorded as "responsible," but the notion of "all persons" of responsibility falling within the tribunal's jurisdiction was rejected in favor of "those who were responsible."

It is important to recognize that by this time (January 2000), Duch already had been in custody for more than six months and was a constant reference point for the negotiators as a likely defendant. The assumption that Duch would appear before the ECCC held firm throughout subsequent years of negotiations. Furthermore, at no point did negotiators state to each other that any suspect must be *both* a senior leader of Democratic Kampuchea *and* an individual most responsible for the serious violations. That would have been an illogical position to take. Such a view would have been open to immediate challenge by negotiators, as we wanted to make sure that individuals like Duch who might not be among the senior Khmer Rouge leaders but were responsible for large scale commission of atrocity crimes would be eligible for investigation and prosecution by the ECCC. Both groups—the group of senior leaders and the group of those most responsible for the crimes—were to fall within the tribunal's personal jurisdiction. I do not recall a single suggestion otherwise. This is one of those benchmarks in negotiations that I would remember if someone had proposed an obvious formula to narrow the list *only* to senior Khmer Rouge leaders who themselves wielded great responsibility during the Pol Pot regime. The only reason to extend the description of personal jurisdiction to another group of individuals with the usage of "and" in the clause would be to identify that *other* group. Otherwise, we would have drafted the language to read, "senior leaders of Democratic Kampuchea who also were responsible for serious violations…" Nonetheless, we would have been denying, or at least suggesting the denial of, the major responsibility of the senior Khmer Rouge leaders if we had used the disjunctive "or" and thus de-linked leadership identity completely from responsibility identity. That would have been unfair to those senior Khmer Rouge leaders who may not have exercised significant responsibility for the atrocity crimes and

yet would be subject to the tribunal's jurisdiction solely by virtue of their leadership positions. We wanted to be very careful about this as we knew that some members of the modern Cambodian Government had Khmer Rouge leadership backgrounds(of whatever rank), but we were only interested in the surviving senior leaders *who demonstrated significant responsibility* as well as *other* top functionaries, like Duch, who had such instrumental roles in the atrocities.

The January 25, 2000, draft of the ECCC Law introduced a definitive two-group division for personal jurisdiction. The U.N. translation reads, "…the senior leaders of the Democratic of Kampuchea [sic] *and other persons* responsible for the crimes and the most serious violations of Cambodian criminal law [etc.]…" (emphasis added) This wording clearly refers to the senior leaders and to another group of persons as falling within the tribunal's jurisdiction.

On March 18, 2000, one of the first drafts of the UN-RGC Agreement appeared. The only descriptions of the tribunal's personal jurisdiction appears in the Agreement's preambular clauses, which refer to 1) "bringing to justice those persons responsible for the crime of genocide and crimes against humanity committed during the rule of the Khmer Rouge 1975-1979," 2) "bringing to justice Khmer Rouge leaders," and 3) "to bring to justice persons responsible for the most serious violations of human rights committed in Cambodia during the period of Democratic Kampuchea, 1975-1979…"

In a letter from U.N. Secretary-General Kofi Annan to Prime Minister Hun in late March, 2000, Annan described the personal jurisdiction of the ECCC as follows: "The personal jurisdiction of the court shall be limited to senior leaders of Democratic Kampuchea and those responsible for crimes and serious violations of Cambodian penal law, international law and custom, and international conventions recognized by Cambodia and which were committed during the period from 17 April, 975 to 6 January, 1979." The common sense interpretation of such language is, again, a two-group formula of 1) senior leaders and 2) "those responsible." It would be nonsensical to read such language as referring only to senior leaders who also were responsible. Again, if that were the intent, simple language could have been used to articulate the intent, for example, "senior leaders of Democratic Kampuchea who were responsible for…"

Hans Corell, the U.N. Legal Counsel, expressed concern to Sok An, the Cambodian Senior Minister and Minister in Charge of the Council of Ministers, in a letter dated March 24, 2000, that the formula for personal jurisdiction actually was broader than intended by the U.N. lawyers. His concern was based not on the two-group formula but on how large the second group, "those responsible for crimes [etc.]," should be stated. He was concerned that the Cambodians were proposing too many potential suspects but Corell's view also reflects a reduction of some reasonable character from the 20 to 30

potential suspects originally envisaged by the U.N. Secretariat. Corell clearly wanted limits, but reasonable limits. The relevant paragraphs of his letter follow:

> "Closely connected to the third party mechanism is the formulation of Article 1 of your draft law. Already during our discussions I expressed concern that this provision may be too broad to reflect the concept that I sense that the Government has in mind for the whole endeavour. When Mr. Om Yintieng came to see me off at the airport (I do appreciate this kind gesture) I raised the matter with him. We agreed that as far as the 'senior leaders' are concerned, there is no problem. He then referred to those "most" responsible for the crimes committed during the period at hand. I reacted immediately and pointed out to him that this qualification does not feature in the draft law as presently formulated; the present text basically encompasses any person who committed crimes during the period of Democratic Kampuchea. Is this really the intention? The Co-Investigating Judges and the Co-Prosecutors must have a clear mandate; to act upon a mandate as broad as the one reflected in your Article 1would expose them to criticism as soon as they do not pursue a broad range of cases that would fall under the provision.
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> "The spontaneous remark of Mr. Om Yintieng at the airport leads me to believe that perhaps the Government's concept of the scope of the legislation is not correctly reflected in the draft law. If this is the case, we have a serious problem which must be corrected before the law is adopted. I see this mainly as an internal Cambodian matter. However, it also reflects on the undertakings that the Secretary-General is making in our Articles of cooperation. In particular, the way in which the chambers are composed indicates that only a relatively limited number of cases can be heard. I therefore reiterate with even more emphasis what I said during our deliberations, namely that the Government needs to take a very close look at Article 1 of the draft law. Any changes made to this provision will, of course, have to be reflected in the exchange of letters between the Secretary-General and the Prime Minister, and in Article 4, paragraph 3, and Article 5, paragraph 3, of the Articles of cooperation."

Thus, in March 2000, the U.N. lawyers actually were trying to revise the Cambodian Government's confusing language that called for a large pool of suspects, which stood in contrast to the now conventional notion that they were insisting on only several senior leaders and Duch as suspects. This requested reversal of the ECCC's mandate should be kept in mind as one interprets the final ECCC Law and UN-RGC Agreement. Ironically, the U.N. lawyers wanted to scale back (in the second group) while the Cambodians were backing language that would have mandated a broader group of those "responsible" for the atrocity crimes.

In a note to me dated March 28, 2000, Corell explained: "The definition in Article 1 [regarding personal jurisdiction] is probably not reflecting the idea that the Cambodians have themselves on the scope of the jurisdiction. The focus on senior leaders is of course correct, but the reference to 'those who were responsible for crimes and serious violations' is so broad that in [sic] encompasses almost anyone who was involved. We doubt that this is intentional. Some qualifications are necessary. Maybe language along the lines 'and those who, because of their special functions or duties, were most responsible for the crimes and serious violations, etc.'." I included this language in a proposed revision of the ECCC Law dated April 2, 2000. And on April 3, 2000, I identified this issue to negotiators as requiring clarification, namely "[t]o clarify scope of Suspects."

Back on March 28, 2000, there appeared the "Final Draft in Legislative Commission of the National Assembly with Comment by CDP and the Cambodian Human Rights Action Committee," which was the latest draft of the ECCC Law. There was one important clarification in that draft that reaffirms the two-group formula. The personal jurisdiction reads, "…the senior leaders of Democratic Kampuchea and *other* persons responsible for the most serious violations of Cambodian criminal laws [etc.]." (Emphasis added)

In late April 2000, Senator John F. Kerry (D-Massachusetts) visited Phnom Penh to address, in part, the difficulties in the negotiations. Prior to his trip there, he consulted with me about the state of the drafting. In my letter to him of April 26, 2000, I confirmed that, "The U.N. has moved a long distance by agreeing to, and indeed now advocating, a narrowing of the scope of jurisdiction in Article 1 of the draft law. Previously, the U.N. lawyers spoke of the need for a broad scope of jurisdiction so as to respond, in particular, to NGO desires to cast a wide net over suspects." That "broad scope" had envisaged more than 20 likely suspects.

The July 7, 2000, draft of the ECCC Law included the U.N.'s proposed language and "Note" in bold typeface. The relevant extract reads:

"ARTICLE 1:

The purpose of this law is to bring to trial senior leaders of Democratic Kampuchea and those who were **most** responsible for **the** crimes and serious violations of Cambodian penal law, international **humanitarian** law and custom, and international conventions recognized by Cambodia, **that** were committed during the period from April 17, 1975 to January 6, 1979.

Note: The UN delegation has at an early stage expressed concern that the draft Article 1 presently before the National Assembly is too broad; it practically covers everyone who had any part in the criminal activities of the Khmer Rouge. Such a

result is obviously not intended by the government, and it would be impossible for the Extraordinary Chambers to deal with such a magnitude of cases. The UN delegation has therefore added the word 'most' as an illustration of how one could limit the scope of personal jurisdiction in a reasonable way. If other solutions are contemplated to achieve the same result, the United Nations is of course prepared to examine them. At the express request of H.E. Sok An, the UN delegation has examined such solutions, while emphasizing that the formulation of this article is a political decision to be taken at the national level. We must, however, reiterate that the language of the provision has to be commensurate with the capacity of the Extraordinary Chambers. With this proviso, we suggest that an alternative text could be, for example, 'and the most notorious perpetrators of the crimes and serious violations etc.' Please note that when Article 1 is finalized, Article 2 [Competence] has to be adjusted accordingly."

Thus the U.N. lawyers were proposing, as of July 2000, a two-group formula, with the second group being "those who were most responsible" and bearing in mind the capacity of the Extraordinary Chambers. The U.N.'s proposed language for Article 1 was used in the draft law reported on by the *Phnom Penh Post* in its Issue 9/22, October 27-November 9, 2000.

Prior to Senator Kerry's return visit to Phnom Penh in November 2000, I wrote a note to him saying in part, "It is critical that you confirm closure on Article 1 of the draft law's scope of personal jurisdiction and make sure that the text of Article 1 is precisely what the UN wants, i.e. that it includes 'those who were most responsible…' Get Sok An to confirm that with you."

On January 2, 2001, the Cambodian National Assembly adopted the ECCC Law with the competence of the Chambers reading, "…senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian laws [etc.]." The U.S. State Department issued a statement that day declaring in part that, "The United States welcomes the action in the National Assembly of the Cambodian Government unanimously approving a draft law to establish 'Extraordinary Chambers' for the investigation and prosecution of senior Khmer Rouge leaders *and others* who were most responsible for the atrocities of the 1975-79 period in Cambodia." (emphasis added)

Perhaps it is remarkable that in Senior Minister Sok An's formal "Presentation and Comments on the Draft Law" to the National Assembly on December 29, 2000, and January 2, 2001, he does not refer even once to the personal jurisdiction of the Extraordinary Chambers. This silence prevails despite his reference to many other issues that complicated and delayed the negotiations. One would have thought that if a truly minimal number of suspects (such as five) was that important to the Cambodian

Government and thus compel officials to ensure it were part of the legislative history of the ECCC Law, Senior Minister Sok An would have made it a point to emphasize such a limited scope for the personal jurisdiction during his formal remarks before the National Assembly. But that did not occur.

In a letter to Senior Minister Sok An dated January 9, 2001, U.N. Legal Counsel Hans Corell did not raise personal jurisdiction as one of the problems he saw in the law that was adopted by the National Assembly. That omission would suggest that the language for personal jurisdiction was finally settled between the parties.

On January 15, 2001, the Associated Press reported that, "Hun Sen has said the government is ready to apprehend anyone the court indicts but has cautioned against prosecution of the late Pol Pot's former foreign minister and brother-in-law, Ieng Sary, saying that could lead to war. However, Cabinet minister Sok An, who is responsible for the tribunal, assured the [Cambodian] Senate that Ieng Sary could also find himself under its scrutiny. 'When the law is approved everybody must be under the law,' Sok An said." Years later Prime Minister Hun Sen did not object to the indictment and now imminent prosecution of Ieng Sary before the ECCC.

Then, on January 18, 2001, Nayan Chanda reported in the *Far Eastern Economic Review*, that, "The decision on who is to be tried will be made 'by respecting the spirit of the law,' says [Senior Minister] Sok An. The bill, he says, does not define what constitutes a crime serious enough to be prosecuted, and so will 'have to be adjusted to determine who will be the target.'" One can read these words as signaling an interpretative debate over the language of the personal jurisdiction, but the statutory independence of the Chambers and of its co-prosecutors also must be factored into any such interpretation.

The next day, on January 19, 2001, Prime Minister Hun Sen visited Anlong Veng, where Ta Mok was captured in March 1999 and which became the last Khmer Rouge base area to surrender to the government. He spoke there to an estimated 3000 former Khmer Rouge men, women, and children and to ambassadors from resident ASEAN missions, the North Korean ambassador, the DCM from the British Embassy, and directors of the International Monetary Fund and other aid agencies and non-governmental groups. (Some press reports estimated a lower number of more than 1,000 residents of Anlong Veng in attendance at the speech.) I received an unclassified report of his visit from the U.S. Ambassador to Cambodia, Kent Wiedemann. He wrote in part: "Hun Sen stressed more than once that the scope of prosecution [of the ECCC] would be limited to the leaders responsible for the crimes, plus the most odious practitioners of crimes such as 'Duch,' head of the infamous Phnom Penh torture center, Tuol Sleng. Apparently mindful of the need to educate his audience on the independence and integrity of the tribunal, Hun Sen also emphasized that the tribunal would make all decisions on

who would be charged with crimes, and neither he as prime minister, nor any other member of the executive or legislative branches of government could interfere with the decisions of the tribunal."

The Deutsche Presse-Agentur reported on that day as well that during his speech at Anlong Veng, Prime Minister Hun Sen said, "Please, people affiliated with the Khmer Rouge don't feel afraid or run into the forest to support your former leaders….We will not bring 12 million Cambodians to court, or even 1,000 or even 100. Just top leaders." The DPA article continued, "The Prime Minister addressed concerns that he would meddle in the judiciary process after making statements last week calling on a court to allow Ieng Sary, who was granted a royal pardon for leading a mass Khmer Rouge defection, to remain free from prosecution. 'I cannot guarantee to anyone that they will not be prosecuted by the court because this is the power of the court,' the Prime Minister said. 'I have no right to protect anyone from prosecution. There is no law allowing me to do such a thing.'"

AFP also reported on January 19, 2001, with respect to Hun Sen's visit to Anlong Veng, that the Prime Minister confirmed, "The trial of four or 10 people will bring justice for [Cambodia's] 12 million people. That is enough." Kyodo news service reported Hun Sen's remarks to describe the number of those brought to trial to be "four or five to 10 only."

This brief history of the negotiations and final drafting of the ECCC Law and UN-RGC Agreement with respect to the personal jurisdiction of the ECCC should demonstrate that while the Cambodian Government originally proposed language that would have greatly expanded the number of suspects falling within the Chambers' reach, ultimately more limiting language was adopted at the insistence of U.N. officials. However, having been part of the negotiations for years, I know of no concession by U.N. negotiators to interpret the personal jurisdiction language so as to limit the suspect pool to only five specific individuals. As I wrote in the *Phnom Penh Post* on January 8, 2009, negotiators "typically spoke of up to 15 or so individuals ultimately being prosecuted." That number was a drastic reduction from earlier hopes by U.N. and non-governmental bodies of 20 or 30 or even more suspects being put on trial. To suggest now that somehow the Cambodian authorities interpreted the final personal jurisdiction language to limit the suspect pool to only five individuals lacks credibility, particularly in light of years of negotiations and the much broader grab at personal jurisdiction that the Cambodians supported through much of 2000.

Furthermore, as demonstrated in this essay, there is simply no plausible way to interpret the personal jurisdiction language of the ECCC Law to narrow the field of suspects *only* to senior Khmer Rouge leaders who also were most responsible for the atrocity crimes of the Pol Pot regime. Duch's appeal challenging his designation within

the personal jurisdiction of the ECCC (see coverage of his arguments on appeal at http://blog.cambodiatribunal.org/2011_03_28_archive.html and http://blog.cambodiatribunal.org/2011_03_30_archive.html) is clearly refuted by the legislative history of the ECCC Law, by a common sense grammatical reading of the text, and by clear expressions of intent by the Cambodian Government and U.N. negotiators prior to enactment of that law.

It is unfortunate that Cambodian Co-Prosecutor Chea Leang publicly declared on May 10, 2011, that the unnamed additional suspects in "Case File 003 were not either senior leaders or those who were most responsible during the period of Democratic Kampuchea." How either she or even the Co-Investigating Judges could possibly arrive at that view, given what is publicly known now from media sources about the likely suspects and the crimes allegedly committed by them, and given any reasonable interpretation of those "most responsible" within the ECCC's personal jurisdiction in light of the negotiating history of the ECCC Law, will be grist for historians for decades to come. Is this politics or law speaking to us?

My hope is that the Co-Investigating Judges will undertake the investigative tasks reasonably set forth by Cayley and stop issuing foolish orders that only reveal their own insecurity over past performance. Either the Co-Investigating Judges or, if an appeal can be successfully lodged before them, the Pre-Trial Chamber eventually must demonstrate enough integrity to set the ECCC on its original course of a limited but reasonable number of suspects falling within one of two categories: those who constituted the senior leadership of the Khmer Rouge and those who were most responsible for the crimes and serious violations set forth in Article 1 of the ECCC Law. The resources must be available for that challenge as well. The world is watching, very closely, and history will be the final judge.

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