

Khmer Rouge: 'Last chance' for justice

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PHNOM PENH - More than 24 years after Cambodia's murderous Pol Pot regime was toppled, the battle to bring his henchmen to justice is still being waged. After a step forward in December, and two steps backward in January, six member states of the United Nations have now called on the UN Secretariat to honor a resolution to resume negotiations for the establishment of a tribunal into alleged Khmer Rouge atrocities.

At issue is the problem of whether a Cambodian legal tribunal would be capable of performing up to the international standards expected by the UN. Powerful critics, notably Amnesty International and Human Rights Watch (HRW), have stubbornly opposed the form of tribunal sought by Phnom Penh. But others, noting that the aging Khmer Rouge culprits are poised to thwart justice by following Pol Pot himself into the grave, argue that even if the standards of the tribunal are less than pristine, it would be better than nothing.

Cambodia did itself no favors last month when anti-Thai rioting in the capital got out of hand, causing millions of dollars' damage to the Thai Embassy and Thai-owned businesses. Phnom Penh's failure to control the riots damaged its credibility on upholding the rule of law. Many doubt the ability of Cambodia's ill-trained lawyers and judges to play a constructive part in deliberating on matters of international justice.

Also last month, UN counsel Hans Corell dropped a bombshell by proposing reinstatement of "a majority of international judges, and an international prosecutor", on to the proposed tribunal, which would mean negotiations would go back to the Square 1 of August 1999.

A number of member states were astonished by this departure from the mandate contained in UN Resolution 57/288 (December 18), which got the negotiations back on track after the UN walked away from them early last year. Last Thursday six member states - Australia, France, India, Japan, Philippines, and the US - met with Corell and UN Secretary General Kofi Annan to insist that the Secretariat adhere to the mandate "to conclude an agreement with the government of Cambodia based on previous negotiations consistent with the provisions of the present resolution".

They endorsed the assessment of David Scheffer, former US president Bill Clinton's ambassador-at-large for war-crimes tribunals and now vice

president of the United Nations Association, that "it is extremely critical that both sides begin where they left off in 2001. The UN endorsed that structure in its own draft agreement between the UN and Cambodia in late 2001."

With most of the suspects now in their 70s, many Cambodians fear that if the tribunal is put off much longer in the quest for legal niceties, more former Khmer Rouge leaders will cheat justice. Chea Vannath, director of Cambodia's Center of Social Development, a non-governmental organization in Phnom Penh, told Asia Times Online: "If we wait for perfect law, the Khmer Rouge leaders will all be dead."

The Documentation Center of Cambodia, a genocide-research institute, has amassed a vast archive of documents, testimony and data on the mass graves and killing sites of the Khmer Rouge era. The researchers' latest estimate of those who died from execution, starvation and other unnatural causes has now reached just under 2 million - and still counting.

Mountains of evidence have been collected. Hundreds of survivors are eager to testify about the horrors of the Pol Pot regime. But everything is on hold until the UN is willing to sign a memorandum of understanding and cooperation to provide vital resource and financial support for the tribunal to be held in Phnom Penh.

The UN's legal team aborted the process last year, claiming the Cambodian model of a "mixed tribunal" did not meet "international legal standards, and could not guarantee an independent tribunal". It was a controversial decision that came close to killing any remaining Cambodian hope for real justice.

Scheffer commented: "The distrust between the two negotiating teams and intense pressure from human-rights advocates who sought, unrealistically, to impose their ideal set of legal standards on the process propelled the United Nations legal team to walk out."

In a three-year see-saw of negotiations, legal deadlocks and compromises, the UN Secretariat and especially its Office of Legal Affairs have frequently been at odds with the views of key member states.

The Cambodian model for the mixed tribunal is based on substantial international participation: an international co-prosecutor, co-investigating judge and other foreign judges would all be nominated by the UN secretary general. The international co-prosecutor would have the power to move ahead with indictments. Every judicial action would

require the approval of at least one international judge.

The core group of nations that have actively worked for this tribunal during the past three years challenged the judgment of Corell's team, and questioned their right to abandon the process without consulting UN member states.

A full-scale UN International Tribunal is unattainable - first because China has always threatened a Security Council veto, and second because the Cambodian government of Prime Minister Hun Sen has never trusted the UN. Among Phnom Penh's bitter memories is the strange fact that for 11 long years - from 1979-90 - the UN continued to allow the Pol Pot gang to occupy Cambodia's seat in the General Assembly.

In the history of the UN there have been few occasions when the Secretariat had to be reminded so many times that that it is obliged to carry out the will of the member states.

Helen Jarvis, an Australian advisor to the Cambodian side, commented: "It is a relief to know that after a year's delay, the UN legal team is soon return to Phnom Penh to resume negotiations. It's urgent to conclude a memorandum of understanding and set up the tribunal as soon as possible."

Human-rights activists are unusually divided by the Khmer Rouge trial controversy. Backing those who argue that, contrary to the Amnesty/HRW stance that the tribunal must live up to international standards, Phnom Penh's tribunal law is better than nothing is law Professor Peter Leuprecht, the UN's special human-rights rapporteur for Cambodia, who calls this "the last chance".

And Scheffer observed recently: "Human-rights activists' call for a United Nations-dominated international tribunal for Cambodia - an approach sought long ago and blocked - and insistence on near-perfect justice risks losing the good for the sake of the unattainable."

A heavy burden now rests on both the UN legal team and the Cambodian side to put past differences behind them and to display all-out determination to reach an agreement in line with the UN mandate.

Scheffer remarked on the irony that with the prospect of finally getting about seven or eight top former Khmer Rouge leaders indicted closer than it has ever been, "How tragic it would be if some advocates for international justice helped them get off the hook."