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Justice for Cambodia

By DAVID J. SCHEFFER

or all the talk of Saddam Hussein at the United Nations this week, the historic news centered on a despot of earlier vintage — Pol Pot, whose Khmer Rouge inflicted mass killings on the Cambodian people a quarter of a century ago.

In a vote Wednesday, the General Assembly directed United Nations officials to resume negotiations with the Cambodian government to set up trials for surviving Khmer Rouge leaders. The vote was not easy to come by. But under the leadership of France and Japan, and with the support of the United States and other governments, the General Assembly forced the issue. The fact that 30 governments chose to abstain, however, shows that the effort to bring the Khmer Rouge to justice may face challenges ahead.

It's regrettable that there had to be a vote in the first place. Last February the United Nations shut down talks with the Cambodians. Both sides had made important concessions, and Cambodia had passed a law to establish a special court in Phnom Penh to investigate and prosecute the surviving Khmer Rouge leaders who masterminded the deaths of an estimated 1.7 million Cambodians. But 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 to walk out.

What these critics missed was how close negotiators came to forging a sound agreement. Excruciatingly difficult talks with the Cambodian government began in 1997 and managed to continue even after the suspicious death of Pol Pot on the Thai-Cambodian border in 1998. Enormous hurdles had been overcome. Mindful of concerns about the Nixon administration's secret aerial bombings of Cambodia during the Vietnam War and Cambodia's own human rights record of the last two decades, negotiators had reached a firm agreement that the court's focus would be limited to senior Khmer Rouge leaders and those who were most responsible for the crimes of the Pol Pot regime from 1975 to 1979.

Negotiators also had agreed on significant international participation at all levels of the new Cambodian courts that would be created specifically for this purpose. An international co-prosecutor, co-investigating judge and other foreign judges would be nominated by the secretary general. The international co-prosecutor had the power to move ahead with indictments. Every judicial action would require the approval of at least one international judge.

Now that the General Assembly vote has taken place, it's crucial that the project resume quickly. Until the Khmer Rouge leaders stand trial, the Cambodian people will continue to live under a cloud of injustice. Even today, the effort to sustain effective law enforcement in Cambodia is crippled by the prominent example of former Khmer Rouge leaders — aging and living in the country — evading justice for crimes of horrendous magnitude. Persistent impunity in Cambodia will also undermine the international community's commitment to global justice.

The few issues that caused the talks to collapse must not be allowed to derail the process again. Lingered concerns about legal representation, amnesties and the influence of the United Nations have long been resolvable. Human rights activists' call for a United Nations-dominated international criminal tribunal for Cambodia — an approach sought long ago and blocked — and insistence on near perfect justice risk losing the good for the sake of the unattainable.

International safeguards will help ensure credible justice in Cambodia. Interested governments can impose a management oversight committee. They will need to provide the relatively modest funds required for the special court to operate professionally and to upgrade Cambodia's justice system. And the United Nations can withdraw its cooperation if, for example, corruption occurs or rights are violated.

After more than 20 years, senior Khmer Rouge leaders are finally on the verge of standing trial in an open and credible courtroom. How tragic it would be if advocates for international justice helped them get off the hook.

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