

Justice Past Due in Cambodia

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The Washington Post

Saturday, December 24, 2005; Page A17

PHNOM PENH -- Speaking to a Senate subcommittee two years ago, Sen. Mitch McConnell (R-Ky.) said that, given the level of "lawlessness and impunity" in the country under discussion, it made "no sense" to even consider convening a human rights tribunal to conduct trials on the heinous crimes of the ousted regime. The country he was referring to was not Iraq -- though it certainly could have been -- but Cambodia, where the United Nations had just finished negotiations with the government to establish a joint tribunal to prosecute surviving leaders of the Khmer Rouge.

That tribunal is expected to open its doors soon, staffed by a mix of international and Cambodian jurists and funded by a group of states led by Japan. The United States, however, is not expected to be among the donors. The contrast is startling: The United States will spend some \$75 million over two years to support the tribunal in Iraq, despite widespread concerns about its competence, security and independence, and yet it has budgeted not a dollar for the Cambodian counterpart, which will confront the worst genocide since World War II.

America's refusal to support the Cambodian tribunal has a personal history. It begins in 1997, when grenades were thrown into an opposition rally in Phnom Penh organized by the Sam Rainsy Party. Sixteen people were killed and many more injured, one of them a staffer from the International Republican Institute (IRI). Paul Grove, who had headed the IRI office in Cambodia a few years earlier, was among many who blamed the attack on Prime Minister Hun Sen, Cambodia's long-serving strongman. Today, Grove is the influential chief of staff for the Senate foreign operations appropriations subcommittee, and his distrust of Hun Sen is shared by his boss, Sen. McConnell, the subcommittee's chairman.

As a result of their efforts, the Foreign Operations Appropriations Acts of the past two years have prohibited American funding for -- as the 2004 version bluntly put it -- "any tribunal established by the Government of Cambodia." The senator and his staffer worried that because the tribunal would include Cambodian judges, Hun Sen would hijack the process.

Their concern is well founded, given the politicized and corrupt nature of the Cambodian judiciary, but it misses the point: It is precisely this threat of political interference that should spur the United States to participate in the process. Consider the example of Cambodian civil society organizations. They share America's concerns about Hun Sen's intentions, but rather than boycotting the tribunal, they have resolved to do all they can to increase its effectiveness. U.S. engagement is desperately needed, in coordination with the other donors, to monitor the court, to pressure the government, to assist investigations, to support nongovernmental organizations and to otherwise regulate and support the process to ensure that those fears are not realized. The United States is right to be skeptical of Hun Sen's intentions, but America's absence at the tribunal does nothing to weaken Hun Sen's grip on power and much to lessen the likelihood that the tribunal will realize its potential to help Cambodians -- all the while undercutting America's already battered global credibility on international justice.

Without strong international engagement, including an active American role, the tribunal is unlikely to succeed. And the stakes are high: Cambodia is still traumatized by the Khmer Rouge rule, which resulted in the deaths of 2 million people -- nearly a quarter of the entire population -- between 1975 and 1979. For a people still only beginning to recover, an effective tribunal process would represent a significant step toward achieving closure, marking a break with the past and the beginning of a new Cambodia that respects law and order. It would finally hold accountable many suspects who continue to live freely and openly in Cambodia.

Fortunately, it is not too late. The 2006 Foreign Operations Appropriations Act, signed by President Bush last month, omits any mention of the tribunal, thereby finally opening the door to American support. This tribunal, imperfect though it may be, is the last real chance to hold accountable the elderly Khmer Rouge leadership. It is time for the United States to get involved in ensuring the Khmer Rouge tribunal is everything Cambodians deserve. It is a gamble -- but a gamble worth taking.

The writer is former adviser to a coalition of Cambodian nongovernmental organizations on issues concerning the Khmer Rouge tribunal.

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