



Special Representative of the Secretary-General
for Human Rights in Cambodia

តំណាងពិសេសរបស់លោកអគ្គលេខាធិការទទួលបន្ទុកសិទ្ធិមនុស្សប្រចាំកម្ពុជា



CAMBODIA

**Presentation to the UN Commission on Human Rights
by Thomas Hammarberg, the Special Representative of the UN Secretary-General
on Human Rights in Cambodia, Geneva 22 April 1999**

Twenty years ago, this Commission received a report on the mass killings and other large-scale atrocities in Cambodia under the Khmer Rouge regime. There was, however, no real discussion of the report and no resolution was passed. Even after the Khmer Rouge regime had been driven out of large parts of the country, the United Nations continued a policy of silence; and that in spite of reports showing that the killings were of genocidal proportions during the three years and nine months of Khmer Rouge administration.

The attitude within the UN is now changed. Two years ago the Commission on Human Rights signalled that the UN was prepared to help Cambodia to tackle "past serious violations of Cambodian and international law". In response First Prime Minister Norodom Ranariddh and Second Prime Minister Hun Sen asked for assistance to bring to justice those responsible for the genocide and crime against humanity 1975-79. In a letter to the Secretary-General they stated that Cambodia itself did not have the resources and expertise to conduct this very important procedure.

With the blessing of the General Assembly, the Secretary-General appointed a Group of Experts to evaluate the existing evidence in order to determine the nature of the crimes committed by Khmer Rouge leaders and to explore legal options for bringing them to justice before an international or national jurisdiction.

Last February the Group reported that sufficient evidence did exist to justify legal proceedings against Khmer Rouge leaders. The crimes included crimes against humanity, genocide, war crimes, forced labour, torture, crimes against internationally protected persons, as well as crimes under Cambodian law.

The Experts recommended that the United Nations, in response to the Cambodian request, should establish an *ad hoc* international tribunal somewhere in the Asian-Pacific region - though not in Cambodia - and that the prosecutor would establish an investigations office in Cambodia itself.

However, the Cambodian government has made clear that it wants the trial to take place inside Cambodia. The Khmer Rouge commander, Chhit Choeun, known as Ta Mok, who had now been arrested, and perhaps others would be tried in a domestic court.

In principle and if possible, trials even of the worst cases should take place where the crimes were committed. The problem, as the Prime Ministers themselves had pointed out, is that the Cambodian judiciary unfortunately is unfit to handle a trial of this complexity and magnitude. According to the Group of Experts, the Cambodian court system still failed to meet three essential conditions: a trained cadre of judges, lawyers and investigators; an adequate infrastructure; and a culture of respect for due process. I agree with that assessment.

Therefore, only a tribunal which is international in character can guarantee international standards of justice, fairness and due process of law in this case. Such an international tribunal need not necessarily be modelled after the existing *ad hoc* tribunals in The Hague or linked to them. There are valid arguments also for establishing the international tribunal inside Cambodia on condition that its integrity be protected. This would make it easier to clearly demonstrate to the Cambodian population that justice is being done.

The Government's concern that arrests and trials might cause unrest should be taken seriously, even if it appears to be contradicted by the official assurance that the Khmer Rouge is finally defeated. The Experts proposed that the prosecutor limit his or her investigations to those who were most responsible for the most serious violations. This would include responsible senior leaders as well as those at lower levels who were directly implicated in the most serious atrocities.

My clear impression is that Cambodians indeed are ready for trials and would welcome them, as long as they meet essential principles of justice. In fact, the absence of proper proceedings at this stage, when the issue at long last has been brought to the agenda, could cause further polarisation.

The fact that twenty years have passed does not change the basic premise: the Cambodian authorities and the international community have an obligation to the victims and their relatives to organise a trial against those who are responsible for the genocide and the other crimes against humanity.

Such a trial, in my opinion, is necessary also in order to putting an end to the sad heritage of the Khmer Rouge: the continued cycle of impunity in the Cambodian society.

My report deals to a large extent with this problem. The courts are underresourced and subject to political or military pressure. It is reported that the majority of the crimes are committed by people whose job it is to enforce the law. Still, it is seldom that officials within the police or the military are put to justice.

I have reported earlier about killings with an apparent political connotation. More than 130 cases of killings or “disappearances” have been forwarded to the government since March 1997. No one has been arrested or prosecuted as a consequence of these cases. The Commission set up to investigate the hand grenade attack against peaceful demonstrators in March two years ago has not issued a report. Not even the killing of the Secretary of State, Mr. Ho Sok, inside the building of the Ministry of Interior has been clarified.

Two international experts were asked a year ago to review the inquiries into these crimes and concluded that the investigations had lacked in vigour and determination. Sadly, I cannot report any progress since then. Indeed, I have the impression that, at least in some of these cases, the investigations have been blocked by powerful elements within the police and military.

This is no doubt an immense problem and will not be resolved until the political leadership clearly demonstrates that no one is protected.

However, I would also like to report that the Minister of Justice has designed a plan for legal reform which would be important also for the combat against impunity. The co-Ministers of Interior have started taking initiatives for a police reform which also is necessary to turn Cambodia into a society ruled by law. The non-governmental organisations and the Cambodian Office of the High Commissioner provide important training, including of police and military personnel.

I sincerely recommend the international community, including the individual donor countries, to assist the Cambodian government in this regard. Important efforts are already made. In particular, I would like to mention the assistance from Japan and Australia for the development of the justice system.

Those of you who take the time to read my report will note that it to a large extent also deals with economic and social rights, that it has chapters on women's rights and the right of the child as well as on the rights of minorities. In January I visited the far north east of Cambodia in order to learn about the situation of the highlanders, the indigenous peoples there. The report points to the severe consequences for them of the illegal logging but also notes that efforts now are being made to put an end to such devastation of their natural environment. Again, I recommend constructive international co-operation.

Finally, I would like to pay tribute to His Majesty King Sihanouk who has been very supportive of the United Nations human rights work. The new coalition government gave priority to a development of human rights protection in its platform adopted five months ago. This has facilitated the constructive co-operation we have developed with several of the Ministries.