

# HISTORY OF THE NEGOTIATIONS ON THE KHMER ROUGE TRIBUNAL BETWEEN THE UNITED NATIONS AND CAMBODIA

## A CHRONOLOGY

(Prepared by the United Nations Office of Legal Affairs on 8 February 2002.)

First Phase: Request from Co-Prime Ministers Hun Sen and Prince Rannaridh

### **21 June 1997**

A joint letter addressed to the Secretary-General by the two Prime Ministers of Cambodia requesting the assistance of the United Nations in bringing to justice persons responsible for genocide and crimes against humanity during the Khmer Rouge regime from 1975 to 1979.

### **23 June 1997**

By letter of 23 June 1997, the Secretary-General transmitted the letter of the two Prime Ministers to the Presidents of the General Assembly and the Security Council, respectively (A/51/930 - S/1997/488 of 24 June 1997). No action taken by any of these organs.

### **13 July 1998**

Pursuant to General Assembly resolution 52/135 of 12 December 1997, the Secretary-General appoints a three-member Group of Experts for Cambodia to evaluate the existing evidence, to assess the feasibility of bringing Khmer Rouge leaders to justice, and to explore options for bringing to justice Khmer Rouge leaders before an international or national jurisdiction (A/52/1007 of 7 August 1998).

### **14 ? 23 November 1998**

The Group of Experts visits Cambodia and Thailand.

### **15 March 1999**

The Report of the Group of Experts for Cambodia Pursuant to General Assembly Resolution 52/135 is submitted to both the Security Council and the General Assembly. In its report, the Group recommends the establishment of an international tribunal to try the Khmer Rouge officials for crimes against humanity and genocide committed from 17 April 1975 to 7 January 1979 (A/53/850 - S/1999/23/1).

**Second Phase:** Request by Prime Minister Hun Sen; the concept is changed

### **17 June 1999**

A request from Prime Minister Hun Sen for the UN to provide experts to assist Cambodia in the drafting of a Cambodian Law allowing foreign judges and prosecutors to participate in the proceedings of the Tribunal.

### **29 July 1999**

In a meeting with the Cambodian Permanent Representative, the Office of Legal Affairs presents the UN proposal on the establishment of a mixed tribunal for the prosecution of Khmer Rouge leaders. (A note setting the main elements of the mixed tribunal is handed out).

### **12 August 1999**

In its response to the 29 July note, Cambodia restates its position on an existing national tribunal for Cambodia, welcoming the assistance of legal experts from foreign countries, and reiterates the request for assistance in drafting the law and sending foreign judges and prosecutors.

### **26 August ? 1 September 1999**

The first UN mission to Cambodia to conduct negotiations on the legal and practical aspects of establishing under Cambodian Law a mixed tribunal for the prosecution of Khmer Rouge leaders. A model of a mixed tribunal meeting international standards of justice is proposed, and comments on the draft Cambodian Law are submitted.

### **20 September 1999**

In an Aide-Mémoire to the Secretary-General, Prime Minister Hun Sen outlines three options for UN involvement in a Khmer Rouge tribunal: 1) provide a legal team and participate in a tribunal conducted in Cambodia's existing courts; 2) provide a legal team which would not participate in the tribunal; 3) withdraw completely from the proposed tribunal.

### **20 December 1999**

The draft Law on the Establishment of Extraordinary Formation in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea" is submitted to the Office of Legal Affairs by the Cambodian Permanent Representative, with a note that it will be submitted to the Council of Ministers for adoption on 24 December 1999.

### **23 December 1999**

In a letter of 23 December 1999, the Legal Counsel, Mr. Corell, expresses concerns at some key provisions of the draft Law relating, in particular, to the composition of the extraordinary Formation, the Office of the Prosecutor, the role of the investigating judge, and the question of financing.

**28 December 1999**

A revised draft "Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period-of Democratic Kampuchea" is transmitted to the Office of Legal Affairs, with a note that it will be submitted for the second and last time to the Council of Ministers on 6 January 2000.

**5 January 2000**

In a letter to the Permanent Representative of the Cambodian Mission, Mr. Corell submits for the consideration of his Government a non-paper summarizing UN's concerns.

18 January 2000 A further revised draft Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea is submitted to the Secretary-General. (An analysis of the text reveals that with the exception of minor drafting changes, the new text does not address any of the concerns raised in the Office of Legal Affairs' Non-Paper of 5 January 2000.)

**8 February 2000**

In a letter addressed from the Secretary-General to Prime Minister Hun Sen, four key issues are identified: guarantees for the arrest and surrender of indictees; amnesty and pardon; the appointment of an independent, international prosecutor; and the appointment of a majority of international judges.

**10 February 2000**

In a letter addressed to the Secretary-General, Prime Minister Hun Sen does not welcome the gap in the positions between the UN and Cambodia, in particular, in the light of the positions taken by other Member States.

**16 ? 22 March 2000**

A second UN mission travels to Cambodia to conclude the discussions on the draft Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia and the UN Cooperation in the establishment and operation of the Chambers.

**21 March 2000**

Letters exchanged between Messrs. Corell and Sok An on the questions of amnesty, co-prosecutors and their power to act independently in case of disagreement; the question of the dispute-settlement mechanism is still pending.

**8 April 2000**

The Cambodian Chargé d'Affaires submits a letter from Mr. Sok An relating to the disagreement of co-prosecutors' options" (six options are presented).

**19 April 2000**

Secretary-General's letter to Prime Minister Hun Sen, in which he comments on the options presented by Mr. Hun Sen, and puts forward a -proposal of the United Nations regarding the pre-trial mechanism for resolving disputes between the co-prosecutors/investigating judges.

**22 April 2000**

Prime Minister Hun Sen responds to the Secretary-General's letter of 19 April in which he states that the exchange of letters between the UN and Cambodia could not be executed before the Law is adopted. He proposes a "special chamber" formula to settle disagreements between the co-prosecutors.

**25 April 2000**

A second letter from the Secretary-General to Prime Minister Hun Sen in response to his letter of 22 April urging him to accept the UN proposal.

**27 April 2000**

Prime Minister Hun Sen responds to the Secretary-General's letter of 25 April requesting an extension of the temporal jurisdiction of the Extraordinary Chambers beginning in 1970.

**17 May 2000**

Secretary-General's letter to Prime Minister Hun Sen in which he seeks confirmation that Mr. Hun Sen accepts, through Senator Kerry, the proposal made in the Secretary-General's letter of 19 April regarding the mechanism to resolve any differences between the co-investigating judges and the co-prosecutors, and that the temporal jurisdiction of the Extraordinary Chambers be limited to 1975-1979.

**19 May 2000**

Prime Minister Hun Sen confirms the understanding regarding the mechanism to resolve differences between the co-prosecutors and co-investigating judges.

**4 ? 7 July 2000**

A third UN mission travels to Cambodia to finalize the Agreement between the UN and the Government of Cambodia on the UN cooperation in the establishment and operation of the Extraordinary Chambers. On 7 July, the Legal Counsel presents a draft Memorandum of Understanding governing the cooperation between the UN and Cambodia in the establishment and operation of the Court, and a marked-up copy of the Law to ensure its conformity with the MOU.

**9 January 2001**

An unofficial translation of the Law as adopted by the National Assembly on 2 January 2001 is received from the UN Human Rights Office in Phnom Penh. In a letter of 9 January 2001, Mr. Corell raises concerns with regard to some of its provisions.

**9 February 2001**

Mr. Corell requests an official translation of the Law as adopted.

**25 May 2001**

A letter from Mr. Sok An regretting the delay in the process of finalizing the amendment "necessitated by the Constitutional Council decision on the Draft Law as adopted by the National Assembly" (a "mistaken" reference to the death penalty in the Law).

**8 June 2001**

In his letter to Mr. Sok An, Mr. Corell reiterates the need for an official translation of the Law. He also reiterates the need for consistency between the two instruments.

**26 June 2001**

Mr. Sok An informs Mr. Corell that the Council of Ministers revised the text of Article 3 of the Law in order to comply with the ruling of the Constitutional Council, and adds that the Law is being transmitted to the National Assembly for adoption, for the Senate and the Constitutional Assembly for review, and for promulgation by the Head of State.

**2 July 2001**

In his letter to Mr. Corell, Mr. Sok An expresses his understanding of the relationship between the Law and the Agreement. While accepting the principle that they should be in conformity with each other, he rejects the notion of "imposition".

**6 July 2001**

In his response, Mr. Corell reiterates the need for consistency between two documents.

**18 August 2001**

Mr. Sok An submits the Law on the Establishment of the Extraordinary Chambers, as adopted on 10 August 2001, in its Khmer version, with a note that the unofficial translation of the Law in both English and French, is being finalized.

**31 August 2001**

The English and the French translation of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea are submitted to the Office of Legal Affairs under cover of a letter from Mr. Sok An of 30 August 2001.

**2 October 2001**

Mr. Sok An extends an invitation to Mr. Corell to come to Cambodia to finalize the Articles of Cooperation.

**10 October 2001**

In his letter to Mr. Sok An, Mr. Corell sets out his comments and suggestions with respect to the Law and the Memorandum of Understanding designed to bring the two instruments in line with each other.

**23 November 2001**

Mr. Sok An acknowledges receipt of the letter and the revised draft Agreement, stating that his response is still partial; he raises in this connection objection to the primacy of the Agreement over the Law.

**18 December 2001**

In his letter to Mr. Sok An, Mr. Corell indicates that a comprehensive response will be sent once the Cambodian team completes its review of the UN comments.

**22 January 2002**

Mr. Sok An sends detailed response to Mr. Corell.

**8 February 2002**

Mr. Corell informs Mr. Sok An that the United Nations is no longer in a position to continue the negotiations.[End]