



PRESENTATION BY
HIS EXCELLENCY SOK AN, SENIOR MINISTER, MINISTER IN CHARGE OF THE OFFICE OF THE
COUNCIL OF MINISTERS, PRESIDENT OF THE TASK FORCE FOR COOPERATION WITH FOREIGN
LEGAL EXPERTS AND PREPARATION OF THE PROCEEDINGS FOR THE TRIAL OF SENIOR
KHMER ROUGE LEADERS
TO
THE STOCKHOLM INTERNATIONAL FORUM: TRUTH, JUSTICE AND RECONCILIATION
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Your Excellencies, Diplomatic Representatives and Participants in this third
Stockholm International Forum

Firstly, I would like to thank the Swedish government for making it possible for the Cambodian delegation to participate in this Forum, giving us the valuable chance to meet and exchange views with scholars, diplomats and legal experts from around the world. Learning from others' experiences and sharing our own is a precious opportunity for us. I would like also to pay tribute to the support that the government and people of Sweden have given in the reconstruction of Cambodia beginning in 1979 when so few stood by us, and continuing through until today. We deeply appreciate this testimony of friendship, and we hope that it will be manifested also in concrete participation in and support for the forthcoming trials.

In the month of April twenty-seven years ago, along with my fellow compatriots, I found myself at the beginning of a journey. It began with a nightmare lasting three years, eight months and twenty days. With friends at our side we struggled to awake, to throw off that horror and to reconstruct our country and rebuild our people's shattered lives. But even now, although we find ourselves at peace for the first time in over thirty years, we Cambodians have still not yet fully emerged from the hangover of that nightmare, and neither have the people of the world yet been able to say that they have done their best to work with us to achieve a just closure.

After we managed to overthrow the Khmer Rouge in January 1979, unfortunately very few members of the international community helped us to rebuild. I wish today to reaffirm our eternal gratitude to those, including Sweden, who did assist our efforts. But to our great amazement and distress, those who had carried out horrendous crimes, two of whom had actually been convicted in the world's first trial for genocide in August 1979, continued to be accorded the right to represent Cambodia in the United Nations General Assembly throughout the 1980s, and were given political, economic and even military assistance in their efforts to overthrow the actual government of the day.

As a result of this support, hundreds of thousands of Cambodian people lost their lives and suffered from mine accidents despite the fact they had been liberated from the Khmer Rouge genocidal regime. Ideology and interests of certain powerful countries caused the international community to forget truth, justice and human rights and to ignore the tragedy and the deaths of millions of Cambodians. Instead of justice, the prize awarded to Cambodia was life in a situation swinging between peace and civil war, of stunted economic development and the laying of millions of land mines that still threaten our poor people in the remote rural areas.

The Paris Peace Agreements of 1991 accorded political legitimacy to the Khmer Rouge and, when UNTAC left Cambodia in 1993, the new coalition government had to cope with the Khmer Rouge continuing policy of civil war and destabilisation. We then launched a multi-faceted strategy involving political, legal, economic and military campaigns, including the 1994 legislation to Outlaw the Khmer Rouge, and efforts to encourage its members to defect and split. What Prime Minister Hun Sen has described as a “win-win” policy that has formed the bedrock of the political platform of the Royal Government of Cambodia involved five facets: “divide, isolate, finish, integrate and develop” in which the Khmer Rouge political and military structure was ended, but those Khmer Rouge who defected were assured of their physical safety and survival, the right to work and to carry out their professions, and the security of their property.

By the end of December 1998 we had managed to put an end to the Khmer Rouge political and military structure, and were faced with the twin tasks of national reconciliation and justice. Cambodia can perhaps offer the lessons of our experience in the long and complex process of reconciliation. Today former Khmer Rouge have put down their guns and have recommenced their lives within the general community, and the former factions have taken up the challenge of working together to develop the country.

In Cambodia reconciliation has not meant amnesia. Important efforts to uncover and document the truth of what happened under the Khmer Rouge have been taken since the very first days after their overthrow. In early 1979 the notorious S-21 prison was turned into the Tuol Sleng Genocide Museum, and the killing field on the outskirts of Phnom Penh where over 15,000 of its inmates were slaughtered became the Choeng Ek Memorial where their remains are respected and honoured in a memorial stupa. Significant oral and physical evidence of the crimes committed (including exhumations and forensic

analysis) was gathered as the basis for the 1979 People's Revolutionary Tribunal. In the early 1980s a massive research effort compiled testimony in petitions from over one million Cambodians from almost every province in the country.

In his presentation Mr Youk Chhang will no doubt describe the valuable work carried out since 1995 by the Cambodian Genocide Program and the Documentation Center of Cambodia in painstakingly assembling and analysing documents as well as mapping genocide sites throughout Cambodia.

Mindful of the need to preserve these sites, in December 2001 the government issued a circular concerning the preservation of remains of the victims of the genocide committed during the regime of Democratic Kampuchea, and preparation of the former Khmer Rouge stronghold of Anlong Veng to become a region for historical tourism and for education of present and future generations of Cambodians, as well as foreign visitors.

We must acknowledge, however, that Cambodia's achievements in the fields of truth and reconciliation have not been paralleled by advances in the matter of achieving justice for the victims of that genocidal regime. It is a task that has been on our minds since 1979 when we established the People's Revolutionary Tribunal, which I mentioned above. Unfortunately, due in part to weaknesses in that process but, above all, due to the political isolation of our government at the time, the testimony and the verdicts were simply ignored outside our country, and the task is one that we have had to engage in again over the past years. Now as we throw our efforts into this quest for justice, we keep in our minds firmly that this must not damage the process of reconciliation that I have described above. In Cambodia we seek restorative justice to heal the wounds in our society.

In June 1997 the then Cambodian Co-Prime Ministers requested the United Nations for

assistance in organizing the process for Khmer Rouge trial. This led to the adoption of a resolution in the General Assembly in December and later the establishment by the Secretary-General Kofi Annan of the Group of Experts. I wish to take this opportunity publicly to express my appreciation for the pivotal efforts in that process of our Moderator today, His Excellency Thomas Hammarberg, then Special Representative of the Secretary-General for Human Rights in Cambodia.

In the second part of my presentation today I want to share with you the perspective of the Royal Government of Cambodia on these ongoing efforts to achieve justice regarding the crimes of the Khmer Rouge, in which we have been guided by three fundamental principles.

The first is the respect for and search for justice. We condemn the crimes of the Khmer Rouge as crimes of genocide and crimes against humanity. We seek justice for their victims, and for the entire Cambodian people, and we wish also to contribute to the development of international humanitarian principles, condemning genocidal crimes and seeking to prevent their recurrence. The Cambodian people express their deep thanks to the international community for joining this justice-seeking process over the last few years, although they had turned their heads away during the Pol Pot regime and immediately afterwards.

The second principle is maintaining peace, political stability and national unity, which Cambodia has only just achieved. Two months ago we held local elections throughout the country, and last week we celebrated our new year -- both events were conducted in an unprecedented atmosphere of optimism and relative absence of violence -- in stark contrast to our previous situation, even though we have not yet ensured 100% social law and order, and 100% security. That would be impossible in the light of the recent traumatic past. We however are proud of moving forward in the

process of strengthening political stability, peace and security in Cambodia, and this is a valuable achievement for our beloved motherland. Whatever we do must not damage our peace and stability, and throughout the process over the past four years of designing the Khmer Rouge trials we have always sought to gain consensus, based on respect for the highest national interests.

Some have criticized the slow pace of the process, but to achieve national consensus is a difficult task, one whose success was demonstrated by the unanimous vote achieved in both houses of our legislature. The Law was promulgated on 10 August 2001 almost exactly two years after the first draft was placed on the negotiating table -- by no means a long time to develop unprecedented legislation on such a sensitive and important issue.

The third principle is respect for national sovereignty, enshrined as a fundamental principle in the Charter of the United Nations. Our raising the principle of respect for our national sovereignty is reasonable; and we have struggled hard for this principle. The Royal Government of Cambodia did not accept the recommendation of the Group of Experts, proposing a trial held entirely outside the country, with no Cambodians participating, except as defendants or spectators. As our Prime Minister Samdech Hun Sen remarked at the time, the only jobs the Secretary-General would like to give to Cambodians would be to “go into the jungle to capture the tiger”, and to be “the watchdog for the UN”.

It has been our consistent view that Cambodia has the primary obligation to prosecute under Article 6 of the Genocide Convention, and could proceed with a trial within the domestic courts. Let me remind critics of this approach that the principle of subsidiarity is fundamental to the International Criminal Court, of which Cambodia is

proud to have been one of the 60th member states to ratify and bring into reality just over ten days ago.

However, despite the fact that we were fully entitled to prosecute the Khmer Rouge in a national court, we sought international involvement in the process, preferably through the United Nations. Why? On the one hand because we were all too acutely aware of the weaknesses in our judiciary, and we wanted help to make certain this trial was able to meet internationally accepted standards. On the other hand, and let me be frank here, we felt that it was important for the international community to share in carrying out this task in order to clear its own record on previous support for the Khmer Rouge. This was our reasoning when in 1997 we asked for assistance, in 1999 when we reached an in principle decision with the UN to hold a national trial with international participation, and it is still our reasoning today.

In 1999 and 2000 the United Nations sent three delegations to Cambodia, all led by high-level experts from the Office of Legal Affairs (Their Excellencies Hans Corell and Ralph Zacklin). As a result of the efforts made by both sides during the course of these negotiations, we agreed on a number of fundamental principles, through a process that involved five significant steps along the way:

1. When we held wide differences between the notions of an international tribunal and a trial in the national courts, then we made a step forward to agree on a national trial but held in extraordinary chambers of the existing court structure following Cambodian procedure. These Extraordinary Chambers would, most notably, include foreign judges. At that time, in 1999, this was an unprecedented concept internationally.

2. After we agreed on foreign participation a deadlock arose concerning which side should hold the majority among the judges. The United Nations wanted foreign judges to be in the majority, while we insisted that the chambers must be composed of Cambodian judges in the majority. This deadlock was broken by the second compromise – Cambodian judges in the majority, and foreign judges in the minority, but the minority would be a “blocking minority” without whose vote the majority could not convict. Again we worked our way out of a deadlock by adopting another unprecedented arrangement with this “super-majority” formula.

3. The third compromise concerned the concept of co-prosecutors. The United Nations wanted to have an international prosecutor while we wanted the prosecutor to be a Cambodian national. So we compromised on co-prosecutors. This formula was followed also in regard to the investigating judges.

4. The fourth significant compromise related to the resolution of differences between the co-prosecutors regarding bringing down indictments. The United Nations wanted each prosecutor to work autonomously. We maintained that as we had agreed on the concept of “co”-prosecutors, in principle they should cooperate in a common endeavour. But a problem arises if they cannot reach agreement. This too was settled by development of a mechanism known as the Pre-Trial Chamber, to resolve any differences between the co-prosecutors, and likewise between the co-investigating Judges.

5. The fifth compromise arose because the United Nations wanted the Law explicitly to exclude the possibility of any amnesty or pardon for those who may be indicted or convicted. According to our 1993 Constitution the King has the right to give amnesty and pardon and we did not wish this law to contradict our Constitution. As a compromise we agreed to state in the law that the Royal Government of Cambodia will not request the King to grant any amnesty or pardon. Our Prime

Minister and I have repeatedly stated that no one is above the law, and it will be entirely up to the Extraordinary Chambers to decide who shall be indicted or convicted.

At this stage, in mid-2000, we understood that our negotiations with the United Nations had reached agreement on all the fundamental principles and structures. We then moved forward in our legislature, and 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 was passed by the National Assembly and the Senate in January 2001. After a technical amendment, His Majesty King Norodom Sihanouk signed it into law on 10 August 2001.

I must emphasise here that this Law is itself a result of the negotiations with the United Nations, and differs markedly from the original drafts placed on the table by both sides in August 1999.

It was to our greatest amazement and dismay that some six months after the Law's promulgation we received the letter from His Excellency Hans Corell, dated 8 February 2002, conveying the message that the United Nations will no longer negotiate with the Royal Government of Cambodia towards the establishment of the Extraordinary Chambers.

It was particularly surprising to read that the UN Secretariat believed "it is not likely that we would resolve it through further negotiations", considering how far both parties had come precisely through the process of negotiation. It has by no means been an easy task to sail through uncharted waters and design an unprecedented national court with international participation. Compromises were made on both sides along the way, but I believe that the model we designed, and which was promulgated into Cambodian law on 10 August 2001, forms a sound basis. I believe that the Law establishing the Extraordinary Chambers based within the Courts of Cambodia with international participation embodies all the fundamental

principles agreed to between the two sides during the negotiations, including meeting internationally accepted standards.

After promulgating our Law we expected to move forward to finalise the process, but instead the UN announced its withdrawal. While there is not time for me here to go into the details of the exchanges between myself and His Excellency Hans Corell, I should say clearly we consider none of the issues raised as being unsurmountable. I could direct those interested in the details to look at the web site we have established containing all the major documents generated by the Cambodian side in the negotiations, as well as related material (www.cambodia.gov.kh/krt_main)

It is, however, probably necessary for me here to address one point, as this seems to be the major cause for the United Nations withdrawal. This concerns the relationship between the Cambodian Law establishing the Extraordinary Chambers and the proposed Articles of Cooperation to be signed by both parties. In our view the Law, which was adopted by the Cambodian legislature under the Constitution of Cambodia, has determined the jurisdiction and competence of the Extraordinary Chambers as well as their composition, organizational structure and decision-making procedures, while the Articles of Cooperation are to determine the modalities of cooperation between the Royal Government of Cambodia and the United Nations in implementing those provisions of the Law concerning foreign technical and financial support. We thus see the two documents as being complementary to each other, and we see no need to establish a hierarchy between the two.

We are now, in April 2002, standing at beginning of the last stage of our long journey. We are not sure whether, as so often before, Cambodia will be forced to walk this stage without the support of the United Nations. Let me reiterate clearly that on the Cambodian side the door remains open to a resumption of negotiations with the United Nations, and our Prime Minister has stated we are willing to wait for a change of heart on their side.

But we cannot wait for ever. Article 46 of our Law makes perfectly clear that, while primacy is given to United Nations participation in the process, if it pulls out Cambodia is entitled to go ahead to establish the Extraordinary Chambers without the United Nations, hopefully with the participation and support of individual member states and foreign legal personalities, or in the last resort to carry out the trial entirely on its own. I would like here to pay special tribute to the Prime Minister of the Republic of India (where I once had the privilege of serving as Cambodian Ambassador) who has just pledged to send a judge. India has once again shown itself to be a close friend of Cambodia in our hour of need.

May I emphasise that the Royal Government of Cambodia remains committed to seeking justice for the crimes perpetrated by the Khmer Rouge on behalf of the Cambodian people and of humanity as a whole. Our seriousness in this effort can be measured by the large amounts of time and energy we have expended over the past three years since the Prime Minister established the high-level Task Force for Cooperation with Foreign Legal Experts and Preparation of the Proceedings for the Trial of Senior Khmer Rouge Leaders, of which I have the honour to be appointed Chairman. I should point out that this is time and energy that has been diverted from the many pressing tasks of our national reconstruction, but we are ready to make such a sacrifice in the interests of achieving justice. As I stated in my letter of 15 February 2002 to His Excellency Hans Corell, we believe that the Law negotiated by us and promulgated on 10 August 2001 provides a sound foundation and we hope that the United Nations will join with us in its implementation.

One of the themes of this year's forum is the consequence of inaction in prosecuting crimes against humanity. Cambodia knows all too well that justice delayed is justice denied. We have waited twenty-seven years and must not wait any longer. Please join with us in carrying out this task.