

## Chapter 2

# Creating the Tribunals

The decision to deal with widespread atrocities through the norms and institutions of criminal justice is first and most notably a strategic one, a choice that presents both local and international policymakers with a wide array of potential risks and rewards. Courts, at least objective courts that adhere to accepted principles of due process, are not easily controlled by political powers and can easily spin out of policymakers' grasps, potentially leading to results that are unsatisfying for the public or politically destabilizing (or both). Uncomfortable questions can be raised and the court itself can become politicized by crafty defendants and their lawyers. It can be converted into a form of spectacle that creates embarrassment and frustration for those disaffected by the conflict who counted on it to provide some form of satisfaction or catharsis. In short, criminal justice is dangerous during unstable times.

There are, of course, alternative responses to mass atrocity, each of which has its own advantages and disadvantages. Creating tribunals with outcomes that are predetermined by political actors (so-called "Vishinskyism") may generate good theater and lead to punishments that some may find satisfying, but these courts can easily generate cynicism among observers. Equally important, such show trials are unlikely to receive political and financial support from influential international actors, like the USA and the European Union, who advocate principles of the rule of law. In addition, there are alternative nonlegal approaches to handling those responsible for violence, each with varying degrees of acceptability, such as truth commissions, amnesties, or even the imposition of extrajudicial punishments. Each of these approaches can produce important results, but none of them is *both* punitive and carries the authority of law that is central to the legalistic ideology of modern statehood. (Shklar, 1964) Thus, alternative approaches to handling these cases, which have been used in many conflicts around the globe also generate their own risks and potential rewards. (Hayner, 2010)

In the previous chapter, we discussed the different conflicts or series of conflicts that led to the formation of the different hybrid tribunals that we will discuss in the remainder of the book. In this chapter, we will turn to the tribunals themselves, looking at the decisions made by the different actors (national, international, and individual) that led to their formation as well as the political and legal challenges

that each tribunal faced at its outset. In many of these situations, as we will see, the negotiations leading to the formation of the tribunals were fraught with political complexities and calculations. Each collective or individual actor sought the best position for themselves in relation to the others vis-à-vis the hybrid tribunal they were considering. The risks and rewards that could come from creating a hybrid court weighed on the mind of all stakeholders while they were in the process of creating the tribunals.

While some people involved in establishing the hybrid courts sought a just punishment for those most responsible for the violence, in many cases, this value took a back seat to more concrete political and economic calculations. Many actors saw these tribunals as a way to improve the standing of their particular nation within the international community—helping rehabilitate the reputation of nations associated primarily with horrific violence. Others saw it as a tool to gain the political and financial support of wealthier benefactor states or, at a minimum, to avoid the financial punishments that could come from ignoring the wishes of these states, many of whom expected some kind of accountability. Finally, and most cynically, many actors saw these tribunals as a way to punish political enemies and settle scores remaining from the violence and the related political fighting. All of these interests were thrown into the mix of arguments and negotiations in the countries that sought to establish some form of hybrid court.

Not every tribunal went through a torturous process at the outset. While Sierra Leone and Cambodia faced a number of contentious issues at their birth, the tribunals that were created either directly by the UN, namely the tribunals for East Timor and Kosovo, or those created after international justice had already been functioning in the conflict, namely Bosnia, were much more straightforward affairs. In the former set of cases, there was no government in existence that could seek to manipulate the process for their own benefit. In the latter case, the Bosnian state was largely interested in establishing itself as an honest political broker. It had developed a strong enough relationship with the international system that the creation of the Bosnian War Crimes Chamber was more a matter of legal reform than political machination. Of course, as we will see in later chapters, none of this means that there were no efforts to manipulate these courts by interested governments, particularly in the case of East Timor. It just means that their formations were less politically complex, and hence they will receive less attention here.

There are a number of common themes shared by the different tribunals as well as some common considerations that helped shape the tribunals at the outset. On the one hand, with the exception of the tribunals created by the UN transitional authorities, the hybrid tribunals were consciously developed in lieu of larger institutions such as the ICC or the ICTY. That is, many of those who initially pushed for some sort of criminal justice processes in Cambodia and Sierra Leone wished for one of these more purely international courts to be set up to deal with their situations. However, in each case, their requests were rebuffed by a skittish international community which feared the great expense incurred by those courts. This meant that in many of the cases the hybrid courts were a compromise position that was taken only when more elaborate and high profile options were removed from the table.

A second theme involved efforts of stakeholders to control the procedures of the different hybrid courts in order to frame the recent conflict. In different ways each actor sought to influence how the tribunal was organized and staffed so that the relevant actors would have veto power over prosecutorial decisions as well as judicial outcomes. Thus, in many cases and in Cambodia particularly, the court was seen as a way to shape the historical narratives regarding complex historical periods, periods which in many ways lack clear heroes but have villains to spare. For example, jurisdictions were carefully delimited in order to maximize the accountability of some groups and minimize it for others. Thus, the structure of the tribunals was shaped by efforts to change the political narrative of the conflicts that spawned them.

The third, and arguably the most significant, theme of the tribunals involved money. As was previously mentioned, the hybrid courts were in many ways intended to serve as a cheaper option for international justice, cheaper at least when compared with their more conventionally international counterparts. However, despite their low cost, money was still a driving factor in shaping the courts. Not only did money provide influence over the personnel and structure of the courts, it also provided an incentive for many states to involve themselves in negotiations for establishing the hybrid courts. Poor states were willing to participate in the negotiation process because they sought various financial incentives that came with the process. Other states feared financial sanctions for not participating in justice processes. Finally, the fact that all of these tribunals lacked direct funding from the UN or some other permanent source of money meant that the funding was always precarious. While these courts have never functioned as “for profit” industries, even the cheapest courts require a great deal of money and cannot afford to alienate their patrons, meaning that money was integral throughout the formation and operation of the hybrid courts.

Along with these issues, many feared that these tribunals would provide an illegitimate form of *ex post facto* justice against the accused. In some cases, these tribunals were created long after the conflict had ended and other political compromises had played themselves out. The Khmer Rouge had been out of power for decades when the Extraordinary Chambers in the Courts of Cambodia (ECCC) was created, and while almost everybody agreed that their leaders deserved some sort of accountability and punishment, previous courts, however flawed, had already provided this, in part at least. This is also the case for the Special Court for Sierra Leone (SCSL) where a novel court was invented that some defendants charged was contrary to the Sierra Leonean constitution and contravened previous peace agreements. While there are sophisticated legal arguments that can be generated to legitimize prosecuting particularly egregious offenders decades after the fact, such arguments are often only persuasive to an elite class of international lawyers and to those already unsympathetic to the defendants. The general public, ostensibly those who are the “audience” for transitional justice are often skeptical and jaded about such procedures insofar as they look like improvised justice designed to achieve particularly political ends.

Internationalized courts can often disrupt a delicate legal equilibrium that has been cultivated in many states in the aftermath of intense conflicts. In some cases,

the domestic political or legal system had previously sought to accommodate or prosecute the offenders in other ways. In Cambodia, some of the defendants had already been condemned to death *in absentia* by preceding governments. Others (such as Ieng Sary and Foday Sankoh) had been given amnesties by their governments. As we discussed in the previous chapter, many of the tribunals were formulated in delicate political circumstances that relied upon compromise and innovation: Two things that can chafe against principles of criminal justice. The Lomé Agreement in the Sierra Leone conflict, for example, provided amnesty under domestic law and there were strong arguments made by defendants that this amnesty trumped the jurisdiction of the hybrid tribunals. Moreover, these domestic legal accommodations were made by people in the throes of conflict and were searching for any route to peace and stability—not well-fed foreigners piously harping on the need for “accountability.” Although there is no doubt that amnesties are troubling, they have a *prima facie* legal legitimacy which legal professionals find difficult to completely shunt aside. The friction between these two ideals, peace and justice, is a classic dilemma of international criminal justice, but one which comes into particular relief when setting up the hybrid tribunals.

## Establishing the ECCC

Cambodia’s political turmoil and the suffering of its people did not end with the expulsion of the Khmer Rouge from Phnom Penh and it was a long time before there was serious talk about prosecuting the Khmer Rouge leadership for their years of misrule. The government set up by the Vietnamese after their invasion was a puppet operating under their direction. The Vietnamese, in turn, remained closely allied with the Soviet Union, while the remaining Khmer Rouge forces were supported by the Chinese and, indirectly, by the USA. The Chinese, of course, had long supported the Khmer Rouge and Prince Sihanouk (the Prince had spent much of his time in Beijing while in exile) and the USA wished to bolster its support for China and torment its enemies in Communist Vietnam and in the Soviet Union. This struggle prevented much humanitarian aid from reaching the Cambodian people for years after the fall of the Khmer Rouge and exacerbated the economic problems left in the wake of Khmer Rouge mismanagement. Encamped along Cambodia’s northwestern border with Thailand, Pol Pot, Ieng Sary, Ta Mok, Nuon Chea, and the remaining Khmer Rouge troops maintained themselves with the aid of their international backers and Pol Pot remained in control of his organization. The Khmer Rouge was even allowed to continue representing Cambodia in the UN with the vocal support of western governments—a fact which would be bitterly pointed out by opponents of the Cambodia tribunal during negotiations over its structure. This meant that whatever the consequences of their rule and however thoroughly they had been discredited, the Khmer Rouge were still significant players in Cambodian politics. Therefore, prosecuting them would be a near impossibility through the 1980s.

After the Vietnam-backed government took power from the Khmer Rouge, there were some efforts by the new government to confront the atrocities committed by the Khmer Rouge leadership. It is fair to say that whatever their aims were when they entered the country, many Vietnamese were truly shocked by what they found in Cambodia in general and Phnom Penh in particular. The Democratic Kampuchea (DK) government fell so quickly that the retreating Khmer Rouge troops were unable to destroy documents and evidence regarding their activities before withdrawing. The descriptions provided by the first Vietnamese troops to enter the rat-infested grounds of Tuol Sleng, littered with rotting corpses are particularly striking. (Dunlop, 2006)

The new government conducted investigations into the activities of its predecessor and convened a People's Revolutionary Tribunal in 1979. Pol Pot and Ieng Sary were each tried and convicted *in absentia* for the crime of genocide and sentenced to death by the tribunal. By most observers, however, these proceedings were generally considered to be show trials. Critics suggested that the choice of defendants was selective and the conclusions predetermined by the government in order to bolster its legitimacy. (Boulet, 2009) Similarly, the government held a form of truth commission bringing forward statements from victims regarding the crimes committed by their former leaders. This was largely considered to be part of a plan to embarrass the UN into forcing the Khmer Rouge out of their position as the representative for Cambodia in the General Assembly. Like the People's Revolutionary Tribunal, the commission was also considered by most observers to be the product of a deeply flawed process and the statements were never presented to the UN. Nonetheless, the material from the commission would later provide enlightening observations regarding life in DK and the tribunal's conviction of these two figures would play a role in Sary's pretrial proceedings before the ECCC.

The struggle between the Vietnam/Soviet-backed government of Cambodia and the US/China-backed Khmer Rouge rebels led to another 10 more years of fighting. The Vietnamese tried to crush the rebel troops while the USA, China, and their regional allies used the Khmer Rouge as a tool to undermine the Vietnam-backed government. The Khmer Rouge continued to occupy and govern large parts of northern Cambodia, while the People's Republic of Kampuchea (PRK) struggled to normalize the country and establish its own brand of one-party rule. It was only in 1989, as the Cold War ended and the Vietnamese withdrew from Cambodia, that there were serious efforts to reconcile the country's warring factions and to provide a political basis for moving forward. Under the guidance of Hun Sen, a former Khmer Rouge soldier, turned rebel (and ally Vietnam), the PRK was scrapped in 1993 and the "Kingdom of Cambodia" was reestablished as a Constitutional Monarchy. While much of the war was over, Khmer Rouge holdouts still held sway over a portion of northwest Cambodia where it retains power today, though largely shorn of its Marxist ideology and bereft of greater political ambitions.

Over the 14 years following the ousting of the Khmer Rouge from Phnom Penh, many expected (and probably hoped) that the Khmer Rouge leaders would die of natural causes in the Cambodian hinterlands without causing any further distress to the Cambodian people. Beyond calls for trials from the Indonesian and Australian foreign ministers and agitation from some justice-minded NGOs, there was little

political support for putting Khmer Rouge leadership on trial in the new Cambodia<sup>1</sup>. (Edwards, 2005) The agreements reached Paris in 1990 between the various Cambodian forces even went so far as to open the door to reintegrate some members of the Khmer Rouge into Cambodian politics. However, when Khieu Samphan, a former Khmer Rouge leader, returned to Phnom Penh as part of this process, he was assaulted by crowds of angry Cambodians shouting “Murderer!” and “Kill the monster!” and had to be rescued by Cambodian police, while the remaining Khmer Rouge leadership in the city fled. (Shenon, 1991) Despite the lingering public outrage toward the Khmer Rouge, there was little support from the leaders of the Cambodian government (many of whom were former Khmer Rouge officials themselves) for some sort of trial for them. As Cambodian Prime Minister Hun Sen stated while entertaining some of the Khmer Rouge leadership in 1998, many Cambodian politicians simply wished to “dig a hole and bury the past.” (Human Rights Watch, 2011)

In the 1990s, however, coinciding with the creation of the ad hoc tribunals for Rwanda and the former Yugoslavia, were changes in the global consensus on justice for the remaining Khmer Rouge. This was particularly the case in the USA. In 1994, the US Congress passed the “Cambodia Justice Genocide Act” which declared that “It is the policy of the United States to support efforts to bring to justice members of the Khmer Rouge for their crimes against humanity.” (22 U.S.C. 2656, Part D, Sect. 571-574) The Cambodian Genocide Program at Yale University was established to study the violence in Cambodia (part of the center, the Document Center of Cambodia became independent in 1997). Furthermore, the Act asked the American president “in circumstances which [he] deems appropriate, to encourage the establishment of a national or international criminal tribunal for the prosecution of those accused of genocide in Cambodia.” In addition, in 1998 US government attorneys explored the possibility of prosecuting Pol Pot in the USA, but they ultimately determined that there were no legal grounds for such a case. (Scheffer, 2008, p. 3) There was clearly a growing political momentum in the international community for putting the Khmer Rouge leadership on trial.

Nonetheless, there remained a great deal of resistance to this proposal from leading figures within the Cambodian government. The two parties that comprised the Cambodian government at the time, the Cambodian People’s Party led by Hun Sen and FUNCINPEC, the Royalist Party led by Prince Norodom Ranariddh, were engaged in political warfare with each vying to recruit former Khmer Rouge members to their side to gain advantage over the other. (Hammarberg, 2001) In 1996, King Sihanouk gave amnesty to Ieng Sary, lifting the death penalty imposed by the People’s Revolutionary Tribunal when Sary agreed to peacefully disarm those Khmer Rouge troops who were loyal to him. As one observer stated, “It is almost like a reward for bringing peace and reconciliation. One has to know the magnitude of this breakaway movement. This is practically the beginning of the collapse of the Khmer

---

<sup>1</sup> One exception in the USA was US Republican Congressman Jim Leach who wrote in *The New York Times*, “Pol Pot should be tried as one of the great criminals of the twentieth century, not countenanced as the eminence grise behind a new Cambodian government.” (Leach, 1989)



Rouge.” (Mydans, 1996) The splits within the Khmer Rouge quickly worsened and their position weakened as former leader Son Sen and his wife Yun Yat were executed by Khmer Rouge leaders for treason. Pol Pot himself was then placed under house arrest by members of the Khmer Rouge in 1997 where he remained until he died in April 1998. The disintegration of the surviving Khmer Rouge resistance, along with the growing momentum of an international movement, began to shift the tides in favor of some form of legal accountability for those responsible for the DK era.

Initial efforts at the international level to develop some kind of tribunal for the Khmer Rouge began with the UN Human Rights Commission passing Resolution 1997/49 (“Situation of human rights in Cambodia”) which called on the “Secretary-General, through his Special Representative for human rights in Cambodia, in collaboration with the Centre for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.” (UN Human Rights Commission Resolution 1997/49, 11 April 1997) In response to the UN resolution, in June 1997 Hun Sen and Prince Norodom Ranariddh sent a letter to the UN requesting help for establishing a court for the remaining Khmer Rouge leadership. The letter went as follows:

*June 21, 1997*

*Dear Mr. Secretary-General,*

*On behalf of the Cambodian Government and people, we write to you to ask for the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979.*

*The April 1997 resolution on Cambodia of the United Nations Commission on Human Rights requests: “the Secretary-General, through his Special Representative, in collaboration with the Centre for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability”.*

*Cambodia does not have the resources or expertise to conduct this very important procedure. Thus, we believe it is necessary to ask for the assistance of the United Nations. We are aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia, and ask that similar assistance be given to Cambodia.*

*We believe that crimes of this magnitude are of concern to all persons in the world, as they greatly diminish respect for the most basic human right, the right to life. We hope that the United Nations and international community can assist the Cambodian people in establishing the truth about this period and bring those responsible to justice. Only in this way can this tragedy be brought to a full and final conclusion.*

*Please, Mr. Secretary-General, accept the assurances of our highest consideration.*

*(signed): Prince Norodom Ranariddh*

*First Prime Minister*

*(signed): Hun Sen*

*Second Prime Minister.*

Critics have pointed out that, whatever the merits of the proposal, the timing of this request is suspect: Soon after he sent the letter, Sen seized exclusive power for his party and ousted the first prime minister in a violent *coup d'état* which included the killing of supporters of his political rival. After the coup, he came out strongly in favor of the tribunal. Observers have speculated that Hun's backing of the project, a position that was to prove temporary, was at least in part an effort to divert the Cambodian public and the international community from domestic political turmoil and from his own questionable actions. As Luftglass (2004) puts it: "On July 5, 1997, Hun Sen took power with a bloody military coup, killing more than forty political opponents. Sen was deeply concerned with both asserting Cambodian sovereignty and gaining international credibility. The coup had been planned for months; it is possible that Sen foresaw a means of diverting attention from the coup by pursuing international prosecution of the Khmer Rouge." (p. 907) As another observer stated, Sen, "knew that formally prosecuting top members of Khmer Rouge would be a chance to cast himself as a savior-statesman, the leader who would pacify Cambodia after decades of conflict. It would also be an opportunity to burnish his credentials with Cambodia's foreign aid donors." (Giry, 2012) While Sen supported the tribunal after the coup, he probably had no intention of allowing such a body to come into being, much less prosecute the Khmer Rouge leadership.<sup>2</sup> Luftglass speculates that during this period there was collusion between Sen and the Chinese government to use the Chinese position on the UN Security Council to prevent the establishment of any international tribunal in Cambodia similar to the two ad hoc courts and thereby thwarting the USA and other states pushing for accountability. The quagmire of Cambodian politics was already beginning to undermine the Cambodia tribunal before it had even come into existence.

The domestic and international politics surrounding the establishment of the Cambodia tribunal are complex and many different actors spoke out of both sides of their mouths in the nearly 4 years it took to create it. As Etcheson (2004) described the political landscape in Cambodia and internationally, there were a wide array of different interests and values at stake in debating the prosecution of the Khmer Rouge. (pp. 183–185) Domestically, some opponents of a tribunal (which he labeled "Nativists") believed the court to be degrading to Cambodian sovereignty, others ("Protectionists") believed that it could reveal embarrassing information about the current Cambodian leadership who were involved in the Khmer Rouge, while others feared that the tribunals could destabilize the still unstable country ("Rejectionists"). The aims of Cambodian supporters were similarly complex: Some sought material benefits that would emanate from such an institution, some sought to help

---

<sup>2</sup> It is also worth noting that at times Sen had discussed expanding the scope of the tribunal's jurisdiction to include US bombings of Cambodia and Chinese support for the Khmer Rouge, proposals that would have been the death knell for international support for the tribunal.



establish the rule of law in Cambodia, and still others simply craved a “pound of flesh” from their political enemies who were allied with the Khmer Rouge.

Beyond Cambodian policymakers, there were many other actors with an interest in the formation of such a tribunal, and therefore, had strong feelings about the actions of the UN. As we have seen a number of nations had played a supporting role in the Cambodian atrocities or in their aftermath and feared embarrassment or political blowback for their policies. The Chinese, in particular, long-term allies of Khmer Rouge wished to quash such a tribunal and threatened to use their veto powers in the UN Security Council to do so. The remaining Khmer Rouge leadership sought a role in Cambodian politics and many political players still saw them as important potential supporters for their side in a tough partisan political world—all of which argued against supporting a tribunal. One of the few groups that strongly and almost unequivocally supported the idea of the tribunals was the Cambodian public, which responded positively to the idea by 75–85% in public surveys despite having had little experience with formal justice systems. (Etcheson, 2004, p. 189) The politics around the formation of the tribunal were complex both domestically and internationally.

One further issue in the politics surrounding the establishment of the ECCC was the lure of foreign aid. Cambodia, still destitute after years of war and mismanagement, remained highly dependent on foreign assistance in order to continue operating and thus had to accommodate the, at times conflicting or imprudent, demands of its foreign benefactors.<sup>3</sup> Under such circumstances, the Cambodian leadership had become skilled at manipulating and placating foreign demands on a variety of issues, including those involving justice for the Khmer Rouge. As Etcheson observed, “The mere prospect of Khmer Rouge trials produced a financial windfall for the Cambodian government. The possibility that a tribunal might be established keeps billions of dollars of assistance flowing into Cambodia, both from those who oppose[d] as well as those who support[ed] the idea of a trial for the Khmer Rouge.” (Etcheson, 2004, pp. 202–203) To this end, the Chinese, Americans, Japanese, and Australians, each major benefactors of the Cambodian government, played a role in shaping Cambodian policy toward the Cambodian tribunal as Sen and the Cambodian government sought to placate their interests and keep the spigot of international aid open.

Despite these contradictory international and domestic pressures, the UN began to respond to the request from the Cambodian leadership. Some of this came from the Secretary General, some from the Security Council, but the most significant contribution came from the General Assembly. In response to the June 1997 letter and 8 months after Sen’s violent coup, the General Assembly passed Resolution 52/135 (On the “Situation of human rights in Cambodia”) in December of that year, requesting that “the Secretary-General ... examine the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, including the possibility of the appointment, by the Secretary-

---

<sup>3</sup> Cambodia stands among the Asian countries most dependent upon foreign assistance. Since 1995, 90% of Cambodia’s public expenditures have been derived from foreign aid. (Sato et al., 2011, p. 2093)

General, of a group of experts to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.” There was some effort by the USA to put the weight of the Security Council behind an International Tribunal for Cambodia, but ultimately resistance from China and Russia prevented any Security Council action on the matter. (Reydams et al., 2012, pp. 50–51)

This General Assembly resolution led to a report from Secretary General Kofi Annan’s representatives, raising the possibility of bringing the remaining Khmer Rouge leadership to trial. After examining both the history and current political situation of the Khmer Rouge at the time, as well as the *prima facie* case against its leaders, the experts advocated creating a tribunal along the lines of the two extant ad hoc tribunals for those most responsible for the atrocities committed in DK. It is particularly interesting to note that the panel initially rejected the idea of a hybrid tribunal out of a fear that it could face interference from Cambodian authorities whereas a UN Tribunal with Security Council backing would not face such a problem:

The key concern [of a hybrid tribunal] is that the negotiation of an agreement and the preparation of legislation for and its adoption by the Cambodian National Assembly could drag on. Many issues concerning the role of the United Nations would be part of this negotiation, and no progress could be made until all were settled. The Cambodian government might insist on provisions that might undermine the independence of the court .... In contrast, a resolution of the Security Council (or even the General Assembly) is likely to move far more expeditiously. While the members of the Council will need to consult with the Cambodian government, the burden of going forward will fall upon the Council rather than the Cambodian government. (Group of Experts for Cambodia, 1999, para. 1904<sup>4</sup>)

Thus, the most effective and prompt way to ensure that there was some measure of impartial justice for the crimes perpetrated by the Khmer Rouge was an international tribunal operating independently of the Cambodian government. Such a tribunal could be created by the Security Council and would work alongside an alternative form of “truth telling mechanism” such as a truth commission “to provide a fuller picture of the atrocities of the period of Democratic Kampuchea.” However, given China’s role as a permanent member of the Security Council and its keen interest in preventing embarrassing details about its role in the DK from surfacing, there was little likelihood that the report’s recommendations would have been implemented, whatever their soundness.

At the same time the Group of Experts was diligently preparing its report for the Secretary General, Sen “switched” his views toward prosecuting the Khmer Rouge leadership and did so in a dramatic fashion. In December 1998 Sen met with Chea, Samphan, and Sary (among the top remaining Khmer Rouge officials) in his home on the outskirts of Phnom Penh. As Ambassador Hammarberg describes the nature of this meeting:

---

<sup>4</sup> A great deal of the report has been expanded and elaborated upon in Ratner et al. (2009, pp. 227–328). Ratner was one of the original members of the Group of Experts tasked with writing the report.



<http://www.springer.com/978-1-4614-6638-3>

Hybrid Tribunals

A Comparative Examination

Fitchtelberg, A.

2015, XVIII, 206 p., Hardcover

ISBN: 978-1-4614-6638-3