SALVAGING THE REMAINS: THE KHMER ROUGE TRIBUNAL ON TRIAL

MICHAEL LIEBERMAN*

I. Introduction

Over a generation after the Khmer Rouge regime's fall from power, Cambodia finally will have the opportunity to hold its remaining principals accountable for their crimes. This long-awaited prospect results from a recent agreement between the United Nations and Cambodia to prosecute the "senior leaders of Democratic Kampuchea and those who were most responsible"[1] for the regime's rampage of bloodshed.[2] In the hopes of the Cambodian people who have for so long awaited this day, justice delayed need not be justice denied.

Cambodia's 2003 Law on the Establishment of the Extraordinary Chambers, recently ratified by Cambodia's parliament, implements the

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* Michael Lieberman is a JD/MALD joint-degree student at Boalt Hall School of Law (University of California at Berkeley) and the Fletcher School of Law and Diplomacy at Tufts University, expecting graduation in 2006. He graduated Phi Beta Kappa from the University of Texas at Austin with degrees in Government and Public Communication in 2002. His studies and research interests include the rule of law in transitional states, international law, and security studies. He is immensely grateful to his parents for their love, inspiration and support.

1 Royal Government of Cambodia, Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea of 2004, art. 1, *available at* http://www.cambodia.gov.kh/krt/pdfs/Combination%20of%20KR%20Law%20and%20the%20Amended%205%20Oct%202004%20-%20Eng.pdf [hereinafter The Law of 2004] (last visited Jan. 24, 2006).

2 Royal Government of Cambodia, Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, http://www.cambodia.gov.kh/krt/english/draft%20agreement.htm (last visited Jan. 23, 2005) [hereinafter Agreement]. The draft form of the agreement was initialed on 17 March 2003, after over five years of contentious, on-again, off-again negotiations. It was approved by the Cambodian parliament on 4 October 2004 and finally ratified on 19 October 2004. Royal Government of Cambodia, Instrument of Ratification of Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, http://www.cambodiagov.kh/krt/pdfs/Instrument%20of%20Ratification%20of%20Agreement.pdf (last visited Jan. 23, 2005)*; see also* Amy Kazmin, *Cambodia in Agreement on UN Genocide Tribunal*, FIN. TIMES, Oct. 5, 2004, at 10.

Agreement.[3] This law establishes a special tribunal within Cambodia's existing court system that features Cambodian judges, prosecutors, and defense counsel working alongside international counterparts. It thus differs from a purely international tribunal such as the International Criminal Tribunals for Rwanda or Yugoslavia.[4] It is instead one of a number of "hybrid" tribunals that have also been established in Kosovo and Sierra Leone.[5]

Hybrid courts differ in specifics, but all feature both international and domestic judges, prosecutors and defense counsel, and sit in the country where the crimes they are adjudicating occurred.[6] These courts purport to offer dual benefits, combining the expertise and integrity of international personnel with the ownership, accessibility, and perceived legitimacy of a trial staffed by nationals in the place of the atrocities.[7] Ancillary benefits may accrue as well, such as reduced expenses, easier access to witnesses and evidence, and the potential for local capacity building.[8]

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[3] 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 (2001), http://www.cambodia.gov.kh/krt/pdfs/KR%20Law%20as%20promulgated%20(Eng%20trans%206%20Sept%202001).pdf [hereinafter the Law of 2001]. This law did not meet with U.N. approval and was subsequently amended to its current form. While the current law largely reflects the original law of 2001, in some ways it alters the latter's structure and procedure. For example, it eliminates the mid-level appellate body and explicitly granting the accused rights under the International Covenant on Civil and Political Rights. *Compare* The Law of 2004, *supra* note 1, art. 9, *with* The Law of 2001, *supra* note 3, art. 9. *Compare also* The Law of 2004, *supra* note 1, art. 35, *with* The Law of 2001, *supra* note 3, art. 35. It further refers the question of the consequences of previously granted amnesties to the Extraordinary Chambers. *Compare also* The Law of 2004, *supra* note 1, art. 40, *with* The Law of 2001, *supra* note 3, art. 40.

[4] *See* International Criminal Tribunal for the Former Yugoslavia, http://www.un.org/icty/glance/index.htm (last visited Nov. 16, 2005); International Criminal Tribunal for Rwanda, http://www.ictr.org/default.htm (last visited Nov. 16, 2005).

[5] Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, art. 2, U.N. Doc. S/2002/246 (Jan. 16, 2002), *available at* http://www.sc-sl.org/scsl-agreement.html; Statute of the Special Court for Sierra Leone, art. 12, U.N. Doc. S/2000/915 (2000), *available at* http://www.sc-sl.org/scsl-statute.html. *See, e.g.*, David Marshall & Shelley Inglis, *Human Rights in Transition: The Disempowerment of Human Rights-Based Justice in the United Nations Mission in Kosovo*, 16 HARV. HUM. RTS. J. 95 (2003).

[6] Neil J. Kritz, *Progress and Humility: The Ongoing Search for Post-Conflict Justice*, *in* POST-CONFLICT JUSTICE 74-75 (M. Cherif Bassiouni ed. 2001).

[7] Laura A. Dickinson, *The Promise of Hybrid Courts*, 97 AM. J. INT'L L. 295, 306 (2003).

[8] *See id.* at 307. This is the hope of many foreign and domestic observers, including the Cambodian Defenders Project, a local legal aid organization. Karen J. Coates, *Cambodia*

For these reasons, many human rights groups and scholars welcome this innovation as another potential mechanism to address serious international crimes.[9] Cambodia's Extraordinary Chambers law, however, has elicited intense criticism. The most prominent of the Agreement's detractors is UN Secretary-General Kofi Annan, whose lead negotiator at one point found the Cambodian position so unacceptable that he walked away from the negotiating table.[10] Adamant, however, that some reckoning take place, the UN General Assembly, quickly ordered him back and directed him to reach an agreement,[11] greatly circumscribing his flexibility. The current agreement is the result.

In a relatively blunt report on the agreement to the General Assembly, Annan cited as a serious concern the "precarious" state of the judiciary in Cambodia and recalled that both the UN Special Representative to Cambodia and the General Assembly had found serious "problems related to the rule of law and the functioning of the judiciary in Cambodia resulting from interference by the executive with the independence of the judiciary."[12] Human rights groups and some commentators share the Secretary-General's skepticism and have been strident in their condemnation. [13] At least one has gone so far as to call

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Tribunal May Pave Way for Judicial Reform, CHRISTIAN SCI. MONITOR, Oct. 14, 2004, at 5.

[9] *See, e.g.*, Dickinson, *supra* note 7; Kritz, *supra* note 6, at 74-75.

[10] Tom Fawthrop, *Why UN Washes Its Hands of Khmer Trial*, KOREA HERALD, Feb. 22, 2002.

[11] G.A. Res. 228, U.N. GAOR, 57th Sess., U.N. Doc. A/57/228 (2002). General Assembly Resolution A/RES/57/228 was recalled on 18 December 2002. Consequently, resolution 57/228, in section V of the Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 49 and corrigendum (A/57/49 and A/57/49 (Vol. I (Corr. 1), vol. I, becomes resolutions 57/228A).

[12] *Report of the Secretary-General on Khmer Rouge Trials*, at 11, U.N. DOC. A/57/769 (2003) [hereinafter *Report of the Secretary-General*].

[13] *See, e.g.*, Human Rights Watch, *Serious Flaws: Why the UN General Assembly Should Require Changes to the Draft Khmer Rouge Tribunal Agreement*, Apr. 2003, http://hrw.org/backgrounder/asia/cambodia040303-bck.htm [hereinafter *Serious Flaws*]; Amnesty International, *Position and Concerns Regarding the Proposed Khmer Rouge Tribunal*, Apr. 25, 2003, http://web.amnesty.org/library/index/engasa230052003 [hereinafter *Amnesty International's Position*]; LAWYERS COMMITTEE FOR HUMAN RIGHTS, CAMBODIA: THE JUSTICE SYSTEM AND VIOLATIONS OF HUMAN RIGHTS 54 (1992) [hereinafter THE JUSTICE SYSTEM]; U.S. Department of State, Country Reports on Human Rights Practices: Cambodia (2002), http://www.state.gov/g/drl/rls/hrrpt/2002/18238.htm [hereinafter State Department Country Report].

for UN withdrawal if the Agreement is not renegotiated to provide for further assurances against governmental interference.[14]

In addition to the state of Cambodia's judiciary, critics cite vagaries in the law and confused, potentially intractable decision-making processes as potentially fatal flaws.[15] These shortcomings of the Chambers' legal structure might be less of an issue if those concerned had more faith in Cambodian Prime Minister Hun Sen's willingness to bring former Khmer Rouge leaders to justice. Of course, the Chambers' weaknesses exist for this very reason, and there is a well-placed fear that Hun Sen will work behind the scenes to delay the trials, mete out lenient sentences or engineer outright acquittals.[16]

Though the Cambodian government originally requested international assistance for a tribunal,[17] and the Prime Minister now expresses his support for one,[18] many see this position at odds with his interests and actions. Hun Sen has demonstrated some resolve to bring some Khmer Rouge to justice by arresting two former Khmer leaders, Ta Mok, known as "the Butcher," and Kang Kek Ieu, known as "Dutch," who now await trial for crimes against humanity.[19] It is questionable, however, whether their arrests indicate Hun Sen's determination to bring former Khmer Rouge leaders to justice or his desire to placate the international community by singling out perpetrators who happen to have fallen from grace. Numerous other Khmer Rouge leaders remain free. One, Ieng Sary, former Democratic Kampuchean head of state, received a royal pardon in 1996.[20] Two others, former head of state Khieu Samphan and "ideological guru" Nuon Chea, both live openly in Phnom

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[14] Scott Luftglass, Note, *Crossroads in Cambodia: The United Nations' Responsibility to Withdraw Involvement from the Establishment of a Cambodian Tribunal to Prosecute Former Members of the Khmer Rouge*, 90 VA. L. REV. 893, 895 (2004).

[15] *See Serious Flaws*, *supra* note 13; *Amnesty International's Position*, *supra* note 13.

[16] *See* Luftglass, *supra* note 14, at 909.

[17] *Report of the Secretary-General*, *supra* note 12, para. 74.

[18] Seth Mydans, *Cambodian Denies He Opposed Trial for Khmer Rouge*, N.Y. TIMES, Jan. 2, 1999, at A1.

[19] Thomas Crampton, *Cambodia to Restore Khmer Rouge Sites*, INT'L HERALD TRIBUNE, Aug. 21, 2003, at 2.

[20] *Cambodian Political Stalemate Could Delay Khmer Rouge Tribunal: Hun Sen*, AGENCE FRANCE PRESSE, Oct. 14, 2003. The Agreement defers deciding on his status, leaving it up to the Extraordinary Chambers. *See* The Law of 2004, *supra* note 2, art. 11.

Penh, the capital city of Cambodia.[21] As recent defectors to the government, they could well enjoy its continued protection.[22]

Indeed, detractors of the Agreement point out, several former Khmer Rouge leaders hold powerful positions within the government.[23] These leaders include Hun Sen himself, who defected to Vietnam two years prior to that country's invasion of Cambodia in 1979.[24] At the time of his defection, the Khmer Rouge already had been in power for two years, by which time it had already proven itself to be a relentless perpetrator of atrocity.[25] Yet upon its invasion, Vietnam installed Hun Sen as a high-ranking official in a new Cambodian government.[26] Considering Cambodia's longstanding distrust of Vietnam,[27] and Hun Sen's role in the Khmer Rouge regime, Hun Sen has good reason to keep skeletons in their closets.[28] In addition to these motives, it may be that Hun Sen is not eager to establish accountability as a standard of Cambodian governance.[29]

The stark implications of these facts are heightened by Hun Sen's insuperable demands for a hybrid court with an equal or predominant role for Cambodian personnel, many of whom, as noted above, are subservient to his diktat.[30] Though as noted above, hybrid courts hold out the promise,[31] few, if any, believe that fostering a sense of local ownership or promoting judicial professionalism accounted for Hun Sen's negotiating position. Hun Sen's motives and the Chambers' weaknesses notwithstanding, the Extraordinary Chambers are

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[21] Patrick Walter, *Hun Sen Vows to Try Khmer Rouge Pair*, AUSTL., Feb. 12, 2002, at 7.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *See* Brian D. Tittemore, *Khmer Rouge Crimes: The Elusive Search for Justice*, 7 HUM. RTS. BRIEF 3 (Fall 1999).
[26] Walter, *supra* note 21, at 7.
[27] Terrence Duffy, *Toward a Culture of Human Rights in Cambodia*, *in* CAMBODIA 277 (Sorpong Peou ed. 2001).
[28] In the midst of negotiations for the tribunal, Hun Sen was quoted as saying, "If a wound does not hurt why should we poke it with a stick to make it bleed?" Mydans, *supra* note 18, at A1.
[29] Steven Ratner, *Current Development: The United Nations Group of Experts for Cambodia*, 93 AM. J. INT'L L. 948, 949 (1999) (citing Thomas Hammarberg, former U.N. Special Representative for Human Rights in Cambodia).
[30] *See, e.g.*, THE JUSTICE SYSTEM, *supra* note 13, at 54; *Amnesty International's Position*, *supra* note 13; *Serious Flaws*, *supra* note 13; State Department Country Report, *supra* note 13.
[31] *See, e.g.*, Dickinson, *supra* note 7.

Cambodia's last opportunity to bring its past tormentors to justice. At this point, the interests of justice must merge with those of practicality. The longer the trials are delayed, the less the chance that crucial evidence, witnesses, or even the defendants will be available. The perfect, in this case, must not be made the enemy of the good.

Beyond accountability for the perpetrators and justice for the victims, moving forward is a good way for the international community to lend real assistance to Cambodia's stultified judiciary and to have a chance at helping bring the Khmer Rouge leaders to justice. The rule of law in Cambodia, as noted, is in a poor state. The tribunal, staffed by international experts and watched closely by the global community, may provide an opportunity to bolster ongoing efforts at enhancing the integrity and capability of Cambodia's justice system. With sufficient effort, the tribunal could serve as a workshop for Cambodian judges, and give the Cambodian people a chance to witness legal procedures according to international standards of law. Despite the current regime's wishes, it might even do the same for Cambodian elites. Through outside political pressure on the Cambodian government not to interfere with the tribunal and a vigorous insistence upon developed criminal justice principles in trial and appellate chambers, Cambodia may benefit from seeing justice done alongside a judicial shot in the arm. In order for this to occur, not to mention real accountability, the international community must be prepared to make the most out of the Extraordinary Chambers.

This article seeks to provide initial guidance towards that end. It begins by describing the makeup of the Extraordinary Chambers and the outlines of its substantive and procedural laws. It then critically examines the arguments of human rights groups such as Amnesty International, Human Rights Watch, and others, which condemn the tribunal as insufficient and rife with opportunities for malfeasance. The paper confirms the validity of many of these critiques, while questioning the strength of others in light of the Cambodian and international law under which the Chambers will formally operate. In this way it seeks to provide a first step at rectifying some of the tribunal law's shortcomings. After suggesting methods to do so via a purely legal strategy, it goes on to suggest ways the international community can influence the Chambers to live up to its promise of closing a chapter of Cambodia's long-running nightmare.

II. Overview of the Agreement

The current law establishing the tribunal establishes "Extraordinary Chambers" within Cambodia's extant judicial system to try the primary perpetrators of the Khmer Rouge's crimes.[32] Its subject matter jurisdiction covers crimes under the 1956 Penal Code of Cambodia, namely homicide, torture and religious persecution.[33] It further includes crimes under numerous international treaties, such as the Genocide Convention of 1948,[34] "grave breaches" of the Geneva Conventions of 1949,[35] the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, and the Vienna Convention of 1961 on Diplomatic Relations.[36] The current law also takes its definition of crimes against humanity from the Rome Statute establishing the International Criminal Court.[37]

The procedures "shall be in accordance with Cambodian law,"[38] but where such law does not address an issue, "guidance may also be sought in procedural rules established at the international level,"[39] such as Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights (ICCPR),[40] to which Cambodia is a party.[41]

Structurally, the Agreement establishes two chambers, a Trial Chamber, composed of three Cambodian and two international judges, and the Supreme Court Chamber, made up of four Cambodian and three

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[32] The Law of 2004, *supra* note 1, art. 2.
[33] *Id.* art. 3.
[34] *Id.* art. 6.
[35] *Id* art. 7
[36] *Id.* art. 8.
[37] *Id.* art. 5; United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome Statute of the International Criminal Court, art. 7, U.N. Doc. A/CONF. 183/9 (July 17, 1998).
[38] *Id.* arts. 20, 23, 33.
[39] *Id.*
[40] These include the right to a fair and public hearing, the presumption of innocence, the engagement of an accused's choice of counsel, adequate time and facilities to prepare a defense, the provision of counsel if the accused cannot afford one and the right to confront one's accusers and adverse witnesses. *Id.* art. 33; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), arts. 14,15,21, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966).
[41] Cambodia ratified the ICCPR on 26 August 1992. *See* Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties (June 9, 2004), http://www.unhchr.ch/pdf/report.pdf.

international judges.[42] The UN Secretary-General nominates the international judges, who are then selected by Cambodia's Supreme Council of the Magistracy.[43] Under Cambodia's constitution, the Council is responsible for, *inter alia*, making proposals on the appointment of judges.[44] For the judges to render a decision, an "affirmative vote" is required of at least four judges in the Trial Chamber and five judges in the Supreme Court Chamber.[45] This supermajority formula thus requires the support of at least one international judge for a chamber to render a decision.

For the conduct of investigations, the Agreement creates two equal investigating judges, one Cambodian and one international.[46] The same formula is established for the two co-prosecutors.[47] Both the international investigating judges and the international prosecutors, like the international judges, are appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General.[48] The investigators and prosecutors "shall be independent . . . and shall not accept or seek instructions from any Government or any other source."[49] In case of disagreement between the two co-investigating judges or the two co-prosecutors the investigation or prosecution "shall proceed"[50] unless one or both of either duo requests settlement of the dispute by a pre-trial chamber of three Cambodian and two foreign judges, selected in the same way as are the other adjudicative judges.[51] In the event of a dispute, members of both teams are to submit the reasons for their disagreement to the pre-trial chamber.[52] A supermajority formula applies in this chamber as well, but in the event that no resolution of the dispute can be reached, the investigation or prosecution also "shall proceed."[53]

To help ensure the smooth functioning of these processes, the Agreement requires that Cambodia agree to "comply without undue

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[42] The Law of 2004, *supra* note 1, art. 9.
[43] *Id.* art. 11.
[44] CONST. OF THE KINGDOM OF CAMBODIA art. 134, *available at* http://www.embassy.org/cambodia/government/constitution.htm.
[45] The Law of 2004, *supra* note 1, art. 14.
[46] *Id.* art. 23.
[47] *Id.* art. 18.
[48] *Id.* arts. 18, 26.
[49] *Id.* art. 19.
[50] *Id.* arts. 23, 20.
[51] *Id.*
[52] *Id.*
[53] *Id.*

delay" with any request for assistance by the investigating judges, prosecutors or Chambers for the identification, location and detention of persons, transfer and the service of documents.[54] Finally, as a hedge against Cambodian non-cooperation, the UN reserves the right to withdraw from the Agreement if the government of Cambodia should "cause [the Chambers] to function in a manner that does not conform with the terms of the present Agreement."[55] The Secretary-General's negotiators did not submit this clause as boilerplate, indicating the skepticism with which they and the human rights community view the Cambodian government's commitment. Their distrust, and the way the Agreement falls short of fully addressing it, forms the basis for much of the criticism of the Agreement.

The remainder of this Article examines and evaluates the leading critiques of the Agreement. It then takes the lessons gleaned and suggests a strategy to bolster the credibility and efficacy of the Extraordinary Chambers.

III. Criticisms of the Agreement Examined

Denouncing what they see as a flawed compromise that undermines the prospect of seeing true justice done, observers charge that the proposed tribunal fails in at least three key respects. These shortfalls are: (1) a failure to guarantee prosecutorial, investigative and judicial independence; (2) the lack of a clear, controlling body of law; and (3) "unworkable and confused" investigative and decision-making processes.[56] The following section examines these reservations from an instrumental perspective, with an eye toward discovering how Cambodian and international law may help ameliorate some of the above concerns.

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[54] Agreement, *supra* note 2, art. 25.

[55] *Id.* art. 28.

[56] Other criticisms decry the absence of an adequate system for protecting witnesses and victims, as well as the deferral of a decision regarding the pardon of former Khmer Rouge foreign minister Ieng Sary. Because this article assumes the agreement will be the basis for a tribunal, and is concerned with functional and legal issues related to the trials themselves, it does not explore these other critiques in detail.

A. Failure to Guarantee Judicial, Prosecutorial and Investigative Independence and Impartiality

1. No Majority of International Judges

The most pointed and overarching critique of the proposed tribunal rests on the susceptibility of the Cambodian judiciary to manipulation from the government. The Secretary-General voiced his concern with this problem in his March 2003 report on the Agreement, recalling that both the UN Special Representative to Cambodia and the General Assembly found serious "problems related to the rule of law and the functioning of the judiciary in Cambodia resulting from interference by the executive with the independence of the judiciary."[57] One human rights group even calls the Cambodian judiciary an "arm of the ruling Cambodian People's Party."[58] The Agreement's establishment of a majority status for Cambodian judges from such a system thus introduces a potentially corruptive and obstructive element, as they lack "the physical [and] professional security to simply decide to behave differently."[59]

Beyond its lack of independence, systematic corruption also plagues the Cambodian courts.[60] Other problems include incompetence due to a lack of education and training, low salaries, resource constraints and poor infrastructure.[61] As a result, though there may be good reasons for having nationals of a state adjudicate war crimes or crimes against humanity that occur within that country,[62] the Cambodian judiciary may be incapable of executing its solemn task. This weakness, critics charge, will prevent the Extraordinary Chambers from enjoying the same

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[57] *Report of the Secretary-General*, *supra* note 12, at 11; *see also* THE JUSTICE SYSTEM, *supra* note 13, at 54.

[58] THE JUSTICE SYSTEM, *supra* note 13, at 54..

[59] *Serious Flaws*, *supra* note 13, at 4.

[60] *Id.* at 3; Amnesty International USA, *Cambodia: Urgent Need for Judicial Reform*, http://www.amnestyusa.org/stoptorture/document.do?id=F74A8DDB9A24CBBE80256BEB0039AF24 (last visited Nov. 29, 2005) [hereinafter Amnesty International Website].

[61] Amnesty International Website, *supra* note 60.

[62] *See* text accompanying notes 5-9; Dickinson, *supra* note 7, at 305-07 (arguing that "hybrid" courts comprised of both foreign and international judges can help promote legitimacy, local capacity building and the penetration of international norms into domestic regimes); *see also* Kritz, *supra* note 6, at 75 (commending such courts as being more accessible to local populations, allowing for greater local ownership and contributing to the reform of national judiciaries).

credibility, such as the purely international tribunals established for Rwanda and the former Yugoslavia,[63] thus denying Cambodians the prospect of seeing their tormentors answer for their crimes.

2. Co-Investigating Judges

Another feature that many decry is the Agreement's provision for investigating judges.[64] Cambodia insisted on their inclusion, arguing that they are essential if the Extraordinary Chambers are to exist within Cambodia's legal system, which as a civil law country uses them extensively.[65] These investigating judges, whom the Agreement describes as being "responsible for the conduct of investigations,"[66] appear subject to the same interference, incompetence, pressures and obstacles as the Cambodian judges and prosecutors.[67] Of particular concern is their unclear role in relation to the co-prosecutors. In one of Cambodia's governing criminal codes,[68] the State of Cambodia Law, investigating judges are charged with "finding the truth," a task that grants them wide powers to arrest the accused, to summon him or others for questioning, to search his property and to otherwise fulfill his investigatory function.[69] Prosecutors usually assign these responsibilities to investigating judges, but also posses the power to conduct investigations themselves.[70]

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[63] *See, e.g.*, *Report of the Secretary-General*, *supra* note 12, para. 29; *Serious Flaws*, *supra* note 13, at 3. The twenty-four judges on the International Criminal Tribunal for the Former Yugoslavia, including *ad litem* judges, each come from a different country, none of which are parts of the former Yugoslavia. *See* International Criminal Tribunal for the Former Yugoslavia, http://www.un.org/icty/glance/index.htm (last visited Nov. 16, 2005). The eighteen judges on the ICTR, each also representing a different nationality, come from countries other than Rwanda. *See* International Criminal Tribunal for Rwanda, http://www.ictr.org/default.htm (last visited Nov. 14, 2005).

[64] *See, e.g.*, *Amnesty International's Position*, *supra* note 13, at 8; *Serious Flaws*, *supra* note 13, at 6.

[65] *Serious Flaws*, *supra* note 13, at 6.

[66] Agreement, *supra* note 2, art. 5(1).

[67] *Serious Flaws*, *supra* note 13, at 6.

[68] *See* Section C, *infra*, for a discussion of the confusion regarding "Cambodian law."

[69] International Human Rights Law Group, RESOURCE GUIDE TO THE CRIMINAL LAW OF CAMBODIA § 2.37 (2000), *available at* http://www.globalrights.org/site/DocServer/Cambodia_covcontent.pdf?docID=186 [hereinafter RESOURCE GUIDE].

[70] *Id.* § 2.36.

In practice, the functions of the two offices seem confused.[71] Some investigating judges, for instance, have taken responsibility for prosecutors' inquiries, but then refused to continue.[72] Indeed, valid questions exist about the value of the investigating judge, as the position may be just another opportunity for obstruction.[73]

Still, though the problem of delay is insurmountable under the current Agreement's terms, it is one that potentially answers itself, because the prosecutor has the same investigative powers under Cambodian law.[74] Because the Agreement does not explicitly recognize this authority, the international co-prosecutor ought to take full advantage of these prerogatives. Even if in practice prosecutors do not exercise this power themselves in Cambodia, the international prosecutor will be justified in being aggressive in his investigations if the investigating judges are gridlocked. Conversely, the investigating judges may serve as a backup in case the prosecutors' investigations are hindered.

3. No Single, International Prosecutor

A strong prosecutorial arm is integral to any tribunal, particularly in Cambodia where the legal framework and political realities contain many obstacles and difficulties. The law, as discussed, calls for two co-prosecutors, one Cambodian and one international.[75] The Agreement does not clearly list their duties, providing only that they "shall work together to prepare indictments against the Suspects [sic] in the Extraordinary Chambers."[76] Human rights groups criticize this bifurcation for reasons similar to the criticism of the placement of Cambodian judges in the trial and appellate chambers. They note that the Cambodian prosecutorial service suffers from the same weaknesses as the Cambodian judiciary: governmental fealty, a lack of professionalism, and corruption.[77] As the Agreement lacks a clear division of duties between the co-prosecutors and provides no procedural

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[71] *Serious Flaws*, *supra* note 13, at 6.
[72] *Id.*
[73] *Id.*
[74] RESOURCE GUIDE, *supra* note 69, § 2.36.
[75] The Law of 2004, *supra* note 1, art. 16.
[76] Agreement, *supra* note 2, art. 6(1).
[77] *Serious Flaws*, *supra* note 13, at 4; *Amnesty International's Position*, *supra* note 13, at 9.

mechanism for them to carry out their functions, delay, obfuscation, and impotence are stark possibilities.

These threats are mitigated somewhat by the dispute resolution mechanism outlined in Article 7 of the Agreement, which establishes the pre-trial chamber to decide disputes between the co-prosecutors.[78] Because in the absence of a decision, for which the vote of at least one international judge is required, the prosecution "*shall* proceed,"[79] a Cambodian prosecutor under orders to undermine a case can only delay, not derail, a prosecution.

For "the prosecution to proceed", of course, there must first be a prosecution. A close reading of the Agreement in conjunction with the Cambodian Constitution reveals the danger that, in the event of a dispute, even if the pre-trial chamber sided with an international prosecutor seeking to file an indictment, or could not reach a decision and thus allowed the prosecution to "proceed," a prosecution could only be filed with the consent of the Cambodian co-prosecutor.

Under Article 131 of the Constitution, "[o]nly the Department of Public Prosecution shall have the right to *file criminal suits*."[80] Because neither the Agreement nor the Law on the Extraordinary Chambers explicitly grants the international prosecutor the right to bring suit, the Cambodian prosecutor could arrogate to himself the sole right to do so. This could effectively leave the fate of the tribunal in the hands of the Cambodian government, despite efforts made by the international personnel. Even if an international prosecutor could participate in the prosecution, his inability to file suit would relegate him to the role of deputy prosecutor, not co-prosecutor. A reading that leaves the exclusive right of "fil[ing] criminal suits" to the Cambodian prosecutor is bolstered by the Agreement's language establishing the Extraordinary Chambers "within the existing court structure of Cambodia,"[81] which necessarily brings it within the ambit of the country's constitution, and thus within Article 131.

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[78] Agreement, *supra* note 2, art. 7.
[79] *Id.* (emphasis added).
[80] CONST. OF THE KINGDOM OF CAMBODIA art. 131, *available at* http://www.embassy.org/cambodia/government/constitution.htm (emphasis added).
[81] Agreement, *supra* note 2, pmbl. para. 4.

One possible way out of this predicament is to insist on the Agreement's description of the prosecutors as "co-prosecutors," thus eliminating any conception of disparity between them. Another solution may be the Agreement's language incorporating the Vienna Convention on the Law of Treaties.[82] The Vienna Convention requires parties to perform their treaty obligations in good faith[83] and forbids a party from invoking provisions of internal law to justify failing to honor its obligations.[84] Thus, if the UN can provide evidence that the parties contemplated granting the international prosecutor the right to file a suit, perhaps through an examination of the *traveaux prepartoire*[85] or through subsequent practice, as provided by Vienna's rules of interpretation,[86] the international prosecutor may avail himself of the right to bring suits, hopefully, but not necessarily, with the backing of his co-prosecutor.

B. Unworkable and Confused Investigative and Decision Making Process

A glaring and serious weakness that will be difficult to overcome is an investigative and decision-making process that simmers with potential friction. As described, if the co-prosecutors or co-investigating judges cannot agree among themselves, they may appeal to the pre-trial chamber. Once there, a majority plus one is needed to decide the dispute.[87] Such a supermajority, it is argued, could be necessary "dozens or even hundreds" of times in the course of a case.[88] "Even decisions about who to investigate can become the subject of this cumbersome process," one group claims.[89] While the process may be halting and fraught with the danger of dilatory tactics, it is not insurmountable.

What critics of the Agreement and the tribunal law overlook is that in the case of the prosecutorial and investigative disputes, if the pre-trial chamber cannot render a decision due to the obstinacy of compromised

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[82] *Id.* art. 2(2).
[83] Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 26, 1155 U.N.T.S. 331, 339.
[84] *Id.* art. 27.
[85] Materials used in preparing the ultimate form of an agreement or statute, and especially of an international treaty. BLACK'S LAW DICTIONARY 1505 (7th ed. 1999)
[86] *Id.*; *see id*. art. 31.
[87] The Law of 2004, *supra* note 1, art. 20.
[88] *Serious Flaws*, *supra* note 13.
[89] *Id*. at 6.

members, the investigation or prosecution "*shall proceed.*"[90] Moving forward with an investigation or prosecution would thus not require a supermajority, only the lack of one *against* the proceeding. This circumstance, then, would be unlikely considering the breakdown of the pre-trial chamber, which features enough international members to prevent such an outcome, assuming they themselves saw merit in pursuing a particular case.[91]

C. No Clear, Controlling Body of Law

1. Procedural Law

Another serious critique of the Agreement is its ambiguous reference to the choice of procedure. Article 12 states that "[t]he procedure shall be in accordance with Cambodian law."[92] As described above, where the law does not address an issue, is uncertain, or may not comply with international standards, Article 12(2) states that "guidance may also be sought in procedural rules established at the international level."[93] This default recognizes that Cambodia's present "system" of criminal procedure is a morass of different legal regimes, established under various recent governments.[94] The criminal codes established under the United Nations Transitional Authority in Cambodia (UNTAC), and the State of Cambodia Law (SOC law), passed by Hun Sen's Cambodian People's Party before the present Constitution came into effect and thus of questionable legitimacy, are the most widely used.[95] Still, inconsistency and unpredictability plague the application of the law,[96] a problem that both results from and lends itself to political pressures. Further, some of the laws still in use, such as the Vietnamese-backed People's Republic of Kampuchea 1984 Decree Law 27, utterly fail to

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[90] The Law of 2004, *supra* note 1, arts. 20, 23 (emphasis added).

[91] Unfortunately, the negotiators did not include a similar provision for interlocutory appeals from the trial to the appellate chamber. Because Cambodian law allows for such appeals, the international judges may be forced to rely on techniques of persuasion rather than on analysis of law to overcome this problem if it arises. RESOURCE GUIDE, *supra* note 69, § 4.38.

[92] Agreement, *supra* note 2, art. 12.

[93] *Id.*; The Law of 2004, *supra* note 1 arts. 20, 23, 33.

[94] Others include the Vietnamese-backed People's Republic of Kampuchea (PRK) laws and the Criminal Code of 1969. *See* RESOURCE GUIDE, *supra* note 69, §§ 2.23 – 34.

[95] RESOURCE GUIDE, *supra* note 69, § 2.23.

[96] *Serious Flaws*, *supra* note 13, at 7.

meet standards of international due process[97] and tend to be used in cases of politically motivated arrests.[98] According to some critics, this state of affairs "may make it impossible to offer due process to defendants."[99]

While the question of the applicable law is certainly one the Chambers must address, it need not hinder the tribunal. The UNTAC criminal code, the SOC law, and the ICCPR, to which Cambodia is a party, provide sufficient legal standards to protect the accused and assure a fair trial. Their application, of course, is far from guaranteed, but unless Cambodia proves extraordinarily obstinate or the international judges are pliant and unassertive, there is a strong foundation for adhering to universally accepted benchmarks. One can even infer this view from the very critique that condemns the smorgasbord nature of the applicable law, at least in reference to Article 12(2) of the Agreement. "It is unclear," reads one assessment, "which 'procedural rules established at the international level' should be used to clarify weaknesses in the Cambodian law. The Rome statute of the ICC . . .? The statute of the International Criminal Tribunal for the Former Yugoslavia? [100] The statute of the International Criminal Tribunal for Rwanda?"[101] Yet all of these codes of procedure are substantially similar and uphold minimum due process standards. Cambodia's membership to the Rome Statute and the ICCPR provides yet another source of applicable procedural law.

Another fault in the Agreement is the absence of ICCPR Article 9, which contains important pre-trial rights of the accused, alongside ICCPR Articles 14 and 15 in Article 12 of the Agreement. [102] Cambodia is a party to the ICCPR. Such a criticism, along with a view suspicious of the tribunal's susceptibility to interference, undermines the consistency of critics' impression of the Hun Sen regime. Either the Prime Minister is insufficiently committed to bringing former Khmer Rouge senior leaders to justice, or he is overly zealous and thus liable to

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[97] *Id.*

[98] RESOURCE GUIDE, *supra* note 69, § 3.14.

[99] *Id.*

[100] Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993), reprinted in 32 I.L.M. 1159 (1993), amended by S.C. Res. 1166, U.N. SCOR, 53d Sess., 3878th mtg., U.N. Doc. S/RES/1166 (1998).

[101] Statute of the International Tribunal for Rwanda, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., Annex, U.N. Doc. S/RES/955 (1994), reprinted in 33 I.L.M. 1598 (1994).

[102] *Serious Flaws*, *supra* note 13, at 11.

ignore fundamental due process rights. This concern would be more urgent if the Cambodian government sought to accuse scapegoats instead of the real culprit. The chances of letting this occur, however, are small considering the presence and powers of the international personnel and the substantial evidentiary basis implicating suspects who are by now quite notorious.[103]

Surely the most stringent and specific standards should permeate every aspect of the Agreement. Yet falling slightly short of that threshold should not cause undue alarm. The problem is less with the law than with the vigor with which the tribunal analyzes, interprets, and applies the law. For this reason, international pressure from both within and without the tribunal is essential.

2. Substantive Law

In a vein similar to that of the noted critiques, Human Rights Watch charges that the "lack of clarity of the substantive law" renders due process guarantees insecure.[104] This argument conflates procedural and substantive law. The International Covenant on Civil and Political Rights Articles 14 and 15, previously discussed, clearly address procedural matters, the absence of ICCPR Article 9 notwithstanding. Moreover, the group's proposed remedy, incorporating the text of the ICC in the Agreement, already has been accomplished regarding an area in which the ICC goes significantly further than other incorporated texts, namely crimes against humanity.[105] The other international instruments referenced in the Agreement, such as the Geneva Conventions, resemble the ICC substantive law.[106] The concerns, then, that "[c]ompetent defense counsel will be able to raise constant objections based on the lack of clarity of the substantive law" and that "[j]udges may then find themselves with no choice but to dismiss indictments or require them to be re-filed"[107] does not appear well-founded. And with sufficiently zealous foreign personnel, these fears should be unrealized.

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[103] *See, e.g.*, Walter, *supra* note 21, at 7.
[104] *Serious Flaws*, *supra* note 13, at 7.
[105] *See* Agreement, *supra* note 2, art. 9 ("the subject-matter jurisdiction . . . shall be [*inter alia*], crimes against humanity as defined in the 1998 Rome Statute of the [ICC].").
[106] *Id.*
[107] *Serious Flaws*, *supra* note 13, at 7.

3. Defenses

a. Pardons

Article 11 of the Agreement prohibits Cambodia from requesting amnesty or a pardon for anyone under investigation for or convicted of crimes under the Tribunal Law.[108] In 1996, however, Ieng Sary, the foreign minister under Democratic Kampuchea, received a royal pardon from King Sihanouk for his 1979 genocide conviction under the Vietnam-backed People's Revolutionary Tribunal.[109] Instead of rescinding this pardon, the Agreement leaves the scope of it to the Extraordinary Chambers, thus leaving open the possibility that Sary will escape justice.

In arguing that Sary's amnesty should not stand, those judges who wish to prosecute him should employ the precedent of the Special Court of Sierra Leone. Despite a grant of amnesty under the Lome Agreement that ended that country's civil war,[110] the statute that later established the Special Court prevented such amnesties as bars to prosecution.[111] Just as it did in its negotiations over amnesties with Cambodia, the UN objected to the analogous provision in the Lome accord, lodging a reservation to it stating that "amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other [such] serious violations."[112] Seeking to resolve the difference between the contradictory agreements, then-UN High Commissioner for Human Rights Mary Robinson argued that the Lome amnesty provisions may be applicable with respect to national law, but not international law,[113] thereby justifying the supremacy of the statute establishing the Special

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[108] Agreement, *supra* note 2, art. 11.

[109] GENOCIDE IN CAMBODIA: DOCUMENTS FROM THE TRIAL OF POL POT AND IENG SARY 3 (Howard J. De Nike, John Quigley, Kenneth J. Robinson, eds. (2000)).

[110] Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999, U.N. Doc. S/1999/777 (providing protection of human rights and humanitarian law for the people of Sierra Leone), available at http://www.sierra-leone.org/lomeaccord.html (last visited Jan. 29, 2006).

[111] Statute of the Special Court for Sierra Leone, art. 12(1)(a), S.C. Res. 1315, U.N. SCOR, 55th sess., 4186th mtg., U.N. Doc. S/RES/1315 (2000), *available at* http://www.sierra-leone.org/specialcourtstatute.html [hereinafter SCSL Statute] (last visited Jan. 29, 2006).

[112] Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, U.N. SCOR, U.N. Doc. S/2000/915 (Oct. 4, 2000).

[113] *U.N. Human Rights Commissioner Wants International Probe into Sierra Leone*, AGENCE FRANCE PRESSE, July 9, 1999.

Court. Since Cambodia's Extraordinary Tribunal Law incorporates international conventions as the basis for many of its substantive crimes, those seeking to overcome the previously granted amnesty can make a similar case.

b. Superior Orders

One group denounces the Agreement for not explicitly barring superior orders as a defense, though it recognizes such a bar under Article 29 of the Cambodian Tribunal Law, in which the Agreement is couched.[114] That Article reads, "The fact that a Suspect acted pursuant to an order of the Government of Democratic Kampuchea or of a superior shall not relieve the Suspect of individual criminal responsibility."[115] As a defendant would thus have trouble invoking this defense under the law, it is curious, if not unduly punctilious, to attack the Agreement's omission of the superior orders defense prohibition. Such hypercritical behavior does nothing to mitigate the tribunal's very real shortcomings and erodes the force of the human rights community's stronger objections.

Their shortcomings notwithstanding, the criticisms of the Agreement identify serious weaknesses that must be addressed. Because the Agreement appears to be the final word on any Khmer Rouge tribunal, however, it is critical that in addition to the legal strategies outlined above, the international legal community develops other means to optimize the tribunal's capacity to mete out justice. The following section sketches some considerations towards that end.

IV. A Strategy To Mitigate Malfeasance, Promote Justice, and Contribute to the Development of the Rule of Law in Cambodia

The failure of the Agreement to establish protocols geared towards the maximum efficiency, credibility, and accountability of the tribunal is unfortunate. Yet the Agreement is likely the last chance for Cambodians to bring leaders of Democratic Kampuchea to justice. Considering the weaknesses of the Agreement, it is unwise to hope that it will provide the degree of catharsis and closure sought for and deserved by victims of the

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[114] *Amnesty International's Position*, *supra* note 13, at 9.
[115] The Law of 2004, *supra* note 1, art. 39.

Khmer Rouge. Some justice, however, is better than none. Youk Cheng, head of the Documentation Centre of Cambodia**,** an organization that collects and records evidence of the horrors of the Khmer Rouge regime, believes in "symbolic justice."[116] The tribunal, he says, can serve "as our own individual revenge. For the interests of the country, for stability, for resources, I think the top 10 [Khmer Rouge leaders] are sufficient for all of us."[117]

For the top tier of leaders to face justice in the face of any potential obstinacy and interference by the Cambodian government and tribunal personnel, the international community must prepare itself to make the most of the Agreement. It must also ensure that international judges do not come merely to oversee the trials and then depart. As contributors of the international community, the international judges should add value to local capacity building and judicial training. Some specific steps the international community can take are as follows (1) the Secretary-General must nominate strong, assertive international personnel; (2) pressure Cambodia to respect the integrity of the Tribunal; (3) Identify pertinent sources of Cambodian law; (4) use the avenues available in the Agreement; (5) use the opportunity to help train Cambodian judges and lawyers, and (6) as a last resort, threaten to walk away:

A. The Secretary-General Must Nominate Strong, Assertive International Personnel

Under Article 3 of the Agreement, the UN Secretary-General nominates the international judges, co-prosecutors, and co-investigating judges.[118] The Cambodian Council of the Magistracy, however, can only select international personnel from the list provided. The Secretary-General, then, should ensure that his nominees not only meet the standards enunciated in Article 3(3) of the Agreement ("high moral character, impartiality and integrity . . ."),[119] but also informal qualifications such as assertiveness, experience dealing with Cambodians and, perhaps, diplomatic experience. The international personnel must be prepared to aggressively pursue investigations and prosecutions (and,

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[116] John Aglionby, *Pol Pot's Soldiers Escape Justice for Genocide: Only Senior Khmer Rouge Officers Will Stand Trial for 1.7m Deaths*, GUARDIAN (U.K.), Aug. 5, 2003, at 12.
[117] *Id.*
[118] Agreement, *supra* note 2, art. 3(5).
[119] *Id.* art. 3(3).

where warranted, convictions) in the face of any Cambodian truculence. The international appointees may also help advance trials by using their colleagues' inexperience with international criminal law to influence the proceedings more than their minority status may suggest is possible. Judges with experience in the mixed tribunals in Kosovo may be particularly well suited to this task.[120]

B. Pressure Cambodia to Respect the Integrity of the Tribunal

Articles 3, 5 and 6 of the Agreement require, respectively, that judges, prosecutors, and investigating judges "be independent . . . and shall not accept or seek instructions from any Government or any other source."[121] Article 2 of the Agreement also requires Cambodia to abide by the Vienna Convention. The international community should pressure Cambodia to abide by these articles. Since, as we have seen, many do not trust Cambodia to respect these provisions, the General Assembly may wish to provide a channel for whistleblowers to expose their violations, and perhaps even threaten sanctions or countermeasures if the Cambodian government is seen to interfere. This could provide a way for other nations and the UN to gauge Cambodia's commitment to respecting the Agreement, and to work to make sure that it does so.

C. Identify Pertinent Sources of Cambodian Law

The Tribunal's substantive law is sufficiently clear. Yet because Cambodian criminal procedure is a mixture of different rules and practices, the international personnel should do their homework, and identify the relevant sources of Cambodian law that could bear on criminal procedure.[122] This Article has attempted to sketch some preliminary lines of inquiry for this effort. The international personnel should also insist on Cambodia's adherence to the default "rules established at the international level,"[123] such as the ICCPR, to which Cambodia belongs.

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[120] As of November 2005, the Secretary General was still interviewing candidates. *See* American University War Crimes Research Office, Extraordinary Chambers for Cambodia Status Updates, *at* http://www.wcl.american.edu/warcrimes/krt_updates.cfm (last visited Jan. 17, 2006).

[121] *Id.* arts. 3(3), 5(3), 6(3).

[122] *See* Section IV(C)(1), *supra*.

[123] Agreement, *supra* note 2, art. 12(1).

In addition, the Extraordinary Chambers must, upon first convening, promulgate detailed rules for implementing the procedures envisioned in the Agreement. Such rules would be neutral and, of course, comply with the Agreement and Cambodian law. In addition to clarifying the procedure and avoiding delay, their creation could give the international judges a chance to assertively inject international standards into the tribunal, and provide a stronger basis for them to do so.

D. Use the Avenues Available in the Agreement

The Agreement contains provisions that give significant influence to the international personnel. The supermajority system, which requires at least one international judge to issue a decision, provides a safeguard against undue acquittals and convictions. The requirement that investigations or prosecutions "shall proceed" in the case of a deadlock between the co-prosecutors or co-investigating judges guarantees, at least in law, that the international personnel are able to move forward, notwithstanding opposition from their counterparts. A thorough examination not just of the Agreement, but also of its relationship to Cambodian law, is crucial to surmounting the obstacles in the Agreement.

E. Use the Opportunity to Help Train Cambodian Judges and Lawyers

The international personnel should also not shy away from their didactic duties of educating their Cambodian colleagues in techniques of proper criminal investigations and trial management. United Nations Special Representative for Human Rights in Cambodia Thomas Hammarberg originally suggested that such an educational process occur in The Hague over several years prior to the start of the trials.[124] Though ideally the Cambodian judges would have had this learning opportunity before the trials started, the international judges must nonetheless be sure to take advantage of the avenue presented. In doing so, the international personnel can draw upon the experience of mentoring programs in places such as Kosovo and East Timor.[125] These efforts could also involve

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[124] *Serious Flaws*, *supra* note13, at 4 n.3.

[125] *See, e.g.*, *IFES Project Report, East Timor: Mentoring Public Defenders, at*

other rule of law development organizations, such as the Cambodian Bar Association. The international personnel must leave behind more than their efforts to see the Khmer Rouge face justice; they must also take what steps it can to ensure that a robust adherence to the rule of law allows Cambodia to be free from such tyrants forever.

F. Threaten to Walk Away

Under the Agreement, the UN reserves the right to withdraw support from Extraordinary Chambers in the case of Cambodian refusal to cooperate.[126] The UN may see fit to strategically invoke this right. Though forced to return to the negotiating table by the General Assembly, the Secretary-General's refusal to continue negotiations with Cambodia in 2002 could well be credited for securing several subsequent concessions. These include the reduction of the Chambers from three to two,[127] the default role of international procedural standards when Cambodian law is unclear,[128] and the specific mention of ICCPR Articles 14 and 15.[129] If all else fails and the tribunal begins to appear to be a sham, the UN must be prepared to threaten abandoning the effort, though there should be a high bar to actually doing so.

V. Conclusion

The Agreement and the law establishing the tribunal are flawed, but not fatally so. Instead of abandoning the effort as hopeless, the pursuit of justice now demands sublimating idealistic advocacy to practical preparation. In Cambodia, the window of opportunity is closing rapidly. Even if the tribunal were to convene tomorrow, it would be longer than any other time in history between the commission of internationally condemned crimes and their perpetrators' appearance before courts of justice. No more Khmer Rouge leaders should die without facing their victims. As the international community assists in this process, it must be sure to leave behind not only accountability, but also the tools to

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http://www.ifes.org/rol-project.html?projectid=easttimormentor (last visited Jan. 17, 2006); United Nations Development Programme, Judicial Inspection Unit Support Project, *at* http://www.kosovo.undp.org/Projects/JIU/JIU.htm.

[126] Agreement, *supra* note 2, art. 28.

[127] *Report of the Secretary-General*, *supra* note 12, at 10, para. 26.

[128] *Id.* at 14, para. 49.

[129] Agreement, *supra* note 2, art. 12.

ensure that justice is done after the Extraordinary Chambers complete their task. Despite the obstacles ahead, we may still salvage what remains of the hope for justice in Cambodia.