

**AGREEMENT BETWEEN THE UN AND THE ROYAL GOVERNMENT OF
CAMBODIA CONCERNING THE PROSECUTION UNDER CAMBODIAN LAW OF
CRIMES COMMITTED DURING THE PERIOD OF DEMOCRATIC KAMPUCHEA**

By a letter dated 21 June 1997 to the Secretary-General, the two Prime Ministers of Cambodia requested the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes against humanity committed during the rule of the Khmer Rouge from 1975 to 1979 (A/51/930-S/1997/488); the letter was sent by the Secretary-General to the Presidents of the General Assembly and Security Council respectively on 24 June 1997. The letter referred in this respect to resolution 1997/49 of 11 April 1997, by which the Commission on Human Rights had requested “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”.

By resolution 52/135 of 12 December 1997, under the agenda item of the “Situation of human rights in Cambodia”, the General Assembly, on the recommendation of its Third Committee, *inter alia*, took note of resolution 1997/49 of the Commission on Human Rights, and endorsed the comments of the Special Representative for human rights in Cambodia that the most serious human rights violations in Cambodia in recent history have been committed by the Khmer Rouge and that their crimes, including the taking and killing of hostages, had continued to the present, and noted with concern that no Khmer Rouge leader had been brought to account for his crimes (paragraph 15). The Assembly requested the Secretary-General to examine the request made by the Cambodian authorities, including the possibility of the appointment 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.

In accordance with resolution 52/135, on 13 July 1998, the Secretary-General created the Group of Experts for Cambodia with the mandate: (a) to evaluate the existing evidence with a view to determining the nature of the crimes committed by Khmer Rouge leaders in the years from 1975 to 1979; (b) to assess, after consultation with the Governments concerned, the feasibility of bringing Khmer Rouge leaders to justice and their apprehension, detention and extradition or surrender to the criminal jurisdiction established; and (c) to explore options for bringing to justice Khmer Rouge leaders before an international or national jurisdiction. In its report, transmitted by the Secretary-General to the General Assembly and the Security Council on 16 March 1999, the Group of Experts recommended, *inter alia*, that, in response to the request of the Government of Cambodia, the United Nations establish an *ad hoc* international tribunal to try Khmer Rouge officials for crimes against humanity and genocide committed from 17 April 1975 to 7 January 1979 (A/53/850-S/1999/231, Annex).

The Government of Cambodia, in a letter addressed to the Secretary-General on 3 March 1999, cautioned that any decision to bring Khmer Rouge leaders to justice must take account of Cambodia’s need for peace and national reconciliation. In a meeting with the Secretary-General on 12 March 1999, representatives of the Cambodian government conveyed to the Secretary-General that it was of the view that Cambodian courts were fully competent to conduct such trials (A/53/850-S/1999/231). On 17 June 1999, the

Government of Cambodia requested that the United Nations provide experts to assist Cambodia in drafting legislation that would provide for a special national court to try Khmer Rouge leaders and that would provide for foreign judges and prosecutors to participate in its proceedings. In response to this request, the Secretary-General entered into negotiations with the Government with a view to reaching an agreement on how such a court would have to be organized and how it would have to function, if the United Nations was to provide or arrange assistance to help establish it and help it to function. Those negotiations lasted two and a half years (Report of the Secretary General on Khmer Rouge trials, A/57/769).

In resolution 55/95 of 4 December 2000, under the agenda item “Situation of human rights in Cambodia”, the General Assembly, on the recommendation of its Third Committee, welcomed, *inter alia*, the successful conclusion of the talks between the Government of Cambodia and the United Nations Secretariat on the question of the trial of the Khmer Rouge leaders who are most responsible for the most serious violations of human rights; appealed strongly to the Government to ensure, including by facilitating the expedited completion of the necessary legislative process as soon as possible, that those Khmer Rouge leaders are brought to account in accordance with international standards of justice, fairness and due process of law; encouraged the Government to continue to cooperate with the United Nations on this issue; and welcomed the efforts of the Secretariat and the international community in assisting the Government to this end.

On 10 August 2001, the Cambodian National Assembly promulgated the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (Reach Kram No. NS/RKM/0801/12).

In resolution 56/169 of 19 December 2001, the General Assembly, on the recommendation of its Third Committee, *inter alia*, welcomed the promulgation of the Cambodian Law; urged the Government and the United Nations to conclude an agreement without delay so that the Extraordinary Chambers could start to function promptly; and appealed to the international community to provide assistance in this regard, including financial and personnel support to the Chambers.

In February 2002, the Secretary-General concluded that he was no longer in a position to continue his negotiations with the Government of Cambodia on this matter (Report of the Secretary General on Khmer Rouge trials, A/57/769). Thereafter, the Government of Cambodia made statements indicating that it was prepared, in order to meet the concerns of the United Nations, to amend the law on the Extraordinary Chambers. In a press release dated 10 August 2002, the Secretary-General made it clear that in order for him to engage in further negotiations, he would need a clear mandate from either the General Assembly or the Security Council (SG/SM/8341).

In resolution 57/228 A of 18 December 2002, under the agenda item of the “Khmer Rouge trials”, the General Assembly, on the recommendation of its Third Committee, requested the Secretary-General to resume negotiations, without delay, to conclude an agreement with the Government of Cambodia, based on previous negotiations on the establishment of the Extraordinary Chambers consistent with the provisions of the resolution, so that the Extraordinary Chambers may begin to function promptly.

Negotiations between the United Nations and the Government of Cambodia were thus resumed and took place in two stages (in New York in January 2003 and in Phnom Penh in March 2003 respectively). In a letter dated 17 March 2003, the Secretary-General

informed the President of the General Assembly that these negotiations had resulted in the establishment of a text of an agreement and that it would be for the General Assembly to decide whether this text was acceptable to the United Nations (A/57/758). The draft agreement providing for the establishment of Extraordinary Chambers in the national courts of Cambodia, with international assistance, was initialled by the United Nations and the Government of Cambodia and was attached to the report submitted by the Secretary-General on 31 March 2003 pursuant to paragraph 7 of resolution 57/228 A (A/57/769). This report also described the requirements of the Extraordinary Chambers and their associated institutions in terms of funds, equipment, services and personnel, and proposed the mechanism of assessed contributions for financing the assistance provided by the United Nations.

By resolution 57/228 B of 13 May 2003, the General Assembly, on the recommendation of its Third Committee, approved the draft Agreement between the United Nations and the Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, which was annexed to the resolution. It further urged the Secretary-General and the Government of Cambodia to take all measures necessary to allow the draft Agreement to enter into force and to implement it fully after its entry into force. It also decided that the expenses of the Extraordinary Chambers to be defrayed by the United Nations shall be borne by voluntary contributions from the international community, and appealed to the international community to provide assistance to the Chambers. The resolution further requested the Secretary-General to report on its implementation.

The agreement between the United Nations and the Government of Cambodia was signed in Phnom Penh on 6 June 2003 by Senior Minister Sok An on behalf of the Government of Cambodia and by the Legal Counsel on behalf of the United Nations (Report of the Secretary-General on the Khmer Rouge Trials, A/58/617).

On 3 December 2003, the Secretary-General submitted an interim report to the General Assembly on the implementation of resolution 57/228 B, in which he expressed concern at the delays in the implementation of the agreement and called upon the Government of Cambodia to ensure that its ratification be placed on the agenda of the newly constituted National Assembly as a matter of priority (A/58/617). By resolution 58/191 of 22 December 2003, the General Assembly, *inter alia*, again urged the Secretary-General and the Government of Cambodia to take all the measures necessary for the early establishment of the Extraordinary Chambers.

On 12 October 2004, the Secretary-General submitted his report on the implementation of resolution 57/228 B, informing the General Assembly that, although the agreement had not yet been fully ratified by the Cambodian authorities, the latter would proceed with ratification without delay (A/59/432). On 27 October 2004, the Cambodian National Assembly amended the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (Reach Kram No.NS/RKM/1004/006). On 16 November 2004, the Government of Cambodia notified the United Nations of the ratification of the Agreement (A/59/432/Add.1).

On 28 April 2005, the Secretary-General notified the Government of Cambodia that the legal requirements on the United Nations side for the entry into force of the Agreement had been complied with. The Agreement entered into force, in accordance with its article 32, on 29 April 2005, the day after this notification (Report of the Secretary-General on Khmer Rouge trials, A/60/565).

On 6 March 2006, the Secretary-General communicated to the Government of Cambodia the names of international judges for the Extraordinary Chambers, international co-prosecutors and international judges for the Pre-Trial Chamber. On 4 May 2006, the Supreme Council of the Magistracy of Cambodia selected and appointed international and Cambodian judges, co-investigating judges and co-prosecutors for the Extraordinary Chambers (Report of the Secretary General on Khmer Rouge trials, A/62/304). The judicial officers of the Extraordinary Chambers were sworn in on 3 July 2006.