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At last there is a way to bring the Khmer Rouge to justice;
BALAKRISHNAN RAJAGOPAL;
Balakrishnan Rajagopal is a professor of law and development at the
Massachusetts Institute of Technology.

BYLINE: By Balakrishnan Rajagopal

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Cambodia's Prime Minister Hun Sen has finally agreed to cooperate in establishing a "mixed" international tribunal to try the Khmer Rouge for crimes with the participation of both Cambodian and foreign judges and prosecutors.

There has never been such a "mixed" criminal tribunal in the past. Tribunals at Nuremburg and The Hague have consisted only of foreign judges and prosecutors. The international human rights community and the United States must support and build on this agreement before political complications derail it.

Recent events have once again shown that nothing is predictable in Cambodia. Hun Sen was tepid at best in his commitment to bring the Khmer Rouge to justice after he had secured peace with them by striking de facto immunity deals for the aging leadership. He labeled - for his own political ends, to be sure - the calls by international human rights groups as misguided attempts to bring justice at best and imperialism at worst. Conversely, the human rights community seemed to be frozen in a state of legal puritanism wherein they would accept nothing short of a tribunal a la former Yugoslavia. The chasm between the realpolitik on the ground and utopian aspirations at the global level seemed unbridgable. The "mixed tribunal" seems to bridge this chasm.

This "mixed tribunal" is the only option that is minimally acceptable to both the international community and the Cambodian government. All other options seem either hopeless or naive. An international tribunal like the one for former Yugoslavia is prohibitively expensive and would be far from Cambodia, where it needs to have an impact on popular consciousness. A truth commission as in South Africa seems impractical in a country where the massive crimes took place more than 20 years ago. Truth commissions work best in situations where there is an urgent moral desire and practical necessity for addressing immediate past crimes.

Domestic prosecutions appear to lack legitimacy, both inside and outside Cambodia, due to the reputed lack of independence and professionalism of the Cambodian judiciary. In this situation, the only way to establish justice is to involve the Cambodians in a process that is sufficiently internationalized to provide legitimacy and to keep it out of the reach of Cambodian politicians. The "mixed tribunal" meets that threshold.

There are many advantages to this model. First, it makes the Cambodians share the responsibility for its success as well as failure. A failure to arrest indicted criminals then, for example, does not result in international law alone looking like a toothless tiger.

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Second, by rooting the process in Cambodia, the tribunal is more likely to contribute to consciousness-raising among the Cambodian public and elite. A local tribunal would be closely watched by the local press and may contribute tangibly to the establishment of the idea of rule of law.

Third, it would avoid recourse to the Security Council, which may be essential for a "pure" international tribunal. This is good news because the Security Council is unlikely to approve another ad hoc tribunal, especially when China and, to a lesser extent, the United States have much to hide about their support for the Khmer Rouge during the 1980s. Besides, given the pending establishment of the international criminal court, the Security Council is unlikely to approve another tribunal.

There may be some objections to this "mixed tribunal" idea. First, it may be claimed that international criminal tribunals can not involve nationals of the "accused" state, since they are likely to be prejudiced and may also violate the principle that one can not be a judge in one's own cause. This is wrong, because the nature of international crimes is that they are individual, not collective crimes. The entire people of a country cannot fall under a cloud of suspicion due to the mistakes of individual leaders. Further, these crimes were committed more than 20 years ago by people belonging to a radically different political regime.

Second, it may be objected that such a tribunal has never been established and may not work. However, none of the earlier tribunals had precedents, and yet they were established. In an age when Pinochet of Chile is arrested on a Spanish warrant in England and Libyan suspects are tried by Scottish judges in Netherlands, it seems odd to see such institutional conservatism.

Third, it may also be claimed that a locally established tribunal may inflame passions and lead to violence, causing danger to witnesses and court officials. This is a real issue, but it seems unduly exaggerated. With a well-organized witness protection program and internationally guaranteed immunity, court officials and witnesses will be safe from intimidation and violence. Hun Sen has too much to lose by allowing such violence and much to gain due to increased legitimacy.

It is important for the United Nations to act on this agreement with Hun Sen right away and create momentum for the establishment of this tribunal. The international human rights community and the United States must act now to support this process with money and political support. Finally there is a glimmer of hope that the worst act of mass killing in the latter half of the 20th century may be addressed before this bloody century closes. It is now or never.

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