

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Review Meeting

Peace Agreements: The Role of Human Rights in Negotiations

Belfast, 7-8 March 2005

HUMAN RIGHTS IN NEGOTIATING PEACE AGREEMENTS: FINAL ACT OF THE PARIS CONFERENCE ON CAMBODIA

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GENERAL: CONTEXT AND BACKGROUND

What peace agreements were produced in the country you are considering? Which agreement provided the main framework for how peace would be achieved? In summary what did it provide for (see more detailed questions below)?

1. Cambodia's sole peace agreement, the Final Act of the Paris Conference on Cambodia, was signed at an international meeting in the French capital on 23 October 1991. The details were contained in three instruments, namely: Agreement on a Comprehensive Political Settlement on the Cambodia Conflict; Agreement concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia; and Declaration on the Rehabilitation and Reconstruction of Cambodia. In this paper they will be referred to as the Paris Accords.¹
2. The first of these, the Agreement on a Comprehensive Political Settlement on the Cambodia Conflict, provided the central framework. It outlined arrangements for a transitional period leading to popular elections, a legislative assembly and government. It also contained elements relating to the withdrawal of foreign forces, a ceasefire and cessation of outside military assistance, protection of human rights, international guarantees of Cambodia's sovereignty, release of prisoners of war and civilian internees, and principles for a new constitution.
3. An important part of the agreement was that the United Nations was to be responsible during a transitional period, for ensuring implementation of the peace plan, including organising elections. A UN transitional authority (UNTAC) was established and given "powers necessary" for these purposes. Although sovereignty was retained by a recently formed Supreme National Council, that had been formed in 1990 and comprised representatives from Cambodia's main factions, the UN ended up dealing with a significant body of public administration matters as well as the job

¹ The full text of these agreements can be found in UN General Assembly / Security Council document [A/46/608-S/23177](#). 30 October 1991.

of creating a neutral political environment conducive to democratic elections. In total it ended up deploying more than 20,000 foreign military and civilian personnel, and had additional authorisation to employ some 4,830 Cambodian staff supplemented by international contractual staff and election personnel. From the signing of the peace agreement to UNTAC's departure in September 1993 took 23 months.

What was the background to this agreement being produced?

4. At the time of the Paris Accords Cambodia had been in various states of conflict for decades. Freed from colonial rule in the mid 1950s when France withdrew from Indochina, it had suffered a succession of capricious or despotic rulers, with heavy-handed suppression of dissent. In 1970, the Vietnam War openly spilled across its borders, and in April 1975 the Khmer Rouge marched into its capital, Phnom Penh. In the three years and eight months that followed some 1.7 million people died or were murdered, representing a quarter of the population and leaving survivors exhausted and traumatised.²
5. The Paris Accords essentially offered a solution to the period in the country's history that came *after* January 1979, the month that the Chinese-backed Khmer Rouge was ousted by invasion from neighbouring Vietnam. The invasion and installation by Hanoi of a government largely made up of Khmer Rouge defectors had angered China and upset Thailand, Vietnam's long-standing regional rival. It also renewed Indochina's status as a front line in the Cold War. The United States, the Association of Southeast Asian Nations, and several Western governments aligned themselves with China, and over the following years, funnelled military and other assistance into an anti-Vietnamese resistance. This resistance came to include three factions: the republican Khmer People's National Liberation front (KPNLF), the royalist Funcinpec faction, and the communist Khmer Rouge.³ Meanwhile Vietnam tapped into Soviet support offering in return highly strategic Pacific naval facilities at Cam Ranh Bay near Nha Trang. Solving Cambodia's conflict consequently came to require settling domestic differences *and* ending external involvement in fuelling the flames.
6. Early initiative in framing expectations of a peace deal was taken at the United Nations, where in November 1979 the General Assembly passed an Asean-backed resolution calling for a cessation of hostilities, the withdrawal of foreign forces, and democratic elections to form a new government.⁴ This was followed in July 1981 by a UN-sponsored International Conference on Kampuchea that established a declaration of principles for settling Cambodia's crisis. These included the withdrawal of foreign forces under the supervision and verification of a UN peacekeeping-observer group, free elections under UN auspices, arrangements to ensure that armed Cambodian factions would not prevent or disrupt the elections, measures to maintain law and order during the election period, and international guarantees aimed at ensuring Cambodia's neutral status and territorial integrity. Over the following years these principles appeared in successive UN General Assembly resolutions, and they formed the basis of an Asean-sponsored framework for resolving the Cambodian question.
7. Early attempts by Vietnam and the new government in Phnom Penh to retake the initiative do not appear to have made much headway, with Hanoi's efforts appearing mainly premised on denying Chinese influence in Indochina. A separate 1981 conference, proposed by Hanoi and aimed at expanding discussion to include Thai and Chinese involvement in Cambodia, was rejected by its would-be interlocutors as an attempt at internationalising the problem.⁵ In turn

² The source for the 1.7 million estimate is [Yale University, Cambodian Genocide Program](#).

³ See '[Coalition Government of Democratic Kampuchea](#)', U.S. Library of Congress.

⁴ UN General Assembly Resolution [A/RES/34/22](#), 14 November 1979.

⁵ See [Cambodia: The Search for Peace](#). U.S. Library of Congress, Country Studies

Hanoi rejected Asean's subsequent 1983 'Appeal for Kampuchea Independence' which suggested a phased withdrawal of Vietnamese troops, an international peacekeeping force, internationally supervised free elections, and reconstruction aid for areas evacuated by Vietnam.⁶ To strengthen its negotiating hand Vietnam launched a major dry-season offensive in 1984, destroying most, if not all, resistance bases.

8. In February 1985, Prince Norodom Sihanouk, leader of the royalist faction, sought to kindle interest in a new international conference on Cambodia. But his proposal for unconditional talks was rejected by China, which said Vietnam must withdraw first.⁷ Two weeks later the prime minister of the Phnom Penh government, Hun Sen, outlined six points for a Kampuchean settlement. These included free elections if "certain individuals and groups" joined the Phnom Penh government against the Khmer Rouge, the withdrawal of Vietnamese forces, cessation of all outside interference and international guarantees and supervision of a peace agreement.⁸
9. Over the following months several new initiatives appeared. In July 1985, for example, Japan's foreign minister Shintaro Abe outlined a three-point plan in which Tokyo would support peacekeeping and provide reconstruction aid after a Vietnamese withdrawal. The following year, in March 1986, Prince Sihanouk expanded on the Asean formula from 1983 by announcing an eight-point peace plan involving elections but proposing simultaneously that he and the KPRLF's leader, Son Sann, should be president and prime ministers respectively in a coalition of national unity with the government in Phnom Penh. Asean and the European Union supported the proposal, but Vietnam and the Phnom Penh government rejected it. The prime minister in Phnom Penh, Hun Sen, instead called for the "Pol Potists" to be placed on trial.
10. Starting in late 1987 a series of meetings occurred between Prince Sihanouk and Hun Sen to address settlement issues directly. Asean added its assistance through a process that became known as the Jakarta Informal Meetings. These meetings, in July 1988 and February 1989, brought together the parties most directly involved in the Cambodian conflict, namely the four Cambodian factions, Vietnam, Laos, and the six Asean states.
11. In the late 1980s external events were also playing a large part in the drive towards peace. Diminishing Soviet support as the Cold War drew towards conclusion had led Vietnam to withdraw its armed forces from Cambodia. Meanwhile, the U.S. and its allies were facing domestic and foreign questioning over a policy of supporting resistance forces that were in alliance with the Khmer Rouge. All sides were faced with the need to assess strategic interests and determine priorities for dealing with a post-Cold War Asia.
12. With elements of a peace equation falling into place the former colonial power, France, convened the first session of the Paris Conference on Cambodia between 30 July and 30 August 1989. The event was chaired by the foreign ministers of France and Indonesia, Roland Dumas and Ali Alatas respectively, and attended by the Secretary-General of the UN, Javier Perez de Cuellar, and his Special Representative, Rafeuddin Ahmed. In addition to the Cambodia factions, 18 nations participated including Zimbabwe for the Non-Aligned Movement.
13. At this conference Cambodian parties dealt with matters relating to power arrangements among themselves through an Ad Hoc committee on national reconciliation among the factions. Non-Cambodians meanwhile led the three working committees on military matters, international guarantees, and repatriation of refugees and displaced persons and Cambodia's reconstruction. The conference failed and was suspended, in large part because of differences over how the Cambodian groups should share power until elections were held. But progress was made in

⁶ [An Appeal for Kampuchea Independence](#), 20 September 1983.

⁷ See [Chronology of Cambodian History 1985-1989](#)

⁸ [Cambodia: The Search for Peace](#). U.S. Library of Congress, Country Studies

elaborating elements that would be necessary for achievement of a comprehensive settlement. These were discussed at the UN Security Council between January and August 1990 in a series of meetings of the permanent five members aimed at finding how an enhanced role for the UN might aid settlement.⁹ The outcome was a framework document, agreed to on 28 August 1990, which was accepted by the Cambodian parties as a basis for settling the conflict. This was endorsed by Security Council resolution 668 of 20 September 1990 and General Assembly resolution A/RES/45/3 of 15 October 1990. The framework subsequently provided the structure on which the Final Act of the Paris Conference was built.

What were the main human rights problems prior to the agreement being signed? To what extent were these being addressed locally and internationally prior to the agreement being signed?

14. For many Cambodians the most immediate human rights problems prior to the peace agreement related to the ongoing fighting, which in addition to causing direct casualties had resulted in large numbers of internally displaced people and refugees, most of the latter living in camps in Thailand. Inside the State of Cambodia (the name used by the Phnom Penh government from 1989 to 1993) very significant problems were arising out of failures in the systems that nominally provided law. An often used estimate is that of the 400-600 lawyers in Cambodia prior to April 1975, when the Khmer Rouge established Democratic Kampuchea, fewer than a dozen survived in country.¹⁰ The system of justice during the 80s had little to do with rule of law. Although international human rights groups had had very limited access to Cambodia, reports from the period speak of large numbers of political detainees, widespread torture, and frequent detention without trial.¹¹ In 1991 protests erupted in Phnom Penh over corruption, amid a wave of opportunistic property grabbing and wholesale selling off by civil servants of state assets. Underlying this was that Cambodia had seen no accounting for the crimes of the Khmer Rouge period.

Continued fighting

15. A ceasefire between Cambodia's four main factions (the State of Cambodia, and the Khmer Rouge and its non-communist Khmer People's National Liberation Front and Sihanoukist allies on the other) had come into effect on 1 May 1991, some five months prior to the Paris Agreement being signed. However, no disarmament had occurred (nor any confiscation of weaponry from the civilian population), large areas of Cambodia remained heavily mined, and each of the factions continued to support substantial military elements. At the time of the Paris Conference, in October 1991, a situation therefore persisted in which individual Cambodian parties to the conflict had at their disposal the option and ability to seek further incremental gains through fighting or covert acts of subversion and violence.
16. Foreign military and other aid or assistance to the various combatants was still being delivered into the early 1990s, although governments were generally less than transparent in this regard. The persistence of reports, for example, that Vietnam provided continuing advice on security matters to the State of Cambodia appears to lend credibility to such claims. Lethal and non-lethal military and other help was also provided to the resistance, including through informal sources. In June 1990, Bangkok newspapers revealed that six Thai companies, including one partly owned by a cabinet minister, were offering the Khmer Rouge cash and equipment in exchange for

⁹ See also [Country Background Notes, 1990-93 Cambodia](#). U.S. State Department.

¹⁰ Neilson, Kathryn [‘They killed all the lawyers – Rebuilding the judicial system in Cambodia’](#) Occasional Paper #13 October 1996.

¹¹ [‘Cambodia: Recent Human Rights Developments ASA 23/07/90’](#). December 1990, Amnesty International.

logging concessions around Pailin. In addition, the Khmer Rouge received delivery of Chinese-supplied tanks and heavy equipment to the Khmer Rouge in October 1990.¹² On 18 July 1990 U.S. Secretary of State James Baker announced the start of a shift away from tactical aid to the resistance.¹³ This involved dropping U.S. support for the seating at the UN of representatives of the Cambodian resistance and allowing \$5 million in humanitarian aid voted by Congress to be delivered to the government in Phnom Penh.¹⁴ In October 1991, just days before the Paris Conference, U.S. Assistant Secretary of State for East Asian and Pacific Affairs Richard Solomon, announced that \$25 million had been provided that year in both government *and* non-communist resistance areas.¹⁵

Non-accountability for past crimes

17. No agreement existed either before or at the time of the Paris Conference on whether or how to bring to account those responsible for the widespread human rights problems that had occurred in the country's recent past, including the 1975-1979 period in which the Khmer Rouge was in power. In large part this was because the principle domestic players who might have been affected were included in the peace process. Political cost considerations were also a factor for countries that had been external parties to the conflict. The only attempt to hold Khmer Rouge leaders to account occurred in August 1979 when the Vietnamese-backed government in Phnom Penh staged a trial of Khmer Rouge leader Pol Pot and his foreign minister, Ieng Sary, sentencing them to death *in absentia* for genocide crimes. However, as a trial that served the interests of an occupying force, it lacked credibility. Subsequent appeals by the Phnom Penh government for an international trial of 'Pol Potists' were similarly seen as being politically opportunistic.¹⁶ Outside Cambodia appeals during the 1980s for a trial of the Khmer Rouge came from, among others, Australian Foreign Minister Bill Hayden and his Indonesian counterpart Mokhatar Kusumaatmaja.¹⁷ Nonetheless it appears that at the time of the Paris Accords accountability, truth, and reconciliation, for Cambodia had been relegated both locally and internationally.

Refugees / Displaced people

18. At the time of the peace agreement more than 350,000 Cambodians were living in camps in neighbouring Thailand, while an estimated 180,000 were displaced inside their own country.¹⁸ By the late 1980s considerable international pressure existed for a solution to Indochina's refugee problems.¹⁹ Thailand was not a signatory to the 1951 Refugee Convention and although it accepted large numbers of refugees its attitude was distinctly ambivalent. Camps established to house these people were supervised by the military. In 1979 Thai soldiers had herded thousands of Cambodians back over the steep mountainside border at Preah Vihear, many to their deaths on the minefields below.²⁰ By 1989 pressure throughout the region for a solution to the continuing arrival of refugees from Indochina had culminated in an international agreement, known as the Comprehensive Plan of Action, aimed at reversing the tide. In effect this plan marked a shift in international policy away from providing refuge and towards repatriation and

¹² '[Cambodia, human rights developments 1990](#)'. Human Rights Watch

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Testimony before the House Subcommittee on Asian and Pacific Affairs, October 17, 1991.

¹⁶ One such example is a 17 September 1986 letter to the United Nations from Hun Sen, the prime minister of the Phnom Penh government, in which he appealed for the Khmer Rouge leaders to be placed on international trial.

¹⁷ See [Chronology of Cambodian History 1985-1989](#). Entries dated 17 September 1986 & 8 August 1986.

¹⁸ Source: [The State of the World's Refugees 2000. Chapter 4](#). UNHCR.

¹⁹ See [Joint Statement by Asean Foreign Ministers on Indochinese refugees, 14 June 1987](#).

²⁰ 'Thai / [Cambodian Border Refugee Camps History](#)' Entry dated June 8-12 1979

other so-called “durable solutions”. Already by 1990 UNHCR had begun planning for the large-scale voluntary repatriation of Cambodians residing in border camps in Thailand.

Torture and illegal detention

19. Inside the State of Cambodia were serious problems with the courts, law enforcement, and prison systems, and significant restrictions on civil liberties. Legal reforms made in 1989 which set limits on detention and guarantees of rights of the accused had stalled. In large part this was because there were almost no trained lawyers or judges, but also because of a turf battle between the powerful Ministry of Interior and relatively powerless justice officials. In May and June of 1990 six prominent individuals had been arrested for trying to form an independent political party.²¹ As among the refugee population in Thailand there were reports of forced conscription.²² A 1987 report by Amnesty International found widespread use of torture and other ill treatment of prisoners.²³ Its concerns included arbitrary detention of political prisoners or their detention without charge or trial or after unfair trials; torture and other ill-treatment of political prisoners during interrogation; and prison conditions constituting cruel, inhuman or degrading treatment. It does not appear that significant efforts were being made either locally or internationally at the time of the peace agreement to address these problems.

To what extent was human rights law considered to apply? Were treaties ratified, were derogations entered? To what extent was international humanitarian law considered to apply?

20. Cambodia signed several major human rights treaties before 1991, although in most cases it did not consent to being bound by the terms. The main exceptions are the International Convention on the Elimination of All Forms of Racial Discrimination, which it ratified in 1983; and the Convention on the Prevention and Punishment of the Crime of Genocide, which it acceded to in 1950.²⁴
- 21.
22. On paper, the peace agreement marked a watershed in Cambodia’s acceptance of international law. Within 12 months it had ratified or acceded to six major treaties: namely, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention (and Protocol) relating to the Status of Refugees. Since then it has also become a state party to the convention relating to Freedom of Association and Protection of the Right to Organize, the Right to Organize and Collective Bargaining Convention, and the Rome Statute of the International Criminal Court. It has ratified the optional protocols to the Convention on the Rights of the Child relating to the sale of children, child prostitution and child pornography and the involvement of children in armed conflict.
23. In practice, adherence to human rights laws has been poor. Cambodia’s ethnic Vietnamese communities were subject to sporadic violent attack before and after the October 1991 Paris Accords, including by armed groups associated with the main domestic political factions. A 1990 report by Human Rights Watch notes that in addition to violations of the laws of war, all sides

²¹ ‘[Cambodia: Arrest and Detention of Government Officials ASA 23/02/90](#)’ Amnesty International

²² See: [Human Rights Developments 1990](#). Asia Watch / Human Rights Watch.

²³ See. [Kampuchea: Political Imprisonment and Torture](#), June 1987, Amnesty International.

²⁴ See: [‘Ratification of International Human Rights Treaties – Cambodia’](#), University of Minnesota Human Rights Library

also were engaging in violations of political and civil rights.²⁵ Human rights provisions in the peace agreement and in the 1993 Constitution state that Cambodians shall enjoy the rights and freedoms embodied in the Universal Declaration and other relevant human rights instruments. However, ineffective enforcement and a lack of political will have meant that in practice these rights are not assured. Ample evidence of the country's impunity problems can be found in reports and statements from 1991 to the present day by Cambodian human rights NGOs, Amnesty International, Human Rights Watch, the UN Special Representative for human rights in Cambodia, and the Cambodia Office of the UN High Commissioner for Human Rights.

24. As of February 2005 Cambodia has yet to accept the optional protocols to the International Covenant on Civil and Political Rights and Convention on the Elimination of Discrimination against Women that allow communications from individuals claiming to be victims of violations. Similarly, it has yet to agree to such communications through optional declarations under Article 14 of the Convention on the Elimination of Racial Discrimination and Article 22 of the Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment.²⁶
25. With international humanitarian law Cambodia has been party since 1958 to the Geneva Conventions I-IV covering amelioration of conditions for wounded or sick members of the armed forces on land and sea, treatment of prisoners of war, and protection of civilians (in 1998 it also ratified the Geneva convention's two additional protocols relating to the protection of victims of armed conflicts). In 1962 it became party to the Hague Convention and its first protocol on protection of cultural property during conflict. It has also been bound since 1983 by the Geneva Gas Protocol, prohibiting the use of poisonous gases during conflict and the 1972 convention against the development, production or stockpiling of bacteriological and toxin weaponry.²⁷
26. Significant violations of humanitarian law were seen during the fighting of the 1980s and 1990s. In 1990 Human Rights Watch reported that all four Cambodian factions were responsible for avoidable civilian deaths "some caused by deliberate targeting, some by the choice of indiscriminate weaponry".²⁸ With the exception of the Son Sann faction all sides were found to have engaged in arbitrary forced conscription, while the Khmer Rouge and Sihanouk National Army (the military wing of the Royalist resistance group, Funcinpec) forced non-combatants living in camps under their control in Thailand to carry ammunition and supplies into Cambodia, thereby turning civilian porters into military targets. Children under the age of 15 were used in the war effort, and torture was used on captured prisoners, who were denied access to judicial process. Perhaps most symptomatic of the failure to protect the civilian population was the extensive use of landmines, which by the war's end had turned Cambodia into one of the most heavily mined and unexploded-ordnance affected countries in the world.²⁹

Can you provide a short overview of the human rights issues included in the agreement?

27. Part three of the Agreement on a Comprehensive Political Settlement on the Cambodia Conflict is explicitly devoted to human rights. It states broadly that all Cambodians shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments.³⁰ It requires Cambodia to ensure respect for human

²⁵ [Cambodia, human rights developments 1990](#). Human Rights Watch

²⁶ Information courtesy of the Cambodia Office of the UN High Commissioner for Human Rights

²⁷ ICRC: [International Humanitarian Law and related treaties](#). States party to

²⁸ [Cambodia, human rights developments 1990](#). Human Rights Watch

²⁹ ICBL. [Cambodia, Landmine Monitor Report 2000](#)

³⁰ Article 15, Agreement on a Comprehensive Political Solution on the Cambodia Conflict. Paris Accords

rights and fundamental freedoms, to adhere to relevant international human rights instruments, to support the right of citizens to engage in activities aimed at promoting human rights, and “to take effective measures to ensure that the policies and practices of the past shall never be allowed to return”. Foreign signatories meanwhile committed to promote and encourage respect for human rights and prevent a recurrence of abuses.³¹

28. Article 16 of the Agreement made the UN responsible, during a transition period that was to last 18 months, for fostering an environment conducive to respect for human rights. The UN Commission on Human Rights was additionally tasked with monitoring the situation after the transition, if necessary through the appointment of a Special Rapporteur who would report back annually to the commission and General Assembly.³² This appointment was formalised in 1993.
29. The human rights provisions were elaborated on in the various annexes to the Agreement. Annex 5, for example, listed principles for a new constitution, included among them a declaration of fundamental rights and a declaration that Cambodia was to be a liberal democracy with periodic elections and universal suffrage. Section E of Annex 1 made UNTAC responsible for human rights education, general oversight, investigation of complaints and, where appropriate, corrective action. Refugees and displaced persons were to be free to return voluntarily and choose their destinations.³³

Who were the main proponents, and opponents of, inclusion of human rights references in the peace agreement during the negotiations, and why?

30. A 1992 report by Human Rights Watch notes that prior to the Agreement none of the Cambodian parties tolerated serious criticism of its human rights records by Cambodians under its control, and none had any mechanism for human rights investigations or redress.³⁴ Although willing to criticise each other publicly, the tenor of discussion among Cambodian parties during the peace negotiations appears to have worked against human rights dialogue. Human rights barely feature in the published formal correspondence between the various parties and the UN during the first half of 1990, at a time when the permanent members of the Security Council were engaged in formulating the crucial framework for a comprehensive settlement. A later report to the UN Commission on Human Rights concerning a 30 November-2 December 1992 International Symposium on Human Rights in Cambodia notes in its opening summary that representatives of the three Cambodian factions present (the Khmer Rouge did not attend) presented their views about human rights and responded to questions about human rights “for the first time”.³⁵
31. In published documents of the UN Security Council the need for human rights provisions in the peace agreement appears relatively late in the process, first at a meeting of the permanent five members in New York in late May 1990, and then in the 27-28 August 1990 session at which final agreement on the framework to the comprehensive settlement was reached.³⁶ On the crucial question of accountability for past crimes the language of the Security Council’s document is broad and vague, referring only to the need to “ensure the non-return to the policies and practices of the past” (i.e. the Khmer Rouge policies of the 1975-79 Democratic Kampuchea period). A November 1990 appeal by Amnesty International for fuller and more specific

³¹ Ibid.

³² Article 17, Agreement on a Comprehensive Political Solution on the Cambodia Conflict. Paris Accords

³³ Annex 4, Part II, Conditions Conducive to the Return of Refugees and Displaced Persons. Paris Accords

³⁴ [Cambodia, human rights developments 1992](#). Human Rights Watch

³⁵ Commission on Human Rights. [Report on the International Symposium on Human Rights. E/CN.4/1993/19/Add.1](#) (14 January 1993).

³⁶ Security Council document [A/45/772-S/21689](#). Letter from the permanent five to the UN Secretary General.

addressing of human rights issues appears to have gone unheeded.³⁷

32. A central problem in discussions relating to Cambodia's peace plan and human rights throughout the 1980s and into the 90s was the issue of what to do about past crimes of the Chinese-backed Khmer Rouge. Vietnam and the Phnom Penh government wanted specific mention of Khmer Rouge offences in the Agreements along with provision for the Khmer Rouge leadership to be brought to justice.³⁸ However, as already discussed, this position was not predicated by purely human rights concerns: Hanoi and Phnom Penh had a strategic goal of seeing Chinese influence in Indochina curtailed. Asean, although an ally of Thailand and the United States, appears to have initially been sympathetic to Hanoi's concerns. A draft declaration drawn up by Asean for the July 1981 International Conference on Kampuchea was conciliatory towards Vietnam, acknowledging "the legitimate concerns of neighbouring states of Kampuchea [i.e. Vietnam] that it should not in any way become a threat or be used for subversion or armed aggression against them."³⁹ Unsurprisingly, the draft ran into opposition from China and the Khmer Rouge, who continued throughout the negotiations that led to the 1991 accords to insist that all references to genocide be expunged. When negotiators from all parties met in Paris in 1989 the UN had not considered the question of human rights violations under the Khmer Rouge since the regime's fall.⁴⁰
33. Mention of human rights in the 1991 accords appears to have been, in significant part, the result of a campaign by the small US-based Cambodia Documentation Commission, a non-governmental organisation grouping Cambodian survivors of the genocide and headed by a former Executive Director of the United States Section of Amnesty International. Working with the support of the U.S. government and in co-operation with the State of Cambodia's Prime Minister Hun Sen, the Commission managed to have included in the Paris Accords a pledge by all signatories, including Cambodia, to promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia, as embodied in the relevant international instruments. At Paris, the U.S. also made a "unilateral declaration" that it would support genocide trials if the future Cambodian government decided to conduct them.⁴¹

CURRENT PROTECTION ISSUES IN THE PEACE AGREEMENT

What human rights provisions in the peace agreement aimed at current protection?

34. Current protection was provided for on several levels. The broadest of these are introduced in Article 6, which made the UN responsible for ensuring a neutral political environment, and gave it supervision or control of a large number of administrative agencies and bodies including those that dealt with foreign affairs, finance, information, defence, and public security. Responsibility for monitoring the ceasefire and preventing further fighting was handed to UNTAC and other external parties through Articles 8 to 11, together with the related Annexes (1 and 2). Article 16 and its related provisions in Annex 1 meanwhile tasked UNTAC with fostering an environment of respect for human rights, while Article 15 provided all Cambodians immediately with the rights and freedoms embodied in the Universal Declaration and other relevant instruments.
35. Narrower focus on current human rights issues was provided through Articles 19 and 20 and

³⁷ See [Text of Amnesty International open letter to Cambodian figures and foreign governments involved in the Cambodia peace negotiations urging strong human rights provisions in a settlement](#). Amnesty International, 14 November 1990.

³⁸ [Human Rights and the Cambodian Past: In Defence of Peace Before Justice](#). Kassie Neou and Jeffrey C.Gallup. Carnegie Council on ethics and international affairs.

³⁹ Chanda, Nayan. 'Brother Enemy' p.387. Collier Books.

⁴⁰ Heder, Steve, [Heder Paper on Pol Pot](#)

⁴¹ Heder, Steve, [Heder Paper on Pol Pot](#)

Annex 4, which dealt with the return of refugees and displaced persons and asked the UN Secretary General to facilitate repatriation. Responsibility for organising the release of war prisoners and political prisoners was handed, under Articles 21 and 22, to the International Committee of the Red Cross together with the UN and other international signatories.

Were broad statement of support for human rights, or principles of human rights asserted to be relevant?

36. The failure of the Paris Accords to make provision for bringing the Khmer Rouge to justice came to be one of the most notorious aspects of the peace agreement. In the context of genocide only 12 years earlier it might reasonably be assumed that this omission was not going to be easily corrected by the inclusion of broad statements about human rights. As noted earlier Amnesty International's November 1990 open letter to the various parties in the peace negotiations had urged stronger human rights provisions in a settlement.⁴² Clearly implicit is that the provisions under consideration were overly broad and insufficient.

Did the peace agreement provide for any human rights standards or rights frameworks to be applied, such as Bills of rights, lists of rights, or incorporation of, or commitments to international treaties? Where were these rights drawn from?

37. The Paris Accords contains provisions for a new constitution with a declaration of fundamental rights. These were to be consistent with the Universal Declaration and "other relevant human rights instruments."⁴³ In 1993 the Constitution was promulgated, committing Cambodia to recognising and respecting human rights as stipulated in the United Nations Charter, the Universal Declaration of human Rights, and the covenants and conventions related to human rights, women's and children's rights.⁴⁴

Did the peace agreement provide for any mechanisms to enforce these rights, or processes to produce such mechanisms? For example, constitutional courts, ombudspersons, national institutions?

38. The intention of the Paris Accords was that the Constitution should include a directly enforceable bill of rights, with aggrieved individuals being entitled to seek adjudication and enforcement of these rights through the courts.⁴⁵ No provision was made for a constitutional court, human rights ombudsperson or national human rights commission (although in the case of the latter two there has been subsequent talk of creating such bodies).
39. The peace agreement authorized UNTAC, for the duration of the transition period, to investigate human rights complaints and, where appropriate, take corrective action.⁴⁶ As discussed, Articles 15 and 17 of the Agreement on a Comprehensive Political Settlement on the Cambodian Conflict provided for international human rights oversight after the transition period, including through the optional appointment of a Special Rapporteur to report to the UN's Commission on Human Rights and General Assembly.
40. The 1993 Constitution, which arose from the Paris Accords, provided for a Constitutional Council to ensure conformity of laws with the Constitution. The King, assisted by a Supreme

⁴² [Text of Amnesty International open letter to Cambodian figures and foreign governments involved in the Cambodia peace negotiations urging strong human rights provisions in a settlement](#). Amnesty International, 14 November 1990

⁴³ Annex 5, Item 2, Principles for a New Constitution for Cambodia. Paris Accords.

⁴⁴ [Constitution of Cambodia \(1993\)](#), Article 31.

⁴⁵ Annex 5, Item 2, Principles for a New Constitution for Cambodia. Paris Accords

⁴⁶ Annex 1, Section E. Human Rights. Paris Accords

Council of Magistracy, was tasked with being the guarantor of judicial independence.

Were these human rights provisions implemented, and did enforcement mechanisms begin their adjudicatory functions?

41. The transitional period saw technical implementation of a good number of human rights provisions, a fact that almost certainly contributed to early positive impressions of Cambodia's peace process. In October 1991 the authorities in Phnom Penh released 1,034 prisoners, including what the Cambodian government news agency described as 442 political prisoners and 483 prisoners-of-war. The repatriation of the more than 350,000 refugees from Thai border camps was largely accomplished in 1992, despite some attempts at coercion over choice of destination by political factions controlling the refugee camps.⁴⁷ By all accounts the elections in 1993, and the overall success of UN peacekeeping and public education operations, contributed to improved rights and awareness of rights among Cambodians.
42. But from the outset there were problems. Crucial differences between the Cambodian factions had resurfaced almost immediately after the Paris Accords. These were compounded by delays in the deployment of UNTAC, which only began operations in March 1992. The Khmer Rouge, which had taken opportunity of the cease-fire to try and improve its political position in rural areas took up arms again in mid-1992 in breach of the Accords. A few months later it opted out of the peace process altogether, ending hopes for the demobilizing and decommissioning of other Cambodian armed forces and a lasting ceasefire. Thus the protection from hostilities envisaged in the peace plan did not materialize to the extent that had been hoped for.
43. An apparent consequence of UNTAC's late deployment was that crucial steps for protecting human rights, including developing legal guarantees, de-mining arable land, educating administrators and police to respect human rights, and constructing a civilian justice system began relatively late during the transition, in the autumn of 1992.⁴⁸ Political patronage, corruption, and weak capacity in state institutions, in particular those nominally to do with law and order, soon blocked progress. Rising political violence in late 1992 and early 1993 and the failure or refusal of the existing State of Cambodia authorities to act against such problems prompted UNTAC to invoke its powers under the Paris Accords to arrest suspects and establish a Special Prosecutor's Office. However, poor cooperation from the Cambodian authorities meant UNTAC was unable to bring cases to court, and only one person ended up being convicted.
44. Cambodia's law enforcement and court systems are widely seen as remaining ineffective to this day.⁴⁹ In practice the human rights provisions in the peace agreement and Constitution are not directly enforceable in a court, and judicial independence remains unsecured. The Constitutional Council, whose main function is to ensure that laws are in conformity with the Constitution, did not meet until May 1998. The Supreme Council of the Magistracy, which was intended to assist the King in ensuring the independence of the judiciary did not meet until December 1997.⁵⁰

Were reforms to institutions of justice provided for in the peace agreement? If so, what were they? Criminal justice reform?

45. Specific measures were not outlined in the Paris Accords.

⁴⁷ [Cambodia, human rights developments 1992](#). Human Rights Watch

⁴⁸ [Cambodia, human rights developments 1992](#). Human Rights Watch.

⁴⁹ UN General Assembly. [58/191. Situation of human rights in Cambodia](#) 23 March 2004.

⁵⁰ Lao Mong Hay, ['The Agonising quest of Cambodia'](#) Phnom Penh Post. Issue 8/3, February 5 - 18, 1999

Reform of the judiciary?

46. An independent judiciary was to be established, empowered to enforce the rights under the constitution.⁵¹ The means for doing this was not specified.

Reform of policing?

47. The Paris Accords refer only to arrangements for police during the transition and in general terms: The UN's Special Representative was to determine the requirements for a civil police force on the basis of information provided to him by each of the factions. UNTAC was to supervise all civil police.⁵²

To what extent were these reforms implemented?

48. A paradox of Cambodia's peace agreement is that while many of the reforms were implemented, actual change did not occur or proved minimal. With judicial reforms the UN General Assembly and Commission on Human Rights asked the UN Centre for Human Rights in 1993 to establish an office in Phnom Penh (known later as the Cambodia Office of the High Commissioner for Human Rights), with one of its main tasks being to strengthen the judiciary. The UN Centre subsequently placed foreign consultants in court houses, it provided compilations of laws, translated international instruments into Khmer, advised on legislation, sought funds for the rehabilitation of court houses, lobbied for improved pay for judges, and sent observers to trials.⁵³ Yet despite these efforts and more, as well as those of many others, the UN General Assembly's 2004 resolution on Cambodia "notes with concern the continued problems relating to the rule of law and the functioning of the judiciary resulting from, inter alia, corruption and interference by the executive with the independence of the judiciary."⁵⁴
49. UNTAC established a civilian police component (Civpol) to supervise and control local police forces of each faction. The programme proved problematic, due in part to vagueness about police arrangements in the Paris Accords, but also because of delays in getting started, insufficient numbers of UN police, and a growing realisation that local police were often complicit in political violence and intimidation. To fill the vacuum in local laws and criminal justice, a "Guideline for the Conduct of Criminal Justice in Cambodia" was prepared by the U.N. Crime Prevention and Criminal Justice Division and used by UNTAC. This document contained some of the key principles and standards from various U.N. agreements pertaining to criminal justice, but it appears to have had little impact on the situation.⁵⁵

Was provision made for economic and social rights in the peace agreement? Did policies address socio-economic issues?

50. The Paris Accords state that Cambodians were to be entitled to the rights and freedoms contained in the Universal Declaration. More specific references to social and economic rights occur within the context of the sections of the Agreement dealing with arrangements for repatriation of refugees and displaced persons, and principles for a new constitution. Annex 4,

⁵¹ Annex 5, Item 5. Principles for a New Constitution for Cambodia, Paris Accords

⁵² Annex 1, Section B, Item 5. Untac Mandate, Paris Accords

⁵³ '[Independence of the Judiciary: A human rights priority](#)'. UN background note

⁵⁴ UN General Assembly. [58/191. Situation of human rights in Cambodia](#) 23 March 2004.

⁵⁵ Schear, James & Farris, Karl. '[Policing Cambodia. The Public Security Dimensions of U.N. Peace Operations](#)' Institute for National Strategic Studies.

Part II, states that there must be full respect for the human rights and fundamental freedoms of all Cambodians in recognition of their entitlement to live in peace and security, free from intimidation and coercion of any kind. These rights are further specified as including freedom of movement, choice of domicile and employment, and the right to property.⁵⁶ Among principles for a new constitution are that Cambodian's should be free to form trade unions, and protected against arbitrary deprivation of private property without just compensation.

51. Repatriation, relief and related elements were entrusted to the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and other agencies, with UNTAC providing security. Every effort was to be made to concurrently create political, economic and social conditions conducive to the return and re-integration of refugees and displaced persons. Repatriation on a spontaneous or voluntary basis was to begin as soon as possible, with respect for free choice of destination and preserving unity of the family.⁵⁷

Did the donor community fund any of these programmes?

52. UNHCR launched a Quick Impact Project programme, involving more than 50 implementing partners, to facilitate the reintegration of the returning population. The QIP programme, funded multilaterally, was implemented in collaboration with UNDP and completed at the end of 1993 with some US\$9.6 million having been disbursed.⁵⁸
53. In mid-1992, some eight months after the Agreement, donors pledged \$880 million towards overall reconstruction at the Ministerial Conference on the Rehabilitation of Cambodia. Official Development Assistance has flowed since then at a rate of approximately \$500 million annually.⁵⁹

⁵⁶ Annex 4, Part II, Conditions Conducive to the return of refugees and displaced persons. Paris Accords.

⁵⁷ Annex 4, Part II, Conditions Conducive to the return of refugees and displaced persons. Paris Accords.

⁵⁸ [UNHCR in Cambodia, Background Information](#), (1980 - 1996)

⁵⁹ Asian Development Bank 'Country Strategy and Program Update 2004-2006'

SPECIFIC PROTECTION ISSUES

Was specific provision made for women, and women's rights?

54. No specific provision is made for women and women's rights in the agreement itself. Annex 5, which describes principles for a new constitution, indicates only the need for a declaration of fundamental rights that includes freedom from sexual discrimination.⁶⁰ The Constitution of 1993 incorporates the Convention on the Elimination of All Forms of Discrimination against Women, which Cambodia became party to in 1992.⁶¹

Was specific provision made for children and children's rights?

55. No specific provision for children and children's rights is contained in the Agreement itself. In 1992 Cambodia acceded to the Convention on Rights of the Child, which was also incorporated into the 1993 Constitution.⁶²

Was provision made for the return of refugees and displaced persons?

56. Part five of the Agreement was devoted to Refugees and Displaced persons. Article 19 stipulated that every effort was to be made to create economic and social conditions conducive to voluntary return and integration. Article 20 asked the Secretary-General of the UN to facilitate this repatriation in line with arrangements set out in Annex 4 of the Agreement.

Were human rights matters relevant to ensuring the protection of returning refugees and displaced persons included?

57. Yes. Article 20 provided refugees and displaced persons with the right to return and live in safety, security and dignity, free from intimidation or coercion. Article XII of Annex 2 tasked UNTAC's military component with clearing mines from repatriation routes, reception centres and resettlement areas, as well as the protection of reception centres. Annex 4 Part II provided assurances that refugees and displaced persons would be allowed to return voluntarily, with free choice of destination and unity of the family preserved. Annex 4 Part III tasked UNHCR and relevant agencies with providing medical, food and other repatriation-related assistance to refugees, and security.⁶³

To what extent were refugees and displaced persons able to return in practice?

58. More than 365,000 Cambodian refugees were able to return home between 30 March 1992 and 30 April 1993. Most of them had spent between 10 and 14 years in refugee camps in Thailand. About 2,000 of those who returned came from other countries in South East Asia.⁶⁴ A majority chose to settle in areas controlled by the Phnom Penh authorities (a requirement of the peace agreement was cantonment of the factions). Of the rest, about 33,000 chose to settle in the zone of the non-Communist Khmer People's National Liberation Front, while a few thousands settled

⁶⁰ Annex 5, Item 2. Principles for a New Constitution for Cambodia. Paris Accords.

⁶¹ Article 31. [The Constitution of the Kingdom of Cambodia.](#)

⁶² Article 31. [The Constitution of the Kingdom of Cambodia.](#)

⁶³ Annex 4, Parts II / III, Conditions Conducive to the return of refugees and displaced persons / Operational factors. Paris Accords.

⁶⁴ [Repatriation to Cambodia?](#) The State of the World's Refugees, 1993. UNHCR

in zones under the Khmer Rouge and Funcinpec.⁶⁵

59. Rehabilitation of the estimated 180,000 people who were internally displaced at the time of the peace plan, many of them in Phnom Penh, appears to have been a less immediate priority. Although UNTAC established a Rehabilitation Component, which among other things dealt with housing, the Declaration on the Rehabilitation and Construction of Cambodia makes clear that only limited steps would be initiated during the transitional period.⁶⁶

Were there tensions between the right to return and peace-making? What were they, how were they dealt with?

60. Problems arising out of redistribution of land in the 1980s, coupled with security difficulties in the aftermath of the peace plan, reduced the land available for returnees and resulted in the repatriation plan being reformulated several times. This weakened safeguards that were supposed to ensure free choice of destination on the part of refugees. Instead of accepting arable land as originally envisaged, refugees were offered a cash alternative.⁶⁷ According to UNHCR this option allowed people some freedom to change their minds about where they would live after returning to Cambodia. The majority of refugees chose to accept the cash payouts.⁶⁸
61. UNHCR's programme of Quick Impact Projects was an attempt at aiding reintegration by bridging difference between returnees and local populations. The projects aimed at providing for self-sufficiency among returnees and simultaneously benefiting the local population. Projects included the repair of 220 kilometres of roads and the construction of 355 schools, 1,300 water points and 32 health centres. Agricultural programmes were also launched to rehabilitate 8,000 hectares of land and provide seeds for 60,000 families.⁶⁹

If relevant, was the issue of return of property addressed in the peace agreement?

62. No. While the Annexes to the Agreement state that Cambodians shall enjoy the right to property and be protected from arbitrary deprivation of property without just compensation, no measures for return of property were provided.

Was this implemented in practice? What issues arose and how were they resolved?

63. (Not applicable)

If not already addressed, how were the property rights of returnees balanced with the rights of those who held the property post-conflict?

64. Provisions for resolving disputes over property and land ownership, including possible claims by returnees, were not included in the peace agreement. As discussed previously, most of the returnees accepted cash instead of land. Of note here is that all property rights in Cambodia had been abolished during the 1975-79 Khmer Rouge period. After 1979 claims to ownership became based on occupancy, and the concept of individual ownership of land was not

⁶⁵ [Repatriation Component](#), United Nations Transitional Authority in Cambodia.

⁶⁶ See also Chopra, Jarat. [United Nations Authority in Cambodia](#), Part 3. Pp. 55-80. The Thomas J. Watson Jr. Institute for International Studies. Brown University.

⁶⁷ [Human Rights Developments 1992](#), Human Rights Watch.

⁶⁸ [Repatriation to Cambodia?](#). The State of the World's Refugees, 1993. UNHCR

⁶⁹ [Repatriation to Cambodia?](#). The State of the World's Refugees, 1993. UNHCR

introduced until 1989 (a consequence of this inadequate land titling system was that returnees, and many others, faced huge problems securing their ownership of land). The decision to offer returnees cash appears to have been effective in the short-term, however as a longer term measure it left many people without land and the associated economic benefits.⁷⁰ The principle of *status quo ante bellum* was not applied.

Were other issues of current protection addressed in the peace agreement?

65. (Not beyond those mentioned in Section II).

Were other issues of reparations for human rights or humanitarian law violations addressed in the peace agreement?

66. No provisions related to reparations were included.

DEALING WITH THE PAST

How was the past dealt with in the peace agreement?

67. For reasons discussed above the Paris Accords made no provision for dealing with Cambodia's past, such as a genocide tribunal or trial of former leaders. The Accords are instead forward oriented. The most explicit reference to the past is contained in the opening preamble to the Agreement on a Comprehensive Political Settlement on the Cambodia Conflict which contains the words "recognizing that Cambodia's tragic recent history requires special measures to assure protection of human rights and the non-return to the policies and practices of the past."

68. The points in the Agreement that constitute these 'special measures' are not stated. However, it would appear that the drafters were chiefly referring to disarmament of the four factions, and the human rights sections of the Agreement and related annexes. Included here would be the principles for a new Constitution, UNTAC's role in fostering an environment of respect for human rights, the role of the UN Commission on Human Rights in continuing to monitor the human rights situation after the transitional period, and the optional appointment of a Special Rapporteur to report annually on the situation in Cambodia to the Commission and General Assembly.⁷¹

69. Were amnesties provided for? If so, what was the nature of these amnesties?

70. No amnesties were provided for in the peace agreement. (See question 29)

What was the reaction of the population at large and of civil society organisations vis-à-vis such amnesties?

71. (Not applicable)

⁷⁰ See: ['Where has all the land gone'](#) Cambodia Land Study Project. Oxfam

⁷¹ Articles 15, 16, and 17. Agreement on a Comprehensive Political Settlement. Paris Accords

Were mechanisms for accountability provided for? What crimes/abuses did these cover?

72. No such mechanisms were provided for.

Were these then implemented?

73. (Not applicable)

If not provided in the agreement, did any mechanisms for dealing with the past, or issues of amnesty, or provision for victim's rights later emerge (or had they existed previously outside of the agreement)?

74. Amnesties have been applied in Cambodia since the peace agreement, but in circumstances where victim's rights were not main considerations. The first of these occurred in 1994 when a law was passed outlawing the Khmer Rouge and, for a limited period, promising amnesty to any rank-and-file Khmer Rouge soldier who might want to defect. The measure reflected difficulties in the government's efforts to quickly defeat the Khmer Rouge and aimed at undermining the Khmer Rouge's battlefield strength.
75. A second and significantly more controversial amnesty was granted in 1996 to Ieng Sary, the Khmer Rouge foreign minister between 1975 and 1978 and brother-in-law of the organisation's 'brother number one', Pol Pot. Rivalry between the two main factions in the post-UNTAC government had led both to initiate contacts with segments of the Khmer Rouge in a competition for allegiance. Control of armies, resources, territory, amnesties and senior military and provincial posts were offered as inducements. In August 1996 Ieng Sary's faction broke away from the main Khmer Rouge. He was granted a Royal Amnesty in the name of 'national reconciliation' and his movement, which controlled two major strongholds, maintained its autonomy. His defection dealt a severe blow to the Khmer Rouge, and almost certainly contributed to its eventual collapse in 1998.⁷²
76. International and domestic furore at Ieng Sary's amnesty prompted Thomas Hammarberg, the then Special Representative of the UN Secretary-General for human rights in Cambodia, to push the possibility of UN involvement in judicial accountability for Khmer Rouge era crimes. The UN Commission on Human Rights consequently issued a resolution in April 1997 calling on the UN Secretary General "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".⁷³ Following discussions between Hammarberg, Hun Sen, and his then co-Prime Minister Norodom Ranariddh in June 1997 a letter signed by Hun Sen and seeking UN assistance in bringing to justice persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge was sent to UN Secretary-General Kofi Annan. Subsequent differences between the UN, donors, and the Phnom Penh government over safeguards for judicial independence, over foreign judges, over restrictions limiting the scope of a tribunal, over money, and over other issues have prevented progress. As of early 2005, no judicial or other process of accountability has occurred.

⁷² ['Between War and Peace, Cambodia 1991-1998'](#) David Ashley. Safeguarding Peace, Cambodia's Constitutional Challenge, Accord.

⁷³ Commission on Human Rights resolution [E/CN.4/RES/1997/49](#). Situation of Human Rights in Cambodia

To what extent was the question of international requirements of accountability a controversial issue, perceived to be in conflict with the requirements of peace-making?

77. Prior to the Paris Accords discussion of accountability for Cambodia's past had been blocked by the process of making peace. Throughout the 1980s the main protagonists among Cambodia's four factions had been the two that were militarily most powerful: namely the Soviet-/Vietnamese-backed government in Phnom Penh, and the Chinese-/Asean-/West-backed Khmer Rouge. Consequently negotiations to resolve the conflict and include the Khmer Rouge in a deal prioritized peace over justice, with peace and accountability said (for reasons that included self-interest among parties that had supported the Khmer Rouge and its allies) to be conflicting.
78. Public opinion in the West against the Khmer Rouge had been shaped by reports of atrocities in Cambodia from the late 1970s onwards. In 1984 an influential fictionalised version of what had occurred appeared in the form of the Hollywood movie, the Killing Fields. Despite such revulsion the U.S. maintained a policy of publicly condemning the Khmer Rouge while simultaneously supporting their allies and international backers. This began changing in the early 1990s and by the time of the Paris Conference in October 1991 U.S. Secretary of State James A. Baker, III, was able to declare that the U.S. would support efforts to bring to justice those responsible for the mass murders of the 1970s "if the new Cambodian government chooses to pursue this path".⁷⁴
79. Whether today's Cambodian government wishes to pursue such a path remains unclear, public statements to the contrary notwithstanding. The final collapse of the Khmer Rouge in the late 1990s means that the potential gains to be had by Cambodian political leaders from any judicial process of accountability have been reduced and might even be outweighed by potential costs. In private conversation, individuals close to Cambodia's current leadership have maintained until relatively recently that the prime minister was concerned that a tribunal might spin out of control and ignite renewed hostilities. A related potential concern is that among today's leadership are individuals who served in positions of responsibility as Eastern Zone Khmer Rouge cadres, and who might fear being implicated.⁷⁵

To what extent were victims rights provided for in the peace agreement?

80. The Paris Accords make no provisions for victims' rights relating to past crimes.

To what extent were these measures implemented?

81. (Not applicable)

If not provided for in the peace agreement, were victims rights addressed elsewhere in the process?

82. No. (See answer to question 29).

⁷⁴ See also [U.S. Congress resolution 399, 25th March 2004](#).

⁷⁵ Heder, Steve. Politics, Diplomacy, and Accountability in Cambodia: Severely Limiting Personal Jurisdiction in Prosecution of Perpetrators of Crimes Against Humanity (2005)

RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE PEACE AGREEMENT

Were other human rights issues addressed in the peace agreement?

83. As discussed human rights provisions in the Paris Accords fall into two main categories: those that relate to ending war between the protagonists (and tend to be narrow and specific); and those that relate to the need to assure future protection of human rights and the non-return to the policies and practices of the past (and tend to be more general in nature).
84. Among the first category are the provisions for dealing with refugees, releases of prisoners of war, and the release of political prisoners. In addition UNTAC was authorised to investigate human rights complaints and actions by the authorities that might be inconsistent with the objectives of the comprehensive political settlement, and where necessary take corrective action.⁷⁶
85. In the second category are the various mandates relating to human rights oversight, UNTAC's mandate for fostering an environment of respect for human rights, and the human rights guarantees that were to be provided in a new Constitution.

Was it later felt that other human rights issues which could usefully have been addressed in the agreement?

The most enduring criticism of Cambodia's peace agreement remains its failure to provide adequately for either present day or past accountability, including through effective institutional safeguards for rule of law. The resulting high levels of impunity, mentioned in successive reports of human rights group and the UN Special Representative of the Secretary General for human rights in Cambodia, have hindered national reconciliation among Cambodians.⁷⁷

When human rights issues were not addressed in the agreement, but came to be addressed subsequently, what difference, if any, did it make that the agreement did not address these issues?

86. The States participating in the Final Act of the Paris Conference on Cambodia made an explicit commitment to "above all... promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia".⁷⁸ They also agreed that UNTAC should investigate human rights complaints, and where appropriate, take corrective action.⁷⁹ In practice, the failure of the accords to specify what "corrective action" entailed and when it should be taken has proven to be a crucial weakness. Not only did it allow the question of how human rights violations should be dealt with to become politicized, but it diluted the authority of UNTAC and others to intervene.
87. Within UNTAC itself differences of opinion quickly emerged over where the limits of the mandate for taking corrective action lay. Senior UNTAC officials, concerned at moves by the UNTAC Special Prosecutor to arrest and detain suspects, sought instead to raise cases of abusiveness directly with Cambodian parties to the Accords through an UNTAC Action Committee. The committee eventually came to take control over arrests and prosecutions. But its lengthy deliberations and a policy of only moving to arrest individuals where the Cambodian

⁷⁶ Annex 1, Section E Human Rights, Item C. and Annex 1. Section B Civil Administration, Item 6. Paris Accords,

⁷⁷ See also Say Bory, ['National Reconciliation in Cambodia'](#) Safeguarding Peace. November 1998 Accord Cambodia

⁷⁸ Final Act of the Paris Conference on Cambodia, item 12, paragraph 2.

⁷⁹ Annex 1, Section E, Item C. Paris Accords

authorities had been informed but failed or refused to act resulted in suspects evading justice.⁸⁰

88. With human rights concerns that have arisen since the transition period, creating and maintaining collective will to address problems has proved no less difficult. Although Cambodia remains heavily reliant on donor support, donors themselves have often failed to speak with one voice on crucial human rights issues including justice and police reforms, and corruption. Crucial leverage for aiding enforcement of the human rights treaties and national laws that Cambodia has committed itself to has thus been diluted. In this respect the failure of the Accords to provide a specific mechanism for such cooperation has been a serious omission.

Can the peace agreement be considered be successful? Please use your own measure of success – you may consider it relevant for example whether violence was reduced, reforms, implemented, or past problems, addressed with some success.

89. The Paris Accords provided a solution to the problem of *outside* involvement in Cambodia's war. The inclusion of guarantees to defend Cambodia's sovereignty, withdrawal of foreign forces, and cessation of outside military assistance, meant that to a large extent the external factors driving conflict were removed. It also aided regional stability. Within a few years of the Agreement the principle regional protagonists, China and Vietnam, were able to normalise relations, with Vietnam subsequently becoming a member of the formerly non-Communist Association of Southeast Asian Nations and normalising trade and other ties with the United States and other Western governments.
90. Where the Accords were clearly less successful was in addressing *internal* conflict, both at the level of hostility between factions, and more insidiously at the level of conflict by Cambodia's powerful ruling elites against the power-less population at large. The fact that 14 years after the Accords were signed Cambodia is no longer in a state of internal war is undeniably positive. However, the degree to which this is an outcome of any adherence to the peace agreement is open to question.
91. Whether the Paris Accords was the best agreement that could have been reached at the time and under the circumstances is difficult to know, but in hindsight it appears a very poor model for peace. Although the agreement cut the factions off from their patrons, it left them contesting an election in which the stakes (survival) were extraordinarily high and the sole incentive to cooperate was UN pressure.⁸¹ Implicit in the use of an election to solve war is that parties to the conflict are unable to agree among themselves about peace. The provisions of the Paris Accords which aimed at allowing Cambodians to decide freely on their future were thus vulnerable from the outset to breaches by those who had most to lose or gain (i.e. the four Cambodian factions).
92. As discussed in this paper the most notorious failure of the Paris Accords was its failure to provide effective mechanisms for dealing with the crimes of the Khmer Rouge. Yet by also failing to provide effective mechanisms for present day accountability the Paris Accords perpetuated a culture of impunity in which rulers were unconstrained by law. UNTAC's difficulties in bringing offenders to account and the inability of courts to begin working independently meant that at the end of the transition period there was no effective mechanism to deliver rule of law and the human rights that the Accords promised and that the Constitution was supposed to guarantee. No-one has yet been brought to justice for the crimes committed during the years of Khmer Rouge rule, nor for the systemic violations of human rights that have

⁸⁰ United Nations Transitional Authority in Cambodia, Human Rights Component Final Report, Phnom Penh, September 1993, p. 44; Asia Watch, Cambodia: Human Rights Before and After the Elections, May 1993, p. 34

⁸¹ See Ashley, David '[Between War and Peace, Cambodia 1991-1998](#)' Safeguarding peace: Cambodia's constitutional challenge. (Nov. 1998) Accord Cambodia

characterized Cambodia since. Victims have had no effective remedy or indeed anything resembling justice or truth. In this vital regard Cambodia's peace agreement left a root cause of societal conflict largely unaddressed.

To what extent did the human rights dimensions included in the agreement contribute to the agreement's success?

93. Human rights provisions of the Paris Accords generally appear to have been most successful in instances where specific named bodies were tasked with responsibility for implementing or overseeing them. The UNHCR's repatriation programme, the ICRC-supervised prisoner release scheme, and UNTAC's education, information, and human rights programmes all appear to have assisted the overall goals of the peace plan as well as providing benefits to Cambodia's nascent civil society. Over the longer term value has also been shown in a provision under Article 17 of the comprehensive political settlement that allowed for the appointment of a Special Rapporteur to monitor the human rights situation after the transitional period. The work of the individuals who have filled this role and an accompanying field office of the UN Centre for Human Rights authorised in 1993, has provided a valuable umbrella for the development of domestic human rights organisations, and other benefits. (*Authors note: an interest to declare in relation to these last two sentences -- I have worked for the Special Representatives and the UN's Cambodia human rights office on several occasions.*)

To what extent did limitations in the human rights provision of the agreement, impact negatively on the agreement's success?

94. As discussed, the failure to provide mechanisms for past and present accountability, including vital and comprehensive overhauling of those institutions most directly responsible for rule of law, has exacerbated impunity and prevented fuller reconciliation. The task of upholding the human rights (and other) provisions in the new Constitution, among them an independent judiciary, was left to a post-transition government that was still in the process of cementing power and thwarting enemies. The Agreement contained inadequate provision, once the brief transition period had lapsed, for enforcing the safeguards that it contained. This and the failure to specify corrective action during the transition itself were important omissions.

Was it claimed that human rights measures undermined peace-making? Were the claims founded?

95. Explicit opposition to the inclusion of human rights measures in Cambodia's peace agreement does not appear to have been overtly expressed prior to 1991. More typical was insistence that the Khmer Rouge had to be included for the sake of peace (and thus that a blind eye should be turned to the gross human rights violations of the Democratic Kampuchea period). Tension over the Khmer Rouge's inclusion was evident early on in the peace process: Norodom Sihanouk and Son Sann, leaders of the two non-Communist factions, both denounced the Khmer Rouge and initially refused co-operation with its leaders. China, on the other hand, used international law to justify Khmer Rouge inclusion. In 1981 its then vice-foreign minister Han Nianlong angrily defended the Khmer Rouge at the International Conference on Kampuchea as a "legitimate member of the United Nations" and "a UN member that has been the victim of aggression."⁸² U.S. policy on Cambodia was meanwhile being dictated by strategic interests that as of 1984, and in the words of then Secretary of State Alexander Haig, made China possibly "the most

⁸² Chanda, Nayan. *Brother Enemy*. Chapter 11, p.388 Collier Books

important country in the world.”⁸³

96. Tensions between human rights and peace-making have emerged more openly in the wake of the Paris Accords. The still to be resolved conflict between Cambodia’s political parties on the one hand and the various responsibilities given to the UN to foster respect for and monitor human rights on the other, perhaps inevitably, resulted in strained relationships between the two. In response to criticism of its human rights record Cambodian governments of the 1990s until today have not been averse to portraying the UN (and frequently human rights defenders in general, both Cambodian and foreign) as anti-Cambodian. A 1999 speech to the United Nations by Prime Minister Hun Sen is characteristic: “They [UN staff] consider themselves almighty Gods without any virtue and are ready to violate the sovereignty of a member country, which has paid considerable membership dues to pay for their high salaries.”⁸⁴ Suspicion of the UN and human rights and human rights defenders has been evident in occasional news media items, including those written by non-Cambodians.⁸⁵ A 1992 article in the Australian Trotskyite publication *Green Left*, for example, was headlined “UN ‘peace plan’ aids Khmer Rouge”.⁸⁶ Motives of human rights defenders, including the UN’s Special Representative for human rights in Cambodia, were also questioned for characterising the July 1997 armed ousting of Royalist members of the Cambodian government as a “coup”.⁸⁷
97. While many such claims are poorly founded, this is not always the case. To a degree the outcome of the various human rights and voter education programmes that occurred in Cambodia during the transitional period appears to have been an incomplete understanding of human rights as meaning unfettered liberties. This is reflected in the weak state of the domestic news media, which although “free” in the sense that little direct control is exerted over it, is nonetheless captive to political and business interests that use it to accuse and defame their opponents. Similarly, political leaders have shown scant understanding of the dangers of inciting xenophobia.⁸⁸ In these areas, as with others, it would seem that the flaw in the human rights provisions for Cambodia was that they didn’t go nearly far enough.

To what extent did the agreement enable civic society and human rights NGOs to promote and protect human rights, and what problems did they encounter?

Human Rights NGOs

98. Article 15 of the comprehensive political settlement committed Cambodia to support the right of all Cambodian citizens to undertake activities which would promote and protect human rights and fundamental freedoms. Further support was provided in 1993 by UN General Assembly resolution 1993/6 which (in addition to fulfilling the provision in the Paris Accords allowing for the appointment of a human rights Special Representative) asked the Secretary General to establish an operational presence in Cambodia of the UN Center for Human Rights, among whose aims was support for bona fide domestic human rights groups.
99. During the transitional period five human rights groups were established as well as over a dozen other organisations representing the interests of various civil society groups, such as ethnic minorities, women and students. The human rights organisations initially focused on promoting

⁸³ Alexander M. Haig, ‘Caveat, Realism, Reagan and Foreign Policy’, p.194 (New York: Macmillan 1984).

⁸⁴ [‘Statement by Samdech Hun Sen, Prime Minister of the Royal Government of Cambodia, to the fifty-fourth session of the United Nations General Assembly’](#) Phnom Penh Post, Issue 8/20, October 1 - 14, 1999.

⁸⁵ Kevin, Tony ‘[UN Bully](#)’ Letter to the Phnom Penh Post, Issue 11/08, April 12 - 25, 2002

⁸⁶ Myers, Allen. [‘UN ‘peace plan’ aids Khmer Rouge’](#). *Green Left*

⁸⁷ See also: [‘Threats to human rights defenders in Cambodia’](#), December 2003. Licadho

⁸⁸ See: [‘Cambodia: Killing of Ethnic Vietnamese’ ASA 23/22/98](#) Amnesty International 4 September 1998, and [‘Monitoring report on riots against the Thai embassy in Phnom Penh from 29-31 January 2003’](#) ADHOC

understanding and awareness of human rights, but their activities came to include monitoring of government compliance with international human rights standards and investigations of suspected human rights violations. Many new human rights organisations have emerged in the last decade and the areas they cover have considerably expanded.

100. Along with the rise in the number of human rights groups has been an increase in attempts by the authorities to control their members and activities. A December 2003 report by Licadho, one of the country's first human rights groups, notes that between 1998 and 2003 human rights defenders endured "murder, death threats, arson, actual and threatened physical assault, actual and threatened imprisonment, illegal detention and unfounded legal actions, both criminal and civil, by police and state authorities designed to intimidate, warning letters, telephone harassment, being openly followed and kept under surveillance as well as many forms of intimidation aimed at the civilian population and 'clients' of human rights defenders".⁸⁹ There are no reports of anyone being held to account for any of these attacks.
101. Public criticism by senior officials of human rights groups has also been a recurring theme. In December 2000 the Prime Minister accused human rights workers of hiding terrorists and threatened to arrest and handcuff them. The following month, he said the Cambodia Office of the UN High Commissioner for Human Rights had incited teachers to strike. In February 2001, he accused environmental monitor Global Witness of engaging in politically motivated defamation and threatened to expel the organisation. Accusations against human rights organisations for "defending criminals" have also been common among law enforcement officials. In a public speech in July 2004 the Prime Minister rhetorically asked if non-governmental organisations receiving foreign funding were not foreign puppets.

Labour Unions

102. The right to participate in trade unions is mentioned in Annex 5 of the Accords and enshrined in Article 36 of the 1993 Constitution. The number of unions and trade federations has grown rapidly in recent years, and may today be in excess of 200. According to a 2003 Cambodian Labour Organization report 46.1% of factory workers are members of a union.
103. As with human rights organisations the growth in union membership has been accompanied by government efforts to stymie development of a strong and politically influential labour movement. The Labour law requires unions to register with the Ministry of Labour and Vocation Training. But unions perceived to be anti-government, have had their registrations delayed, creating difficulties for their members. Pro-government unions, such as the Cambodian Labour Union Federation, have meanwhile received financial support.
104. Union members and prominent activists have been murdered and subject to violence. In January 2004, Chea Vichea, the President of Free Trade Union of Workers of the Kingdom of Cambodia, was shot and killed in broad daylight in central Phnom Penh. Four months later, Ros Sovannareth, a chief representative of the same union was similarly murdered. In Phnom Penh paid thugs, known as the 'Pagoda Boys', have been used to disrupt demonstrations and other union activity, sometimes violently. Rallies and marches have also been broken up by police and security personnel.

Would you identify other matters relevant to the discussion?

105. (Already included)

⁸⁹ ['Threats to human rights defenders in Cambodia'](#) Briefing Paper December 2003. Licadho

In your own view, how useful or important are human rights provision to the value of integrity or sustainability of peace agreements?

106. The fate of human rights provisions in the Paris Accords is that many have ended up being flagrantly violated or not applied. These include many of the fundamental rights that were to be enshrined in the Constitution. Over the past 15 years political violence has remained the all too common answer to political problems, political pluralism is under assault, impunity and corruption are endemic, the police are a principle violator of human rights, and the courts and prisons the final components of an unjust system that remains hostile to victims. And yet, despite efforts to hinder them, human rights groups and unions have proliferated, voters still turn out at elections, more students are choosing to study law, and the press, non-governmental organisations and political opposition provide a voice for accountability.
107. The strongest claim to be made of Cambodia's present day power-holders is that after decades of fighting the country is finally at peace. The defeat of the Khmer Rouge in 1998 and the undermining through corruption, assassinations, and the 1997 coup, of the former non-Communist resistance and its successor political parties, has provided the current leadership with a basic element of state survivability -- a monopoly over the use of force. Viewed from a distance, the overall human rights situation in Cambodia is drastically improved over the 1980s. And yet, having taken the route to peace by ignoring justice and human rights, Cambodia's leaders have placed themselves in a position where their interests are at odds with restoring justice and protection of individual human agency.
108. In analysing the Paris Accords and its human rights provisions several conclusions emerge. One, as already discussed, is that the human rights provisions that appear to have been most effective were those in which clearly identified external parties were the principle duty holders. With UNTAC for example, its various components may have had mixed records, but its overall legacy was real: the idea among Cambodian citizens that they might one day enjoy human rights and democracy.
109. Another observation is that Cambodian duty holders, which by force of circumstance were poorly defined in the accords, were in little position to implement the post-transition arrangements after the UN had left. Institutions that were nominally for law enforcement, justice, and public administration in general were so deeply politicised, patronage-ridden, and poorly staffed that, short of complete dismantling or restructuring, they were incapable of supporting the liberal democracy that the Paris Accords explicitly envisaged.⁹⁰
110. These two factors might explain in part the contradictory tendencies noted by some Cambodians, for society as a whole to blame foreigners for the country's human rights problems while simultaneously looking to them to provide solutions.⁹¹ They also point to a core shortcoming of the human rights provisions in the Paris Accords, which was the failure to make allowances for the partial or complete non-functioning of enforcement mechanisms. Consequently Cambodia's nascent human rights and media organisations, along with the political opposition and civil society in general (in short those aspects of a human rights culture that remained beyond the transition period) have been left to bear an exceptionally heavy responsibility in providing missing accountability.
111. In Cambodia's case it is these continuing efforts to provide accountability and fundamental rights in the face of an autocratic Asian political elite that seems likely to determine eventual verdicts on the Paris Accords. The human rights provisions of Cambodia's agreement were neither adequate nor have they worked as might have been expected, but they have provided some small room for a human rights culture to grow. For this reason their inclusion has been utterly crucial.

⁹⁰ Annex 5, Item 4. Principles for a New Constitution for Cambodia. Paris Accords

⁹¹ See: Chhay Yiheang, ['Cambodia's Comprehensive Political Settlement: closing a tragic chapter on Cambodia's past?'](#) Safeguarding Peace: Cambodia's Constitutional Challenge. Accord Cambodia.