

Cambodia swings slowly toward justice

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International Herald Tribune
Wednesday, August 25, 2004

Seeking remedies

LONDON The moral arm of the universe is long," the Reverend Martin Luther King Jr. said in one of his memorable speeches. "It bends toward justice." Many Cambodians, having witnessed the killing fields of Pol Pot's Khmer Rouge, probably wouldn't agree. Yet their understandable cynicism may be about to be confounded.

Cambodia's National Assembly is poised to approve a government decision to ratify a treaty, more than a decade in the making, that will empower a special court to try surviving leaders of the Khmer Rouge, the Communist movement that was seized with a mission to refashion the social and economic structure of their country by the bullet.

Cambodia incarnates the worst horrors of being caught in the crossfire of war. It was heavily bombed in secret by the Nixon administration. Then, when the Vietnamese invaded in 1979, Washington had the audacity to line up world opinion behind recognition of the defeated Khmer Rouge regime. The incongruous sight of the Khmer Rouge flag flying outside the United Nations headquarters in New York was the most revolting testament to mass murder imaginable.

Finally, by the diligence of exiles and the United Nations, a kind of incipient democracy was created in Cambodia and gradually the government has come round to some sort of public trial of a small cadre of the Khmer Rouge's top leaders. Eight of the judges will be Cambodian, with six UN-appointed judges and one UN-appointed prosecutor. No conviction is possible without the assent of at least one UN-appointed judge.

This is the least intrusive of all international arrangements in an era that has seen in quick succession the creation of UN war crimes tribunals for the former Yugoslavia, Rwanda and Sierra Leone, as well as the establishment of a permanent International Criminal Court to deal with future war crimes.

It would seem, despite the hostility to the International Criminal Court of the Bush administration - and the governments of Russia, China and India - that the overall world tide is flowing in the

direction that Martin Luther King Jr. said was inevitable.

But an influential number of people see it otherwise. In a recent issue of a Harvard University quarterly, *International Security*, Jack Snyder and Leslie Vinjamuri argue that "justice does not lead, it follows." In other words, the human rights activists who have fought for these courts have it the wrong way round. First, the authors say, you need a peaceful political order and then you can start to worry about justice.

Thus for them, the Yugoslavian and Rwandan courts have been counterproductive, perpetuating chauvinistic feelings among the Serbs and Hutus. Although they do not spell it out, presumably they think the slow approach of the Cambodian government has been the right one.

There is some truth on the authors' side. The trial of Slobodan Milosevic has been allowed to continue too long, missing an opportunity to produce quick therapy for a country still seized by the sanctity of its cause. And one could go further and say that it is difficult at the moment to argue that these courts have had a measurable deterrent effect on new would-be war criminals. They still seem to thrive, as suggested by events in the Democratic Republic of the Congo, Sudan, Afghanistan and Guatemala. Can't the leaders of these ongoing atrocities read the writing on the international wall? Obviously not.

But such an argument misses two important points. No criminal justice system is capable of deterring all criminals. Deterrence only works at the margins. We seek justice in the courts partly to punish, partly to uphold a standard and partly in the hope that those punished will reflect on their crimes and resolve to put their past behind them.

It is the same in the international arena. We can hope that some villains and governments may be deterred but we should not count on it. Politicians like Pol Pot and Milosevic who decided to carry out ethnic cleansing had calculated the odds and decided, albeit mistakenly, that they would win through.

Nevertheless, a standard is defined. In contemporary history it reaches back to the Nuremberg war crimes trials after World War II. Now it is being reinvigorated by the international courts.

Over time, over generations, new standards of justice do develop. That is why black people are no longer lynched in the United States and South Africa, why democracy has spread so rapidly in the last 20 years and why, according to the Stockholm International Peace Research

Institute, the number of violent conflicts in the world has fallen steadily each year of the last decade. Martin Luther King was right.

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