

Sent By: LEGAL AFFAIRS

1 212 415 4204 ;

May-3-00 3:01PM;

Page 3

05/03/2000 09:27 FAX 202 736 4466

S/WCI

16083/011

USEMB NY AND VALUE FAX 002 TO CUSCII

UN EMBASSY

#0002

Transcripts of the visiting U.S. Senator John Kerry Cambodia, April 28-29

Arrival briefing at the Pochetong Airport

Senator Kerry: I'm just trying to get my cars decompressed. Don't push everybody, there's plenty of time. All right, who wants to ask first?

Chris Fontaine (AP): Senator, you were here a year ago and managed to broker a fairly significant compromise at the time but here we are a year later and still no tribunal... what role do you think you can play right now?

Senator Kerry: First of all, my role is, I am not a negotiator, I am a United States senator with an interest in the issue. But I have had a long time interest in this particular issue and have been able to serve as a sort of catalyst, if you will, in the process. What I hope to do is listen very carefully and make very clear my point of view as a United States senator and a member of the Foreign Relations Committee with a deep interest in the legitimacy of this process. And I will make my view very, very clear to all of the parties that I meet with. My message is very simple. This process has dragged on now for some period of time. It is time for Cambodia to show its good faith and make a decision. There have been good negotiations to date. I think all parties have proceeded down the road relatively effectively, and the proposal that we manage to reach an agreement on a year ago has been very significantly fleshed out by the competent efforts of the ambassador here, Ambassador David Sheffer, and particularly the United Nations Hans Corell, the undersecretary, has negotiated very effectively and there's a very, very narrow gap now that separates the final agreement. It's time for the government to make its clear commitment to the legitimacy of an international process. The United Nations cannot accept and I personally could not go back to my colleagues in the senate and say that a structure that does not allow for adequate international accountability can not be acceptable. And so, the country really has to make a decision. Is it going to join the internationally community of nations in a legitimate and open way or are we going to continue to have great difficulties? And that's really the choice that's on the table. In my judgement they're very, very close. This is not separated by a great deal. I believe that the interests of the international community can be served by this combined international tribunal. I think we could proceed forward. But, again, it would depend on people listening to each other and working hard in the next days to try to see how close people really are.

Kay Johnson (VOA/DPA): You're scheduled to meet with Hun Sen. Are you meeting with any other members of his party?

Sent By: LEGAL AFFAIRS

1 212 415 4204 ;

May-3-00 3:02PM;

Page 4

UNCLASSIFIED//FOR OFFICIAL USE ONLY

S/DCI

0404/011

UNCLASSIFIED//FOR OFFICIAL USE ONLY

US EMBASSY

WUO

Senator Kerry: Yes, I am. I believe I am. I have certainly requested to meet with a number of different people. It was my understanding I would meet with members of his party, with the chief justice, with perhaps the speaker. I will meet with Sam Rainsy, I hope. I mean, I'm hoping to meet with a cross section of parties including NGO'S. And I hope to be able to accomplish that in the next hours.

Reach Sambath (AFP): You said that there is a narrow gap but what is that?

Senator Kerry: The critical issue now is the question of how you resolve a dispute between the co-judges or the co-prosecutors. And that needs to be a balance. A balance between the legitimate sovereignty of the country and the legitimate independence and accountability of the United Nations and international community. You can not have a system that the international community will ratify that does not allow for their ability to be able... to not be sort of... overruled or run over by the structure that is put together. Again we are very, very close. There are a number of options that are on the table and what I hope to do is be able to simply talk through with interested people and use whatever good services I can offer to try to clarify some of those differences and hopefully we can close the door on this. This... You know the United Nations has moved a long way. Originally, they were seeking an independent tribunal completely run by the United Nations. A compromise that I suggested was the notion that we could have a joint tribunal and that could help to strengthen the judicial system of Cambodia itself. My hope is that the structure that has been worked out respects Cambodian judges, respects the magistracy of this country. But at the same time it allows for the participation which gives the international community confidence that the process is going to be legitimate and accountable to international standards. That's a balancing and I think it is an appropriate one. Thank you all very, very much. I'll have more to say after we have the discussions.

Meeting with John Kerry and Sok An
Residence of Mr. Sok An
Saturday April 30, 2000

Sok An: This morning we have everything we discussed. As you know we're the government task force. We had a meeting with His Excellency Senator John Kerry and we have continued the discussion to implement what senator has agreed to with Samdech Hun Sen, the Prime Minister of the Royal Government yesterday. And I would like to invite His Excellency Senator John Kerry to give you the impressions and the results of the meeting with His Excellency Hun Sen.

Senator Kerry: Thank you very much Mr. Sok An. It's been my privilege to meet with Mr. Sok An this morning and also with the members of the task force. We've had a very good meeting further clarifying issues that we raised yesterday at great length with the Prime Minister. Let me emphasize at the beginning of this. I am not a negotiator. I am here as a United States senator who has a deep interest in this issue and in the country and I have been involved for a long period of time in these issues here. I am here with the knowledge and the support of the United Nations and I have specifically been discussing issues with Secretary General Kofi Annan and with Hans Corell who is responsible for the negotiations. Yesterday I was reluctant to say anything substantive about the meeting that we had until I had an opportunity to talk directly to Mr. Hans Corell and to the United Nations through him. And now I have had an opportunity to do that. Mr. Corell has accepted the substance of the discussions yesterday between myself and the Prime Minister, Mr. Sok An, the Ambassador and others. And the United Nations proposal submitted in a letter of 18 April by Secretary General Kofi Annan has been accepted by Prime Minister Hun Sen as the basis of the dispute resolution process. This was the most important sticking point with respect to the two parties, the United Nations and the Government of Cambodia. And yesterday the United Nations, through Mr. Corell, accepted the notion that they will not require a specific agreement or a signed memorandum prior to the National Assembly of the Government of Cambodia having an opportunity, the country of Cambodia, having an opportunity to be able to pass a law empowering this process to take place. The United Nations has thereby respected the sovereignty of Cambodia and the prerogatives of the National Assembly. At the same time the Government of Cambodia has shown its serious intent and purpose to carry out this process by embracing the United Nations proposal for dispute resolution. In addition, the United Nations and the government of Cambodia will exchange letters and those letters will each embrace the obligations and responsibilities that they are both going to undertake. Of course, all of that will be subject to the rights and prerogatives of the National Assembly when they pass the law. The letters will also reference specifically the negotiating process that both Mr. Sok An, on behalf of the Task Force of the government, have engaged in with Undersecretary Mr. Hans Corell on behalf of the United Nations. Finally, they have agreed to, both sides, exert best efforts to complete all the tasks necessary to be able to have a formal agreement by June 15th. So that is really the substance of what has been agreed on. In the dispute resolution process I am sure that Mr.

Sent By: LEGAL AFFAIRS;

UN/UN US TEL NO: 3110 FAX 500 23 11611 SYDNEY US ADDRESS

008/011

Sok An will make available the text of the letter that sets forth that process but I think if I can just comment that this is a very important step forward by the Government of Cambodia as well as by the United Nations and I congratulate both of them on their significant efforts to date. Mr. Hans Corell, on behalf of the United Nations, has done an outstanding job of negotiating very difficult issues and Mr. Sok An, on behalf of the Government of Cambodia, has similarly done an outstanding job of resolving very big differences that have existed over the last year. This represents a unique opportunity for Cambodia, a unique opportunity for the United Nations, to help build the court structure as well as to hold accountable those people most responsible and for the most serious crimes that were committed during the period of 1975-1979. And, I think this, hopefully, will be the beginning of the last chapter of the process of accountability.

Mr. Sok An: Yes, I think that you have completed the whole idea containing the results of the meeting. (inaudible)

Senator Kerry: Are there any questions?

Question: Can you be more specific about what was contained in UN Secretary's letter dated April 18th (inaudible)?

Senator Kerry: Yes, I can. This is a proposal that has been discussed for some period of time. It has been changed a little bit in the last weeks but it essentially establishes within the trial court, outside of the trial court, a separate group of judges, three Cambodian judges and two foreign judges, and they will have the opportunity and responsibility of reviewing any dispute that might occur between the co-prosecutors or the co-judges. There will be a process by which they would actually arbitrate or try to arbitrate that dispute. And, there would be a formal submission of evidence that they have compiled. That evidence would be weighed by the judges, and only if the arbitration were to fail, would there then be a super majority vote that would prevent the indictment from going forward. But this obviously has been a difficult thing to resolve but the Prime Minister decided that other efforts by the United Nations significantly protect and respect the sovereignty of Cambodia in ways that balance between the United Nations interest in having an accountable process and Cambodia's legitimate concerns. I think it is a good balance, personally. I know the United States supports this particular step. I know that obviously the United Nations that proposed it is supportive of it. And, now the Government of Cambodia, likewise, is supportive of it. So, I believe all the parties feel that their concerns have been addressed through this particular mechanism.

Question: Is this the voting procedure that is in the indictment?

Senator Kerry: Correct. It is a variation on that which the United Nations put on with respect to the arbitration.

Sok An: I would like to... The senator referred to the disagreement between the two co-prosecutors... and the disagreement between the two co-investigating judges. This

formula is addressing the disagreement between the two co-prosecutors and the two investigating judges.

Senator Kerry: Good. I agree. Any other questions?

Question: As a last question... Prime Minister Hun Sen said in public on his arrival from Havana on April 17th that he had accepted your formula but I think within the last 24 hours he had received a lot of developments especially upon your arrival within a day... and now it seems he backed off from what he said earlier in the day and now (inaudible) Would you comment on these developments?

Senator Kerry: I would not characterize the Prime Minister as backing off. I would not characterize it that way. I think the Prime Minister had legitimate concerns. And those were concerns that were expressed through a number of members of his party and himself with respect of their interpretation, I emphasize, interpretation of my proposal. One of the reasons I came over here was to be able to personally clarify that. And it is my hope that in the process of the discussions the personal clarification managed to satisfy some of the concerns that had been expressed. In addition, the United Nations offered something in addition to my proposal, which is a change. And that is an arbitration process which leads up to an opportunity to avoid having a vote and to work through, hopefully, by consensus without having ultimately a confrontation, and I think that appealed to those people who were concerned about the process. Finally, the Prime Minister had a very real concern, as did others, about the issue of national sovereignty with respect to the relationship of the National Assembly and the signing of an agreement formally before the National Assembly that exercised its prerogatives. And, so, once they realized there was a possibility to clarify the dispute resolution process as well as resolve their concerns about the prerogatives of the National Assembly, I think the Prime Minister felt the dynamics had changed significantly enough that he could, then, be supportive. Likewise, the United Nations felt that by virtue of the Prime Minister's and the party's support for the dispute resolution process, they were prepared to also sign on. And, I think you saw two people come together as a consequence of that clarification. And, that's really why I came here, to try to clarify and not specifically to negotiate. Thank you all very very much. I appreciate it.

Pre-Departure Press Conference with Senator John Keny
 Pochetong Airport
 April 29, 2000

Senator Kerry: First of all, let me emphasize I am not a negotiator. And, I am not specifically a mediator. I'm here as a United States Senator who's the ranking member of the Asia Sub-Committee. And I'm here as somebody who has been deeply involved in this issue as a senator for a long period of time. I had discussions with the United Nations before coming, with Hans Corell and with Kofi Annan. And I had discussions with our State Department. And it appeared that it might be helpful if I could come and follow-up on discussions I had a year ago with the Prime Minister and others to see if we could get clarifications on why we couldn't move forward and where we were in the process. I'm pleased to report that I succeeded in getting the clarifications that I had hoped for and indeed we were able to make very significant progress. Prime Minister Hun Sen has agreed to accept the United Nations proposal which was put forward to him on the 18th of April after the discussions that I had had with him in Havana. And the United Nations has agreed, in return, that they will not require an agreement that is signed before the National Assembly acts but that they will reach an understanding between the negotiators which will be referenced in a letter exchanged between the government of Cambodia and the United Nations. And, that letter will also incorporate by reference the negotiating minutes that have taken place between Mr. Sok An and Hans Corell. The National Assembly, that way, will not be prejudiced in any way before hand and will be free to pass a law. Subsequently, the formalized agreement will be entered into. And they will proceed hopefully after short order to build the international tribunal process called the Extraordinary Chambers. In addition, the Prime Minister agreed that all of this should hopefully happen with the best efforts of both parties by the 15th of June. And, in my judgement, the dispute resolution agreement which they have now reached is a very significant step forward because it really guarantees both the concerns of the Government of Cambodia about its sovereignty and the concerns of the United Nations about the legitimacy and the accountability of this process. I think those interests have been served and as a result of that I called, as I said I would yesterday, I talked to Hans Corell the chief negotiator for the United Nations. He agreed to the proposal with respect to the delay in the memorandum of understanding and as a result we now have both the United Nations and the government of Cambodia agreeing. I am also very pleased to say that I have met with the Minister of Interior Deputy Prime Minister Sar Kheng. He has agreed that this is a good plan and he supports it. I met with the President of the Senate, Chea Sim. He agrees and feels this is a good plan and should go forward. I met with four representatives of NGO's. They were supportive of this effort. And, finally, I met with Mr. Sam Rainsy and he has agreed that he will support this and he thinks it is an important way to proceed forward. So, as I leave here, I believe that the clarifications that we sought can properly be now conveyed to the United Nations itself. It's their responsibility to negotiate. And Hans Corell has done an outstanding job to date of narrowing the differences, as has Mr. Sok An. And, together, I think they are now in a position in the next few weeks to finalize a tribunal so that the international community

Sent By: LEGAL AFFAIRS;

1 212 415 4204 ;

May-3-00 3:04PM;

Page 9/11

05/03/2000 08:30 FAX 202 738 4485

S/WCI

02/08 00: TUE 01:11 FAX 858 23 218211

US MEMPHIS

40488

and Cambodia can begin the process of dealing with the terrible period of 1975-1979. And we look forward to that.

Question: (Sok Poy, Yomhuri Shimbun, VOA-Khmer Broadcast) Can you give us the details about the agreement with the UN and Cambodia?

Senator Kerry: The detail of the agreement is that it set forth in the letter from Mr. Kofi Annan to the Government of Cambodia of 18th April, and it essentially sets forward a dispute mechanism whereby the parties can come together, have an arbitration. If the arbitration doesn't work, then three Cambodian judges and two foreign judges will have an opportunity to vote, to resolve the dispute, and the vote will be by super majority and it will be a vote not to proceed forward. A vote in the negative, in other words. That was insisted upon by the United Nations negotiators but with the clarification that respected the sovereignty of Cambodia and the National Assembly. The Prime Minister felt that that was a fair compromise and all parties have now accepted it.

Question: (Chris Fontaine, AP) Senator, over the past few days there have been discussions about the scope of the tribunal which I believe is covered under article 1 of the draft plan. Some have suggested opening it way up to include a large jurisdiction but there has also been suggestion, prior suggestions to narrow it. To stop the possibility of say a political witch-hunt. Did any of the political leaders within the CPP, did they suggest that the scope of the tribunal should also be narrowed before an agreement could be reached?

Senator Kerry: Well, the scope of the tribunal is pretty clear. It is to try those who are most responsible for the serious crimes committed during the period of 1975-79. That's the scope. There's been some discussion about trying to be more precise in defining that. And it was agreed that both Mr. Sok An and Mr. Hans Corell will discuss that and sort of flesh that out in the next days. I don't think there's a lot of disagreement about it. It's not a point of major contention. Let me just tell you from my perspective as a senator that has been interested in trying to help this accountability process to take place, that we all in the international community need to have the larger interest of Cambodia in our minds. And I think that we have to do what is possible and reasonable. I'm not sure that you can have some overly broad effort because I don't know if that's achievable at all just in terms of evidence and process. And I think it might even become particularly divisive in terms of the healing process of the country. I think the first thing to do is start with the first steps. And the first steps are what are defined in the current agreement. And I think everybody should try to make the first steps work before they spend a lot of time worrying about things that aren't yet even close to within reach. So my advice would be let Mr. Corell and Mr. Sok An, if there is anything further to discuss, do so, but essentially I think the fundamental framework is already in place.

Question: Chris Fontaine AP: Sir, to quickly follow up, I'm sorry, is to change or not to change article 1 was not part of today's compromise?

mt By: LEGAL AFFAIRS:

1 212 415 4204 ;

May-3-00 3:04PM;

Page 10/11

4/219/011

Senator Kerry: Certainly not in my scope of responsibility. That's really a negotiating issue. And I think Mr. Corall and Mr. Sok An, if there is any further discussion, will do it. We had some discussion about it. But there was no great expression of interest by any person that there needs to be a lot of work done on that based on where it is currently at. It may be that in the final moments there'll be some further defining of it. But it's not a central point of contention right now; therefore, we did not spend a great deal of time on it.

Question: (Kay Johnson VOA/DPA): Just to clarify about what's been achieved, is it fair to say all obstacles have been taken away towards an agreement or there still roadblocks to come?

Senator Kerry: My judgement, my personal judgement is, that there are always in any effort to finalize something, minor wrinkles that arise at the last moment and you have to kind of bang them out. Are there major obstacles? The answer is no. The Prime Minister and the United Nations have made it clear most of the difficult issues have now been resolved. This was the final major sticking point. And I believe according to the Prime Minister and according to Mr. Sok An and according to Hans Corall they believe that they can move to finalize this in the next weeks which is why parties were willing to say that they will make best efforts to complete this task by June 15th.

Question: (Kay Johnson VOA/DPA): And you said there will be a letter of intent that will come before...

Senator Kerry: There will be an exchange of letters at the appropriate time between the United Nations and the government of Cambodia when they've sat the two teams down in the next few days or weeks and finalized all aspects of it. But the fundamental sticking point is now resolved and I'm quite confident that they have the ability to get to a point of implementation and most importantly to have the National Assembly exercise its prerogatives and pass a law that empowers this to happen. One final question...I need to raise this up.

Question: (Seth Meixner Cambodia Daily) How comfortable are you that this agreement will remain intact in the National Assembly?

Senator Kerry: Well, if the National Assembly does not pass an agreement that is in keeping with the negotiating mandates that are incorporated in the letters by agreement of reference, the United Nations, I am confident will not be able to participate. So it is entirely imperative that there be some adherence to the framework. Now out of respect to the National Assembly, the United Nations has stepped back from requiring a formal agreement in order to give the assembly its prerogative. But clearly the assembly needs to honor the negotiating process which Mr. Sok An and Mr. Corall had been involved in. To not do that would be a setback of gigantic proportions.

Question: (Fuy Kaa, Kyodo News Service) Regarding the UN proposal dated April 18th is it the same one as initiated by you?



THE SECRETARY-GENERAL

23 June 1997

Dear Mr. President,

I attach a letter which I have received from the two Prime Ministers of the Royal Government of Cambodia in which they "ask for the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979".

The facts which gave rise to the request remain unclear. The Office of my Representative in Cambodia is presently seeking to clarify the situation, while the Secretariat is examining the legal and institutional issues involved. The letter is brought to your attention for any action which may be deemed appropriate.

Please accept, Mr. President, the assurances of my highest consideration.

A handwritten signature in dark ink, appearing to read "K. Annan", is located below the typed name.

Kofi A. Annan

His Excellency
Mr. Sergey V. Lavrov
President of the Security Council
New York



PHF 022

2/2

ព្រះរាជាណាចក្រកម្ពុជា

Kingdom of Cambodia

រាជរដ្ឋាភិបាលកម្ពុជា

Royal Government of Cambodia

ព្រះមហាក្សត្រ

Nation Religion King

Phnom Penh, June 24, 1997

Mr. Kofi Annan
Secretary-General
United Nations
New York, USA

Dear Mr. Secretary-General,

On behalf of the Cambodian government and people, we write to you to ask for the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979.

The April 1997 resolution on Cambodia of the United Nations Commission on Human Rights requests:

" the Secretary-General, through his Special Representative, in collaboration with the Centre for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability."

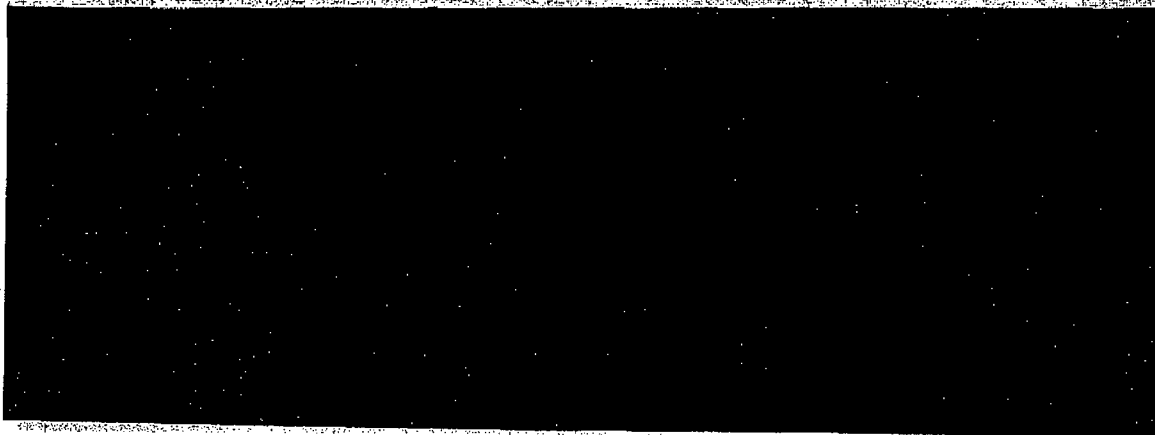
Cambodia does not have the resources or expertise to conduct this very important procedure. Thus, we believe it is necessary to ask for the assistance of the United Nations. We are aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia, and ask that similar assistance be given to Cambodia.

We believe that crimes of this magnitude are of concern to all persons in the world, as they greatly diminish respect for the most basic human right, the right to life. We hope that the United Nations and international community can assist the Cambodian people in establishing the truth about this period and bringing those responsible to justice. Only in this way can this tragedy be brought to a full and final conclusion.

Please, Mr. Secretary-General, accept the assurances of our highest consideration.

Prince Norodom Ranariddh
First Prime Minister

Hun Sen
Second Prime Minister



A number of pages containing copies of newspaper articles have prior to publication been removed from this document in accordance with article 12.3 of ECCC PRACTICE DIRECTION CLASSIFICATION AND MANAGEMENT OF CASE-RELATED INFORMATION