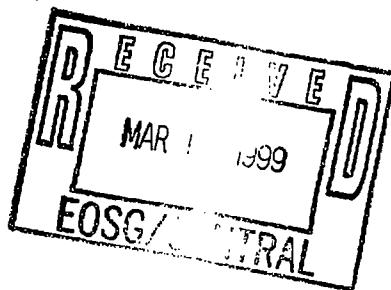


HR/Cambodia

THE SECRETARY-GENERAL



15 March 1999

Dear Mr. President,

By resolution 52/135 the General Assembly requested me to examine the request of the Cambodian authorities for assistance in responding to past serious violations of international and Cambodian law, and those committed by the Khmer Rouge, in particular, and to that end to examine the possibility of appointing a Group of Experts. I accordingly appointed a three-member Group of Experts to evaluate the existing evidence with a view to determining the nature of the crimes committed by Khmer Rouge leaders in the years 1975-1979; to assess the feasibility of their apprehension; and to explore legal options for bringing them to justice before an international or national jurisdiction.

The Group of Experts visited Cambodia and Thailand from 14 to 24 November 1998. It met with the then Second Prime Minister, Mr. Hun Sen, with representatives of Government Ministries, of NGOs and private individuals. It also visited the Documentation Centre, the National Archives, and the Tuol Sleng prison (the so-called "Museum of Genocide"). The Group of Experts submitted its report to me on 22 February 1999. A copy of the report was given on the same day to the Government of Cambodia for its consideration.

His Excellency
Mr. Didier Operti
President of the General Assembly
New York

Based on a review of the material and documents made available to it, the Group of Experts concluded that the evidence gathered to date testifies to the commission of serious crimes under international and Cambodian law, and that sufficient physical and witness evidence exists to justify legal proceedings against the Khmer Rouge leaders for these crimes. It considered that the crimes committed by Khmer Rouge leaders during the 1975-1979 period include: crimes against humanity, genocide, war crimes, forced labour, torture, crimes against internationally protected persons, as well as crimes under Cambodian law.

In the view of the Group, the question of the feasibility of apprehending Khmer Rouge leaders turned on the ability and willingness of the Government, in whose territory suspects are located, to effectuate their arrest or extradition. The Group of Experts concluded that the Government of Cambodia is able to apprehend Khmer Rouge leaders in its territory whose location is known and who are not protected physically from arrest. In their meeting with the Prime Minister, Mr. Hun Sen expressed his Government's willingness and readiness to apprehend any person indicted by the independent prosecutor of an international tribunal, should one be established. Similar expressions of willingness were made by the Government of Thailand.

The Group of Experts analyzed the following legal options for bringing Khmer Rouge leaders to justice: a tribunal established under Cambodian law; a tribunal established by the Security Council or the General Assembly as an ad-hoc international tribunal; a mixed option of a Cambodian Tribunal under UN administration; an international tribunal established by a multilateral treaty and trials in third States.

It recommended that in response to the request of the Government of Cambodia, the United Nations should establish an ad-hoc international tribunal to try Khmer Rouge officials for crimes against humanity and genocide committed from 17 April 1975 to 7 January 1979, that the Security Council establish this tribunal under Chapter VI or VII of the UN Charter, or, should it not do so, that the General Assembly establish it. They further recommended that the UN, in cooperation with the Cambodian Government and non-Governmental sector, encourage a process of reflection among Cambodians to determine the desirability and, if appropriate, the modalities of a truth-telling mechanism to provide a fuller picture of the atrocities of the period of Democratic Kampuchea.

Having considered the report, the Government of Cambodia, in a letter addressed to me dated 3 March 1999, cautioned that any decision to bring Khmer Rouge leaders to justice must take account of Cambodia's need for peace and national reconciliation, and that if improperly conducted, the trials of Khmer Rouge leaders would create panic among other former Khmer Rouge officers and rank and file and lead to a renewed guerrilla war. In a meeting I held on 12 March with the Minister of Foreign Affairs and International Cooperation of Cambodia, H.E. Mr. Hor Namhong, he conveyed to me his Government's view that, on the basis of Article 6 of the Convention on the Prevention and Punishment of the Crime of Genocide and Article 33 of the Cambodian Constitution, the Cambodian courts were fully competent to conduct any such trial. He recalled that the criminals are Cambodians, the victims were Cambodians and the crimes were committed in Cambodia. The Foreign Minister therefore informed me of his Government's decision to put on trial Ta Mok, the former Khmer Rouge military commander of the Southwest region and a member of the Standing Committee, before a Cambodian court under Cambodian law, and to accept foreign assistance and expertise to that end.

In the same meeting, I reminded the Foreign Minister that the Group of Experts had carefully considered the feasibility of a national tribunal, but concluded that the Cambodian judiciary in its current state was unlikely to meet minimal international standards of justice, even with external assistance. I remain concerned about the credibility of any trial process.

This report is submitted to the General Assembly and the Security Council, as the implementation of the recommendations contained therein call for action by either or both organs. But while the mandate of the Group of Experts emanated from the General Assembly, Members of the Council will recall that the initial Cambodian request for UN assistance in bringing Khmer Rouge leaders to trial, was submitted by me to both organs (A/51/930 - S/1997/488), and that subsequently I informed the Council of the establishment, mandate and composition of the Group of Experts.

The decision on the establishment of an international tribunal, whether under Chapter VI or VII of the United Nations Charter, is for the Security Council or the General Assembly to make. I am confident that they will take the report fully into account in their determination of how best to accommodate the principles of justice and national reconciliation in Cambodia. It is my view, however, that the trial of a single Khmer Rouge military leader which would leave the entire political leadership unpunished would not serve the cause of justice and accountability. It is, therefore, my view that Khmer Rouge leaders responsible for the most serious of crimes should be brought to justice and tried before a tribunal which meets the international standards of justice, fairness and due process of law. Impunity, Mr. President, is unacceptable in the face of genocide and other crimes against humanity.

I am firmly of the view that if the international standards of justice, fairness and the process of law are to be met in holding those who have committed such serious crimes accountable, the tribunal in question must be international in character. This does not necessarily mean that it should be modelled after either of the existing ad hoc tribunals or be linked to them institutionally, administratively or financially. Other options may be explored, taking into account the analysis and conclusions of the report of the Group of Experts. The success of any international tribunal of whatever character, however, presupposes the full cooperation of the Government of Cambodia and its readiness to apprehend Khmer Rouge leaders situated in its territory and surrender them to the international tribunal upon request.

I stand ready to assist the General Assembly, the Security Council and the Government and people of Cambodia in bringing about a process of judicial accountability, which alone can provide the basis for peace, reconciliation and development.

Yours sincerely,



Kofi A. Annan