



UNITED NATIONS

GENERAL
ASSEMBLY



UN/SA COLLECTION

Distr.
GENERAL

A/34/559
12 October 1979
ENGLISH
ORIGINAL: ENGLISH/FRENCH

Thirty-fourth session
Agenda items 84 and 123

INTERNATIONAL COVENANTS ON HUMAN RIGHTS

THE SITUATION IN KAMPUCHEA

Letter dated 8 October 1979 from the Permanent Representative of Viet Nam
to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith, for your information, the report of the delegation of the International Association of Democratic Lawyers (annex I) and the statements made by lawyers and jurists before the People's Revolutionary Tribunal of Phnom Penh (annex II) and request that these enclosures be circulated as an official document of the General Assembly under agenda items 84 and 123.

(Signed) HA VAN LAU
Ambassador Extraordinary
and Plenipotentiary,
Permanent Representative
of the Socialist Republic
of Viet Nam to the United Nations

ANNEX I

Report of the delegation of the International
Association of Democratic Lawyers

REPORT ON THE MISSION TO VIET NAM OF THE DELEGATION OF
THE INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

(25 April-5 May 1979)

Following the decision adopted by the Bureau of the International Association of Democratic Lawyers when it met on 25 March 1979, a fact-finding mission visited Viet Nam and also went to Kampuchea during the period 25 April to 5 May 1979.

Its members were:

- Mr. Enzo Enrique AGNOLETTI, Barrister, lecturer at Florence University and Director of the journal IL Ponte;
- Mrs. Monique CHEMILLIER-GENDREAU, Professor of Law at Reims University (France);
- Mr. Joe CROWN, Lawyer, New York;
- Mr. John FRIED, Professor of Political Science, City University of New York, Legal Adviser for the United Nations to the Government of Nepal, formerly United States Special Legal Consultant at the Nuremberg Tribunal;
- Mr. WOJCIEH SOKOLEWIEZ, Professor of the Warsaw Institute of State and Law;
- Mr. Hope STEVENS, Attorney, New York, Co-Chairman of the National Conference of Black Lawyers;
- Mr. Takuro WATANABE, Secretary of the Lawyers International Solidarity Association of Japan.

The mission was led by Mr. Roland WEYL of the Paris Bar, Editor of the Review of Contemporary Law and member of the IADL secretariat.

REPORT ON THE MISSION TO VIET NAM OF THE DELEGATION OF
THE INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

(25 April-5 May 1979)

ANALYSIS OF THE LEGAL POSITION

The following are the conclusions reached by the delegation sent to Viet Nam and Kampuchea by the International Association of Democratic Lawyers, after spending the period from 25 April to 5 May 1979 in those countries and in the light of a legal analysis based on the on-the-spot investigation described in Chapter I of this report and on the historical and political analysis given in Chapter II.

The different situations arising out of the dispute between Viet Nam and China will be dealt with successively under the following headings:

I. The frontier incidents.

II. Chinese military action on and after 17 February 1979.

III. The situation in Cambodia.

I. The frontier incidents between China and Viet Nam

The frontier between China and Viet Nam has the following basis in law:

(a) Two Conventions, signed respectively in 1887 and 1895, between the French Government and the Tsing Government of China, which determined the layout of the whole of the frontier between China and Viet Nam.

(b) The boundary marks set up between 1890 and 1897 along this frontier, most of which are still in their original places.

(c) The new negotiations on the frontier question which took place in November 1957 following the change of régime in each of the two countries. These were conducted by the Communist Parties of China and Viet Nam 1/ and resulted in an agreement following the general rule in contemporary international law under which successor States recognize the frontiers established when they were colonies and these frontiers are permanent and unalterable. This agreement thus provides for a maintenance of the status quo as regards the frontiers which history had handed down.

However, frontier incidents had occurred even before the agreement was signed, and they subsequently became more and more frequent.

According to Viet Nam, a number of points on its territory had been occupied by China and certain boundary marks had been moved, enabling its lands to be encroached on.

1/ In some socialist States, the Party has an institutional role, which means that it may exercise certain State functions.

Viet Nam had requested Chinese aid for the reprinting of maps of the country; it was subsequently to discover that on those published by the Chinese in 1964 the traditional frontier had been altered to the latter's advantage (see Chapter I).

In view of the general state of relations between the two Governments at that time, it was impossible for Viet Nam to be too insistent on having the matter cleared up.

Since the ownership of certain areas was contested, Viet Nam several times requested that negotiations be opened to settle the problem. These requests invariably met with a refusal, the final outcome being the events of February 1979.

It is clear today that the position of China (deliberate incidents, moving of boundary marks and refusal to negotiate) is a breach of contemporary international law.

China, by such conduct, has contravened:

- The existent treaties on the frontier question.
- The Vienna Convention on the Law of Treaties of 29 May 1969, particularly article 26, which reads: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". This is merely the modern wording, for purposes of an international agreement, of the old elementary principle of customary law, pacta sunt servanda, which has always governed international relations in the past.
- The Charter of the United Nations, signed and ratified by China, Article 2, paragraph 4, of which guarantees the territorial integrity of all States.
- The declaration adopted by the Afro-Asian Conference in Bandung in 1955 which saw the official birth of the "third world" and laid down 10 principles governing international relations, one of which was abstention from all acts directed against the territorial integrity of any State.

II. Chinese military action on and after 17 February 1979

On 17 February 1979, troops of the regular Chinese army crossed into Vietnamese territory at several points on the common frontier.

As the delegation was able to observe on the spot in the case of the area of Lang Son and the areas surrounding it (see Chapter I), these troops massacred members of the civilian population, systematically committed acts of extortion and looting, and just as systematically destroyed livestock and numerous buildings and other works constituting the economic, religious and medical potential of the region (bridges, factories, highways, administrative buildings, churches, pagodas, hospitals). All this was in flagrant violation of humanitarian international law governing the conduct of military operations (The Hague Convention No. IV of 1907 and the Geneva Conventions of 1949).

It was, in fact, an aggression within the meaning of resolution 3314 (XXIX) of 14 December 1974 of the United Nations General Assembly on the definition of aggression.

This resolution, which, as we know, was adopted after the People's Republic of China had recovered its seat in the United Nations and which after years of discussion, embodied the unanimous agreement of the Members of the Organization, forms a fundamental part of modern international law. Its adoption meant an important step forward as regards the possibilities of implementing the Charter of the United Nations, more particularly in that it determines the specific nature of threats to peace and the cases in which Article 51 on the inherent right of self-defence in the event of armed attack is applicable.

In the circumstances, article 2 of the definition in resolution 3314 (XXIX) is fully applicable: "The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity".

There can indeed be no doubt as to the first use of armed force by the Chinese army, or as to the fact that the United Nations Security Council did not avail itself of the possibility afforded it by this article.

The aggression came as a particularly painful blow to the Vietnamese in that the days of friendly relations between the two States were not so very far distant in time, that the Chinese invaders used, for the purposes of their aggression, those very roads that they themselves had built in Viet Nam under their technical co-operation programme a few years previously, and that, over and above their actual armed aggression, the Chinese appeared to have unilaterally contravened a number of locally applicable treaties and conventions concerning communications which have thus become invalidated.

The fact that China's action has the specific features of an act of aggression means that the whole of General Assembly resolution 3314 (XXIX) and Article 51 of the Charter become applicable.

The consequences of this are as follows:

- A. Viet Nam was justified in responding to the aggression by exercising its inherent right of self-defence under Article 51, which reads: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." (To date, the Security Council has taken no such measures.)

- B. China's liability in international law is involved ipso facto as a result of its aggression.

Article 5, paragraph 2, of the definition in resolution 3314 (XXIX) stipulates: "Aggression gives rise to international responsibility", while paragraph 3 adds: "No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful."

It is clear, therefore, that in the eyes of the international community China's duty towards Viet Nam involves complete withdrawal from the territory occupied and reparations for the damage caused and for the destruction of Viet Nam's economic potential.

Should negotiations on such a basis fail, Viet Nam would be entitled to sue for such reparations before the competent jurisdictions of the international community (arbitration commission or International Court of Justice). This point is all the more important in that the international community cannot have forgotten the responsibilities already incurred by certain of its members in the disastrous wars Viet Nam has been obliged to endure during the last 30 years and more.

The courage with which the Vietnamese people have recovered from each of these wars cannot suffice this time without reparations for the fresh damage caused.

- C. The Chinese aggression, like any other, must be judged as such, since (under art. 5, paragraph 1, of the definition in resolution 3314 (XXIX)) "No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression".

We are thus led to refute more strongly, in the light of the strictest rules of contemporary international law, the Chinese claim that the action was of a punitive nature - with no mention of the offence for which Viet Nam was supposed to deserve punishment. If China had had genuine grounds for complaint against Viet Nam, it should have begun by stating them clearly and should then have adopted whatever procedure for a peaceful settlement it cared to choose.

The practice of armed reprisals, which is a borrowing from nineteenth century law, must be considered as strictly incompatible with Art. 2, paragraph 4, of the Charter. If there could have been any doubt on this point, it was dispelled by resolution 2625 (XXV) of the United Nations General Assembly of 24 October 1970, which clearly stipulates: "States have a duty to refrain from acts of reprisal involving the use of force".

To conclude on this point, it must be added that China's offence is just as patent whatever the area of international relations in respect of which one chooses to analyse it. Thus:

- As has just been shown, it can strictly be deemed an offence under the general international law governing relations between all countries in the world independently of their respective political or ideological systems.
- It is likewise a specific offence under the socialist international law governing relations between fraternal parties, whose rules include respect for each other's sovereignty, non-aggression and fraternity.
- Lastly, although China sometimes claims that for doctrinal reasons it no longer holds itself bound by the duties of solidarity between socialist countries, it still remains bound by the general principles of peaceful coexistence between States with contrasting ideologies, and these principles of peaceful coexistence remain fundamental as a means of preserving world peace in the present period of dangerous tensions.

III. The situation in Kampuchea

In view of the fact that a part of world public opinion had linked the Chinese aggression in Viet Nam with the incidents which had occurred between Viet Nam and Kampuchea, the delegation most carefully examined the present situation in Kampuchea as seen from the point of view of international law. It found that two questions were involved: the frontier question and that of the entry of Vietnamese troops into Kampuchean territory and their maintenance there.

A. The frontier question

This question had been settled between Viet Nam and Kampuchea after these countries had been freed from colonial domination, on the same bases and in accordance with the same legal principles as the similar question between China and Viet Nam.

The frontiers had originally been established by a treaty signed in 1884, during the colonial period.

In 1964, at the Second Conference of Heads of State or Government of Non-Aligned Countries, in Cairo, the Cambodian Prime Minister made the following statement on this subject: "The major problem for us is to obtain recognition of our frontier with South Viet Nam. This frontier line is the work of our former French masters who, wishing to favour their colony of Cochin China, ... added to it vast stretches of our national territory. However much these frontiers may be to our disadvantage, we accept them".

Moreover, negotiations held in 1964-1965 led to a treaty on this basis. However, between this period and the taking-over of power by the Pol Pot Government on 17 April 1975, there occurred a number of frontier incidents and incursions by Kampuchean into Vietnamese territory.

In August 1975, the socialist Governments of Kampuchea and Viet Nam, represented by the Vice-President of the National Assembly, in the case of Kampuchea, and a member of the Central Committee of the Party, in the case of Viet Nam, began fresh negotiations in the chief town of the province of Tay-Minh.

The Kampuchean Government acknowledged the principles previously cited in connexion with the frontier problem between the two countries and pledged itself to avoid further incidents. However, such incidents recurred on innumerable occasions between 1975 and 1979 (see Chapter I).

As early as June 1976, the Vietnamese Government made fresh proposals for negotiations.

But from this point onwards the Kampuchean Government refused all discussion and incidents became more and more frequent.

It must be pointed out here that, like the attitude of the Chinese Government over the matter of Sino-Vietnamese frontier relations, the attitude of the Kampuchean Government is a breach of law in that it involves non-compliance with lawfully signed treaties and failure to observe the fundamental rule of respect for territorial integrity.

We must now analyse this in conjunction with the second aspect of the present situation of Kampuchea from the point of view of international law: the presence of Vietnamese troops on Kampuchean territory.

B. The entry of Vietnamese troops into Kampuchean territory and their maintenance there

The various facts and pieces of evidence collected by the delegation reflect a complex situation of which two different aspects may be distinguished, each of which requires separate analysis.

1. The Vietnamese military response to aggression by Kampuchea

Three types of action will be noted here (detailed proofs and eye-witness evidence will be found in Chapter I):

(a) Military incursions. During the last months of the Pol Pot régime's existence these became progressively larger in scale, finally reaching the level of decisive armed engagements. Towards the end of 1978 several Kampuchean heavily-armed divisions crossed the frontier at various points and entered Vietnamese territory, where their artillery went into action.

(b) Atrocities and massacres committed among the civilian population. These, perpetrated in Vietnamese territory, were acts of pure barbarity.

(c) The stationing of divisions of the Kampuchean army along the whole of the Vietnamese frontier. This provides evidence of a strategic nature in support of the claim that the Kampuchean Government had aggressive intentions against Viet Nam.

(d) Lastly, the launching of an offensive involving several divisions (see Chapter I). This offensive, launched in the area of Tay Minh, was to have opened the road to Ho Chi Minh City.

There is no doubt whatever here as to the applicability of article 3, paragraphs (a) and (b) of the definition in General Assembly resolution 3314 (XXIX), which mention, among the acts qualifying as acts of aggression:

"The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

"Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State."

There is no doubt whatever that the threat to peace and the aggression referred to above come within the ambit of Article 51 of the Charter of the United Nations. This being the case, the crossing of the Kampuchean frontiers by Vietnamese troops is to be justified as the exercise by Viet Nam of its inherent right of self-defence.

2. The maintenance of Vietnamese troops on Kampuchean territory after the rout of Pol Pot's troops

The decisive battle took place on 29 December 1978. The Vietnamese army so utterly defeated Pol Pot's troops that there remained no organized Kampuchean administration of any sort, military or otherwise.

On the strategic level, that was the date on which Vietnamese forces penetrated more deeply into Kampuchean territory.

The oral and documentary evidence collected by the delegation confirms even more precisely than that previously available to the international press that the situation obtaining in Kampuchea prior to this event had degenerated to a degree probably unique in the history of the modern world.

Specific proofs and more detailed particulars are to be found in Chapter I of this report, and we will confine ourselves here to recalling:

- the absence of elementary freedoms (right to come and go as one pleases and to communicate).
- the compulsory evacuation of all towns and the systematic displacement of populations in the countryside.
- the systematic liquidation of intellectuals (confirmed by the lists of prisoners found in the prison at Phnom Penh and the accounts given by a few survivors who owed their escape to the fact that they had carefully concealed the fact that they were intellectuals).

- the total absence of any representative institution and of the principal public services.

By the time the Pol Pot régime was overthrown, half the members of the National Assembly, including its Chairman and Vice-Chairman, had been exterminated.

- forcible collectivization of agriculture and family life (the latter leading to large numbers of suicides).
- liquidation of the monetary system (involving the actual dynamiting of the Central Bank).
- complete impossibility for any popular movement seeking to organize an uprising to make contact with the outside world and secure an international hearing for fear of total extermination.
- lastly - and most important of all - the systematic extermination of the population by the most barbarous methods.

This list - which is not exhaustive - shows that the situation obtaining inside Kampuchea can be deemed to involve simultaneously:

- total violation of all human rights
- destruction of any form of organized community
- wholesale extermination of large sections of the population, amounting to no less than a crime against humanity. 2/

Can the entry of Vietnamese troops into Kampuchea therefore be considered lawful on the grounds of humanitarian assistance?

Since the Charter of the United Nations has been in existence, and in view of the machinery it provides for the maintenance of peace, the doctrine of humanitarian intervention by unilateral action on the part of a State has lacked any actual legal basis. It will be noted, however, that other recent cases occurring in the field of international relations (India's intervention in Bangladesh, for example, and the intervention of the United Republic of Tanzania in Uganda) have not been condemned as contrary to law, either by international institutions or by other States.

2/ The delegation considers that all the necessary conditions are met for the present Kampuchean Government to be entitled to draw all appropriate conclusions of a legal nature from the guilt of the leaders of the Pol Pot régime in respect of such crimes.

It will also be observed that the international community as a whole is indebted to Viet Nam for helping the people of Kampuchea to put an end to the intolerable situation described above. This is so very true that at no point, either during the discussions in the Security Council or in the draft resolution which was not adopted, was there any question of qualifying Viet Nam as an aggressor for its intervention in Kampuchea.

The entry of the Vietnamese troops and their maintenance in the country have as their justification the existence of a national liberation movement combating a Government in the hold of a foreign Power and the duty of affording that movement support, in view of the appalling circumstances, unprecedented in history, in which it found itself.

During the four years the Khmer Government of Pol Pot was in power (1975-1979) a resistance and national liberation movement had grown up among the population - subsequently to become the FUNSK - whose action in the forest and mountain areas was on the increase.

Moreover, in the course of its investigations and in the light of the documentary and other concrete evidence it was able to bring back (see Chapter I), the delegation was led to conclude that the Pol Pot Government had been subject to foreign control to an extent which went far beyond traditional bilateral co-operation.

In this connexion only the following facts will be mentioned here:

- Of the nine foreign embassies opened in Phnom Penh, eight - contrary to the international conventions on diplomatic and consular relations - were subject to measures restricting their freedom (prohibition of the free movement of all personnel, including the Ambassador). The Embassy of the People's Republic of China, with a staff of over 300 (as against the 10 or so all the other embassies were allowed) was alone in enjoying an absolute right to free movement throughout the country.
- Under the Pol Pot régime to speak a foreign language was to incur the death penalty, but an exception was made in the case of Chinese.
- As has already been reported in the international press, a passport of the People's Republic of China has been found which bears the name of Ieng Sary (the second in command in the Pol Pot Government).
- With the collectivization of the rice-fields and rice-growing, the peasants lost all control over the use made of the rice crops. The delegation heard testimony to the effect that the rice harvested on Kampuchean territory under the instructions of Chinese technical personnel was exported to the People's Republic of China.
- Lastly, on examining the oral and documentary evidence collected, the delegation found a striking resemblance between the acts perpetrated during the Chinese aggression in northern Viet Nam of 17 February 1979 and those which had taken place during the preceding months in Kampuchean territory or on the Khmer-Vietnamese frontier (see Chapter I for full details).

In view of all these circumstances, the presence of Vietnamese troops on Kampuchean territory finds its justification as assistance to the people of Kampuchea.

Contemporary international law does not allow the concept of foreign intervention and in fact actually condemns it. However, it acknowledges that it is the duty of States, in certain very carefully defined situations, to afford their support to peoples fighting for their liberation.

The legal basis for this is General Assembly resolution 2625 (XXV) of 24 October 1970 approving the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, which derives particular force from the fact that it was adopted by consensus.

Particular weight should be attached to the clause in the preamble to the Declaration which reads:

"The General Assembly ... Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security ..."

The Declaration stipulates:

"States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all" (fourth principle, second paragraph).

Most important of all, it also states:

"Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of the right to self-determination and freedom and independence. In their action against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such people are entitled to seek and to receive support in accordance with the purposes and principles of the Charter" (fifth principle, fifth paragraph).

The first sentence of this last paragraph is a perfect reflection of the situation of the people of Kampuchea deprived of its freedom. The second provides the authority for the support afforded by Viet Nam to the Kampuchean liberation movement.

These, therefore, are the texts in which a legal justification for the Vietnamese military aid may be found. But at the same time they set a limit to such justification.

Under these circumstances, it appeared clear to the delegation that the maintenance of the Vietnamese troops in the country after the defeat of Pol Pot's troops was legitimate.

The delegation found that the situation in Kampuchea had no precedent in history and could therefore in no case provide justification for such action in any other situation, no comparison being possible.

Furthermore, in view of the fact that it was a matter not of hostile intervention but of assistance to a people whose needs and whose feeling of relief at being so assisted are undeniable, the delegation, which had duly appreciated the extent of the very heavy burden entailed for Viet Nam, considering that country's own difficulties, held that the conduct of Viet Nam in Kampuchea was not only legitimate but meritorious as well.

It should be noted, last of all, that since 7 January the continued military and other assistance from Viet Nam has been provided under an agreement with the new Government.

Here it must be stressed that, notwithstanding the totally unusual nature of the conditions which still prevail, the new Kampuchean Government genuinely has a de facto existence as such (see Chapter I). 3/

It has made a point of demonstrating this de facto existence and also its own sovereignty by signing a more elaborate international treaty with the Vietnamese Government to take the place of the initial assistance agreement.

This treaty was signed between the two Governments on 18 February 1979 and bears the title Treaty of Peace, Friendship and Co-operation between Viet Nam and Kampuchea.

It clearly lays down the conditions governing relations between the two Governments, paying particular attention to those governing Vietnamese aid.

There is also a protocol providing for the withdrawal of the Vietnamese troops at the request of the Kampuchean authorities.

3/ This de facto existence is unquestionably as real as that of the new Ugandan Government, which, although it is having to contend with difficulties of the same order, has not had the same difficulty in securing wide international recognition.

ANNEX II

Statements made by lawyers and jurists before the
People's Revolutionary Tribunal of Phnom Penh

PEOPLE'S REPUBLIC OF KAMPUCHEA
Independence, Peace, Happiness

PEOPLE'S REVOLUTIONARY TRIBUNAL HELD IN PHNOM PENH FOR THE TRIAL
OF THE GENOCIDE CRIME OF THE POL POT-IENG SARY CLIQUE

ENGLISH

AUGUST 1979

Original: ENGLISH

STATEMENT

BY HOPE R. STEVENS, LLB LIM

Attorney and Counsellor at Law - Member of the Bar
of the United States Supreme Court - Co-Chairperson
of the National Conference of Black Lawyers of the
United States and Canada. Foreign Lawyer as Defence
Counsel before the People's Revolutionary Tribunal
held in Phnom Penh for the Trial of the genocide
crime of the Pol Pot - Ieng Sary clique. Phnom Penh,
18 August, 1979

Hon. Chief Justice, the Hon. Court,

Permit me to thank the Revolutionary Court for allowing me to appear before you as an advocate for the defence of the accused. I have not come from halfway around the world to give approval to a monstrous crime nor to ask for mercy for the criminals. No! a thousand times No! Not at all! I would never be found in such a position. The reasons for my presence include the following points:

1. I belong to a minority in my own country whose present members and whose ancestors have been the victims of the same crime of genocide that has decimated the people of Kampuchea during the past few years.
2. My ancestors were kidnapped by force and violence, transported across the oceans from Africa, subjected to forced labour by the so-called civilized Anglo-saxon white majority and irrespective of their high culture my people were deported to a strange and inhospitable environment to plant not rice, but cotton and sugar cane.
3. In order to accomplish that programme the oppressors had to abolish the national culture of the victims, my people, and by the most horrible forms of torture, raping the women, mutilating the men, cutting off their feet, ears or hands when they tried to escape, tracking them down with blood hounds, and killing them when they refused to submit to the degrading life of slavery.

/...

4. I am therefore by my history an expert on the subject of the crime of genocide, murder, rape, torture, mutilation, lynching and deprivation of human rights.

5. And up to now, the Supreme Court of my country nor the Congress which makes our laws have never ordered a trial condemning the criminal institution of slavery and the genocidal behaviour of the society that practices that horrible criminal system - nor have the criminals who used those disgusting and inhuman methods against my people ever been "posthumously" tried, condemned, convicted, nor denounced "in absentia". So you see, Hon. Chief Justice and the Court, I could not be present here to defend, condone or approve the awful crime of genocide against the beautiful and noble people of Kampuchea.

Then Hon. Chief Justice and the Court, you may ask me "Why are you here?".

"Why am I here?". "Why do I permit myself to speak as advocate for the accused?".

The people of Kampuchea and you are entitled to a further explanation: I am here as the Co-Chairperson of the National Conference of Black Lawyers of the United States and Canada. In my country this organization exists for the purpose of making sure that every person accused of crime has the opportunity of defending himself - the right to a fair trial before a court of competent jurisdiction. It exists to compel the Courts to hear what the accused has to say in his own defence or in mitigation of the crime with which he is charged before being convicted, or to hear what facts or testimony anyone else may have to offer in defence of the accused. We exist to see that the law is applied to all - without fear or favour, so that each accused may have "Equal Justice under Law". I do not intend you to understand or to believe that we always succeed in this effort. Quite often in my country, the elements of racism and prejudice interfere to defeat our goals and to pervert and make a mockery of justice and to condemn the innocent while the guilty go free.

But above all, I am here because the world is struggling to achieve the "Rule of Law". This means that we all work to dissolve and defeat the misrule of violence, terror, barbarism and the effects of unjust laws. Because only through just laws, impartially enforced, can justice ever be guaranteed to those accused of crime, be they guilty or innocent, and the cause of World Peace advanced.

So that I, with many other lawyers from all parts of the world are here to seek to ensure that those accused of the unspeakable crimes that have been alleged against them receive a fair trial. This trial here in Phnom Penh is being observed and will be analyzed and discussed all over the world. Particularly will the enemies of World Peace and those who seek hegemony over the peoples of Kampuchea in particular and all of Indo-China in general be looking to point out errors in the process of the trial. To defeat that opposition!

1. The trial must be shown to be by legally recognized means - before a Court of Competent Jurisdiction. What more original authority can there be than

this Court appointed by the sovereign Revolutionary People's Council of Kampuchea! So this first important requirement of all recognized legal systems has clearly been met.

2. The proceedings must be with "Due Process of Law"; the rights of the accused must be respected; the trial must be in accordance with the law of the land; the testimony must be from persons having knowledge of the facts constituting the crimes; there must be proof satisfactory to the Court that the accused were connected with the facts alleged either by personal participation or as principals of agents acting by their orders or in keeping with their policy or instructions.

3. The evidence must be deemed by the Court to be competent; it must be relevant; it must be material. It must be of a quality to establish the proof for the Court beyond a reasonable doubt - in the opinion of the Court - about the guilt (or the innocence) of the accused.

Honourable Chief Justice and the Court,

You have been listening for three days to the testimony of witnesses - you have heard the charges as set forth in the indictment - at this point there should be no doubt - in fact there can be no doubt that one of the most disgusting and one of the most unspeakable series of crimes in the history of the world has been committed. Indeed, long before the date of this hearing - long before the success of the overthrow of the previous government of Kampuchea by the People's Revolutionary Forces, the world knew and understood the enormity of the shameless crime of genocide that had been carried out in the massacre and murder of some three million people in Kampuchea. So that the fact of the crime was and is clear and overwhelming. But only you have the duty and the authority and the obligation of deciding by law now "Who are the criminals?". The places where the accused would stand in this Court are vacant. The accused are being tried "in absentia". You and you alone must now name the criminals whom you find guilty of the crimes as charged or otherwise. You! not the sorrowing people of Kampuchea - not the mothers and fathers left childless - not the thousands of children made orphans - not even the witnesses who called the names of the accused so often - not the stricken survivors who mourn their dead - not the holy men whose few members escaped extinction - not the homeless wanderers and refugees whose lives have been forever broken - not the freedom-loving peoples of the world who have shared the suffering and travail of the tortured Kampuchean citizens. No! although they doubtless have already reached their own verdict, the responsibility now falls on you legally to name the perpetrators of these crimes - for - Honourable Chief Justice and the Court, I must call your attention to the important principle of law enshrined in most of the legal systems of the world that to accuse the defendants is by itself not enough - they are protected by the "presumption of innocence", which continues right down to the moment when you - the Honourable Chief Justice and the Court, render your verdict. Until that moment the Rule of Law requires that in spite of the feelings, the sorrow, the disgust, the impatience, the opinions of anyone or all who suffer the agony caused by the holocaust of Kampuchea, all must await your decision. You - and you alone - will announce to the world the names of those who are responsible for this monstrous outrage against humanity and whom you find guilty.

It is now clear to all that Pol Pot and Ieng Sary were criminally insane monsters carrying out a programme the script of which was written elsewhere for them.

So that, if it were left to me and the other lawyers of the world who are present here, you would not have only Pol Pot and Ieng Sary and their agents and willing vassals standing judgement here; in fairness to them we would have besides them as fellow-accused the manipulators of world imperialism, the profiteers of neo-colonialism, the fascist philosophers, the hegemonists, who are supporting zionism, racism, apartheid and reactionary régimes in the world, all these would be standing there with the false socialist leaders of China - awaiting the verdict and sharing the sentence of your decision.

In the meantime, Honourable Chief Justice and the Court, we will entertain the hope that soon - and very soon - a wind of change will blow across the Gobi Desert to where once a hundred flowers were invited to bloom; that land where flowers have dried up, where one ugly, spiny cactus has survived to be nurtured, not only by a "Gang of Four" but also it seems by a group of despots of the kind of the former celestian emperors who have for the moment grasped and hold unscrupulous power for their own selfish ambition to extend regional and world hegemony by force and brutal violence, ready to sacrifice hundreds of millions of their own and other peoples to achieve their goals and who used the accused with success as their willing agents in perpetrating this awful crime of genocide against their own people of Kampuchea and who also used this poisoned cactus of fascism masquerading under the false cover of socialism directed by "thoughts" so twisted that not only many of the peace-loving people of China, committed to decency and the respect for freedom and human rights, have been deceived by it, but all of them are for the moment enslaved by it. The traitors of Kampuchea were also ready victims to this false doctrine guided and blinded by their power-hungry leadership.

Our hope must be that another revolution - the revolution of true socialism - will soon again respond to the wind of change and restore China to the ranks of the freedom-loving peoples of the world in search of World Peace.

Then, and only then, will it be possible for Kampuchea and her valiant people, together with Laos and the brave Vietnamese nation, to join hands with their peace-loving neighbours from the North and work with love for genuine and lasting friendship.

Honourable Chief Justice and the Court, the burden in the days ahead falls on all of us to forge the links of solidarity through world opinion and action to prevent such a shameful and terrible challenge from ever again being presented to people anywhere. Only thus can true World Peace be assured and its benefits brought to all mankind.

Honourable Chief Justice and the Court, we and the world await your verdict - "LET RIGHT BE DONE".

REPORT ON THE POL POT- IENG SARY TRIAL BY
THE PEOPLE'S REVOLUTIONARY TRIBUNAL HELD
IN PHNOM PENH

(15 to 19 AUGUST 1979)

AMAR BENTOUMI

Barrister at the Supreme Court of Algeria
Former Minister of Justice
Secretary of the International Association of Democratic Lawyers

The trial just conducted at Phnom Penh from 15 to 19 August 1979 is unquestionably the most important since the time of the Nuremberg and Tokyo trials of the Nazi war criminals and Japanese militarists responsible for atrocities and massacres committed during the Second World War.

For the first time the principal leaders of a fallen régime have been prosecuted for the crime of genocide perpetrated against the civilian population of their own country.

It is also the first time that the court of a country is required to consider a crime of genocide.

In addition, the Phnom Penh trial is interesting from the legal standpoint.

However, the human aspect of the trial is by far the most important. It has revealed the extent of the criminal ventures of Pol Pot and Ieng Sary and their henchmen, of which the world press had denounced only certain spectacular aspects such as the evacuation of the entire population of a capital - some two million inhabitants - and the persecution of intellectuals and of certain ethnic groups such as the Chinese, Chams, Moslems and Vietnamese of Kampuchea.

This trial will have had the merit of revealing to the world the level to which certain Governments, rendered fanatic by an anarchist and nihilist ideology and thirsting for power, could stoop in the commission of horrifying deeds and the destruction of their own people and country.

It is difficult to believe a priori the acts with which the prosecution charged the accused, Pol Pot and Ieng Sary, namely: "planned massacre of three million persons, expulsion of the inhabitants of urban centres and villages, herding them together and forcing them to work in conditions causing their physical and mental breakdown, destruction of religion, destruction of economic and cultural structures and of family and social relationships".

That is why there is a need for scrupulous examination at the legal level of the texts establishing the People's Revolutionary Tribunal of Phnom Penh, the rules

of procedure of that body, the use to which they have been put during the proceedings and the value of the evidence submitted by the prosecution against the accused, Pol Pot and Ieng Sary.

The gravity of the acts with which they were charged gives rise to special legal requirements, especially since they were entitled to the presumption of innocence, as was emphasized by their United States counsel, Mr. Hope Stevens. Furthermore, the trial had political aspects which could influence efforts to ascertain the truth.

A. Legal analysis of the Decree-Law of 15 July 1979 establishing the People's Revolutionary Tribunal of Phnom Penh

1. The Decree-Law of 15 July 1979, in article 1, defines acts of genocide on the basis of the definition contained in the Convention on the Prevention and Punishment of the Crime of Genocide, dated 9 December 1948.

The acts attributed to the accused, Pol Pot and Ieng Sary, who were prosecuted as instigators and authors of a plan for genocide, encompass not only elements which constitute that crime but also other acts of a criminal nature not provided for in the Convention of 9 December 1948, since they had never yet been perpetrated, such as the eradication of religion and the destruction of family structures.

2. Article 2 of the above-mentioned decree-law covers the penalties applicable to those convicted of the crime of genocide.

Under that law, the harshest penalties are reserved for the instigators and organizers of genocide and shows particular leniency to those who carry out the crime, since the punishment laid down may be less than five years' imprisonment and may not exceed 15 years' imprisonment.

Lastly, contrary to the precedent established at the Nuremberg trial, which rejected any exception on the grounds of obeying the orders of one's superiors, it shows clemency with regard to those persons who, having participated in the armed forces or in the administration of the former Pol Pot-Ieng Sary régime, display "sincere regret".

The decree-law establishing the Phnom Penh Tribunal is undeniably inspired by a desire for national reconciliation with regard to the perpetrators of the crime, since it reserves capital punishment for acts of genocide for those in positions of the highest responsibility who gave the orders.

3. The rules of procedure uphold the guarantees which the accused should enjoy. Article 4 of the above-mentioned decree-law places the burden of proof of the guilt of the accused on the Procureur, thereby respecting the principle of the presumption of innocence. Article 5 relates to the right of defence. The accused may defend himself or may be assisted by an attorney of his choice. He may be provided with a defence counsel officially appointed by the Tribunal.

The right of defence is recognized to the full. Foreign attorneys may be authorized to address the People's Revolutionary Tribunal. Furthermore, even if he is tried in absentia, the accused must be defended by a counsel appointed officially. This institution is particularly worthy of note. In many countries, such as Algeria and France, when the accused is tried in absentia he is not, and may not be defended.

Accordingly, the defence of Pol Pot and Ieng Sary was provided by two Kampuchean attorneys and one United States attorney.

B. The proceedings:

1. Publication of the proceedings - Attention is drawn to a fact which, to my knowledge, is unprecedented. Nearly all the documents in the case (cross-examination of witnesses or of the accused in custody, official documents seized, records of sworn statements, report of the investigation, etc.) were reproduced and distributed in Khmer, French and English to the foreign journalists and observers and even to the public.

2. The proceedings were published and were followed by a large segment of the public, including many representatives of the world press, lawyers' organizations and other bodies.

Through the dissemination of the documents in the case and the publicity given to the proceedings, the People's Revolutionary Tribunal gave everyone the possibility of knowing all the elements on which its sentence was based. It was thus able to have its decision monitored by national and international public opinion.

2. The rights of defence were guaranteed:

(a) During the hearing of the witnesses, after the reading of each report of the investigation and of each document, the defence counsels were permitted to speak on the same footing as the Procureur in order to ask questions or present their comments.

(b) At no time were there any disturbances during the hearings. However, certain witnesses, in recalling the killing of their parents, were unable to contain their emotions. They burst into tears, as did certain persons in the courtroom. There were some particularly sad moments.

(c) The defence was heard last of all, although the attorney for the party in the civil action, Maître Mohamed Hikmed Turkmanie, of the Bar of Damascus (Syria), was unable to speak until the end of the proceedings: having been briefed at a late hour by the parents of Cham Moslem victims, he had been unable to prepare his speech in time.

(d) The Procureur and the attorney for the plaintiff in the civil action based

their speeches on both the criminal personal responsibility of the accused, Pol Pot and Ieng Sary, and on the political and moral responsibility of the Chinese authorities for the genocide.

In contrast, the defence, while not denying the guilt of the accused, invoked in their favour the harmful influence of Maoist ideology and of the Chinese authorities, with a view to reducing their responsibility indirectly.

3. The sentence condemning Pol Pot and Ieng Sary to death in absentia rendered in open court on 19 August 1979, which provides for the formalities laid down in the decree-law of 15 July 1979, is fully substantiated.

The ample justification may be seen in the impressive number and serious nature of the pieces of evidence establishing the firm grounds for the charges levelled against the accused.

Furthermore, this sentence establishes and highlights the responsibility, if not the complicity by instigation and provision of means, attributed to the Chinese authorities in the perpetration of the genocide by Pol Pot and Ieng Sary.

C. Examination of evidence:

1. For each charge, the prosecution submitted many sound, important and consistent pieces of evidence of various kinds.

They consist of testimony provided by survivors present at the commission of - or victims of - the criminal acts, written documents issued by the Pol Pot-Ieng Sary régime, records of sworn statements, photographic and film documents, reports of the investigation, etc.

2. For certain charges, such as the expulsion of the inhabitants of the towns and villages, the destruction of economic and cultural structures, a visit to the capital, Phnom Penh, and to the town of Siem Reap, is instructive. More than eight months after the overthrow of the Pol Pot-Ieng Sary régime, those towns are still almost deserted. One meets hardly any inhabitants there, and they consist mainly of women and children. One may see the ruins of buildings such as the Central Bank of Kampuchea, demolished solely because they constituted a symbol of capital. Hundreds of houses were destroyed on the outskirts of Siem Reap in order to prevent the inhabitants from living there, on the grounds that they would thereby become bourgeois.

3. The most serious charge is unquestionably that relating to the existence of a plan for genocide and to the massacre of the population.

(a) The proof of the existence of this plan is established by the official documents issued by Pol Pot and Ieng Sary in which they gave instructions and orders to the local authorities of their régime with a view to "eliminating the enemy's social bases". The evacuation of the urban centres was part of this plan and caused

the death by exhaustion or hunger of a very large number of citizens. The same applies to the division of the population into three categories:

- The first category, the "former population" that had been living in the regions under their authority before the liberation;
- The second category, or the "new population" that had been living in the region under the Lon Nol administration;
- The third category, consisting of civilians and military personnel who collaborated with that administration.

(b) The proof of the massacre of the population by barbarous methods was provided by the prosecution not only through the hearing of eye-witnesses but also by other methods of proof:

- Confessions confirmed at the hearing by three former Khmer Rouge detainees;
- Existence of charnel-houses: foreign observers were able to see them in films and to visit the one at Siem Reap (a vast ossuary; wells swarming with vermin);
- Objects produced in evidence;
- Photographic and film documents;
- Articles that appeared in the world press confirming the statements by witnesses and the reports of the investigation by the authorities of the People's Republic of Kampuchea.

Those authorities put the number of victims at about three million persons. It is difficult to verify that figure with precision but it appears to be reliable since, according to credible persons, all the families lost on average several members. Furthermore, the figures relating to the number of survivors in certain social, ethnic and religious categories confirm the extent of the genocide. For example, of 200,000 Cham Moslems, two thirds were exterminated; and of 2,500 artists, only 250 remain alive.

The genocide committed by the Pol Pot-Ieng Sary régime is incontestable.

(c) The genocidal intention results from the systematic implementation of a concerted plan for massacre of which the victims were:

- First, the officials and military personnel who co-operated with the Lon Nol régime and their families;
- Secondly, the intellectuals and the ethnic or religious minorities;

- Thirdly, the opponents, or persons suspected of opposition, including the members and officials of the Kampuchean Communist Party and the army officers and other ranks.

Through the forcible evacuation of the urban centres, the systematic transfer of the rural population and the mixing of the population of the various districts in people's communes, where they were subjected to forced labour, the destruction of social and family structures, and the institution of a system of denunciation and perversion of adolescents in order to make killers out of them, the Pol Pot-Ieng Sary régime created a veritable system facilitating the commission of genocide against the categories of the population whose extermination had been planned.

The "Angkar", or Organization - invested with excessive powers, since it was supposed to provide all the needs of the inhabitants after the abolition of money and markets, even including matrimonial unions - was the main instrument of the genocide. According to all the testimony it was a kind of "super-Gestapo".

D. Motive for the genocide

1. The grounds invoked to justify the mass extermination of the people was, according to the theories of Pol Pot and Ieng Sary, the building of an egalitarian communal society "without rich or poor", based on a return to the land with a view to achieving neo-Angkorian grandeur.

The achievement of that ideal society required the elimination of about 4 million people who were too contaminated by the feudal and capitalist régime and accustomed to modern comforts.

2. Indeed, from another viewpoint outlined by the party in the civil action, the true motives for the genocide would lie in the lust for power of Pol Pot and Ieng Sary and their ambition to conquer and to cling to power under an ideological cloak.

On their return from Paris, where they had studied until 1960, Pol Pot and Ieng Sary imposed their control on the apparatus of the Kampuchean Communist Party by eliminating most of the senior officials, veterans of the struggle for independence against French colonialism.

They knew how to utilize historical events in order to assume leadership of the internal resistance against United States imperialism and its puppet, Lon Nol.

Upon the liberation in 1975, knowing that they lacked a popular base, they undertook their acts of genocide in order to rid themselves of all those who might oppose their assumption of power by concentrating the population in people's communes, where they subjected them to a régime of forced labour and to draconian surveillance, exterminating opponents and suspects.

By destroying the country's economic, social, cultural and family structures, they created favourable conditions for the recruitment and indoctrination of adolescents whom they organized into a sort of force of "Red Guards" similar to those who had become renowned through the Chinese cultural revolution.

Thus they established absolute power over Kampuchea.

CONCLUSION

What is certain and indisputable is that they committed a veritable holocaust and that they ruined Kampuchea, formerly a prosperous country.

The spectacle of Phnom Penh, where most of the houses are empty and where cattle graze in the public gardens, is instructive in that regard.

Kampuchea, known as the "country of the smile", has become the country of suffering; it underwent and will continue to undergo for a long time the consequences of the régime of terror and famine which they experienced between April 1975 and January 1979. That is the opinion of all impartial observers.

The Pol Pot-Ieng Sary régime has already been denounced by the world press up to January 1979. But the Phnom Penh trial will have the merit of revealing to world opinion the extent of these crimes.

It is impossible to speak validly, whether in the legal or moral sense, of legitimacy in respect of those crimes.

PEOPLE'S REPUBLIC OF KAMPUCHEA
Independence, Peace, Happiness

PEOPLE'S REVOLUTIONARY TRIBUNAL HELD IN PHNOM PENH
FOR THE TRIAL OF THE GENOCIDE CRIME OF THE POL
POT-IENG SARY CLIQUE

ENGLISH

AUGUST 1979

Original: ARABIC

STATEMENT

in the civil action by Mr. MAHOMED HIKMET TURKMANIE
Barrister at the Court of Appeal of Damascus (Syria)

Mr. President,

Ladies and Gentlemen, Members of the People's Revolutionary Tribunal,

Permit me to thank you for having kindly done me the honour of agreeing to grant me the right to make a statement in the civil action before your honourable Tribunal, despite my being a foreign lawyer.

I also wish to express my gratitude to my Khmer brothers for having offered me the opportunity to make my modest contribution to this historic trial in defence of the countless widows and orphans of the equally countless victims of the Pol Pot-Ieng Sary régime, which will go down as one of the most sanguinary régimes in the history of mankind.

In his capacity as representative of the society and on behalf of the people of the Khmer State, the Procureur has delivered a full and convincing indictment. With his talent, competence and objectivity, he was able to convince you and provide you with numerous pieces of evidence of the guilt of the two accused who, regrettably, are not seated in the dock since they preferred to flee and to pursue their criminal ways.

I shall speak to you in my capacity as lawyer and as a human being because, in this case, what is at stake is not only the universal principles of law but also the essential foundations of humanity. No human being can remain indifferent to the martyrdom suffered by the Khmer people during the terrible days and the bloody nights lasting from April 1975 to January 1979.

No human being can avoid being shocked by the systematic genocide of millions of men and women of all ages and of all stations of life, a premeditated crime committed in cold blood by the two accused, Pol Pot and Ieng Sary, and their clique, or by the unspeakable sufferings resulting therefrom and the terrible consequences which it had and will have for the martyred Khmer people.

/...

I, speaking on behalf of the party in the civil action, shall confine myself to a few general comments relating to:

(1) The criminal personal responsibility of the two accused, Pol Pot and Ieng Sary;

(2) The political responsibility of certain Powers in the genocide perpetrated by the above-named accused.

I. CRIMINAL PERSONAL RESPONSIBILITY OF THE ACCUSED, POL POT AND IENG SARY:

At the legal level, you must settle two main questions: that of the validity of the evidence submitted by the prosecution and, if you are convinced, that of the legal definition of the acts with which the accused are charged.

You will also have to examine whether there exist in favour of the accused any attenuating circumstances or whether, on the contrary, there are any aggravating circumstances flowing especially from the premeditation of the crime and the resort to barbarous methods in perpetrating it.

(1) The proof of the acts with which the accused are charged in the indictment flows from all the methods of proof generally accepted in criminal law in all countries. The statements made by many witnesses during the hearings held by your Tribunal, which were imbued with sincerity and sometimes moving and sorrowful, were clear, categorical, detailed and consistent.

They may also be corroborated by all the surviving Kampuchians, whether Khmer or members of a national minority and whether you wish to cite Buddhists, Moslems or Christians: suffice it to open the doors of your Tribunal to have thousands of witnesses ready to confirm the testimony heard during the trial. Each foreigner invited heard the same accounts from Kampuchians whom he was able to approach.

Moreover, the testimony officially recorded by your Tribunal given by persons of various social levels is fully confirmed by the sworn statements of the criminal agents of the Pol Pot-Ieng Sary clique and above all by the official documents issued by the two accused, Pol Pot and Ieng Sary.

They are also corroborated by the films shown, by the facts established at the charnel houses, by the pieces of convicting evidence produced, by the concordant investigations carried out not only by the authorities of the People's Republic of Kampuchea but also by the representatives of the world press in the Khmer refugee camps in Thailand and Viet Nam, and finally by the last statements made by the former Cambodian Head of State - even recently the spokesman for the Pol Pot-Ieng Sary clique - Norodom Sihanouk.

Thus, all the evidence exists for proving the guilt of the accused, Pol Pot and Ieng Sary. The pieces of evidence are numerous, incontestable and convincing.

(2) The legal definition of the actions of which the Pol Pot-Ieng Sary clique is accused is at the same time the crime of genocide and various crimes under the general law: Genocide is a crime against humanity, the definition of which derives from the judicial precedent set by the Nuremberg Tribunal and from international law, in particular the International Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948.

The Decree instituting your Tribunal set out the factors constituting this offence, as universally acknowledged, in particular the mass extermination of populations.

Since the condemnation of genocide under international law predates the crimes of which the defendants are accused, the latter cannot with any validity invoke the rule of the non-retroactivity of criminal legislation.

As far as the penalties applicable are concerned, Decree-Law No. 1 dated 15 July 1979 of the People's Revolutionary Council applied the principle which exists in all criminal legislation whereby the instigator of a crime is punishable on the same grounds as, and sometimes more severely than, the perpetrator of the crime.

The preliminary investigation and the proceedings have amply established that the Pol Pot-Ieng Sary clique did indeed commit the acts of which it is accused, in other words that it organized and ordered the execution of the crime of genocide.

Three million human beings, or three eighths of the population of Kampuchea, were exterminated in particularly cruel and barbarous conditions.

If an offence of such magnitude had been committed in France, out of 50 million inhabitants there would have been 18,750,000 victims. If it had been committed in the United States of America, there would have been 75 million victims.

Pol Pot and Ieng Sary must be classified among the greatest criminals in history.

Both by the number of their victims and by the barbarity of the methods used, they resemble Hitler and his clique.

All the legal principles deriving from Nuremberg are applicable to them.

But their sinister originality lies in the fact that they committed their crimes in peacetime and cannot even invoke the exigencies of war.

Moreover, they attacked not only foreign victims such as ethnic and religious minorities, but also their own compatriots, who were the main target of their criminal enterprises, and their own country by destroying the economic, financial, social and cultural structures.

There is in their crimes an element comparable to the aggravating circumstance which exists, in ordinary criminal law, in respect of the perpetrators of such crimes as parricide or infanticide.

Their whole policy is based on the violation of all the fundamental rights and freedoms proclaimed in the Universal Declaration of Human Rights up to and including the right of every human being to life.

Among the revolting crimes against fundamental freedoms which the accused perpetrated, mention should be made of the elimination of religions in general and the complete liquidation of the Islamic religion in Kampuchea by the systematic extermination of Muslims - men, women and children; only those who managed to conceal their adherence to Islam have survived.

The Pol Pot-Ieng Sary clique has placed itself outside humanity.

It is the right and the duty of your Tribunal to punish that clique for the crime of genocide which it committed and to do justice to its victims and to the people of Kampuchea.

There is, however, another aspect to this case which the party to the civil action must evoke, and that is the political responsibility of third parties to the genocide.

II. POLITICAL RESPONSIBILITY

The political responsibility of the rulers in Peking in the crimes of the Pol Pot-Ieng Sary clique is terrible and evident.

Pol Pot and Ieng Sary quoted the ideology of Peking, they took its political positions on international affairs and copied some of its institutions, including the notorious "people's communes", within the country.

These "people's communes", veritable concentration, forced-labour and extermination camps, played a fundamental role in the execution of the crimes of genocide.

The Chinese authorities could not be unaware of the genocide of which millions of Kampuchean were victims since they had an Embassy at Phnom Penh with a staff of several hundred who were the only foreigners able to move about throughout the territory of Kampuchea.

Although they were aware of the crimes committed, as the record of the talk between Deng Xiao-ping and Ieng Sary (document 2.5.18) shows, they continued to give economic and military assistance to the Pol Pot-Ieng Sary clique which enabled the latter to continue its crime of genocide and its aggression against neighbouring countries, in particular Viet Nam.

The party to the civil action is entitled to consider that the attitude of the Chinese authorities was an encouragement to the Pol Pot-Ieng Sary criminals and played a role which involved their moral and political responsibility in the crime of genocide committed by the latter.

A moral and political responsibility of another order lies with the Western countries.

Those countries denounced the crimes of the Pol Pot-Ieng Sary clique until January 1979, the date of the liberation of Kampuchea by the FUNSK troops with the aid of the Vietnamese army.

Since then, paradoxically, they have in effect taken up the defence of the Pol Pot-Ieng Sary clique by invoking a problem of legitimacy.

The legitimacy of the Pol Pot clique is based on genocide. In order to seize power, it systematically exterminated not only the military and civil servants of the Lon Nol régime, but, knowing that it had no popular base, it organized the exodus from the towns and villages and then the elimination of what it called "the social bases of the enemy", in other words the intellectuals, the townspeople, the former revolutionary freedom fighters, and indeed, the majority of the population.

In order to retain power, it exterminated all the militants and cadres of the Communist Party of Kampuchea and the military who opposed, or who were merely suspected of opposing, its policy.

The Western press remains silent on the crimes of Pol Pot and Ieng Sary and highlights their intrigues before international forums.

The very same people who welcomed the entry of the Tanzanian troops into Uganda and the fall of Idi Amin Dada raise objections to the liberation of the Kampuchean people from the terror of oppression, famine and extermination with the aid of Vietnamese troops.

The relatives of the victims of the genocide and the survivors of the bloody régime and the barbarous tyranny of the Pol Pot-Ieng Sary clique greeted with enormous relief the proclamation of the People's Republic of Kampuchea and are beginning to live again.

On their behalf, the party to the civil action asks of you not vengeance but justice for the 3 million victims, through the exemplary punishment of their executioners, the Pol Pot-Ieng Sary clique.

On their behalf, it hopes that those two monsters with human faces, perpetrators of a holocaust without parallel outside Europe, will find no place of refuge in the world.

They must answer for their crime.