

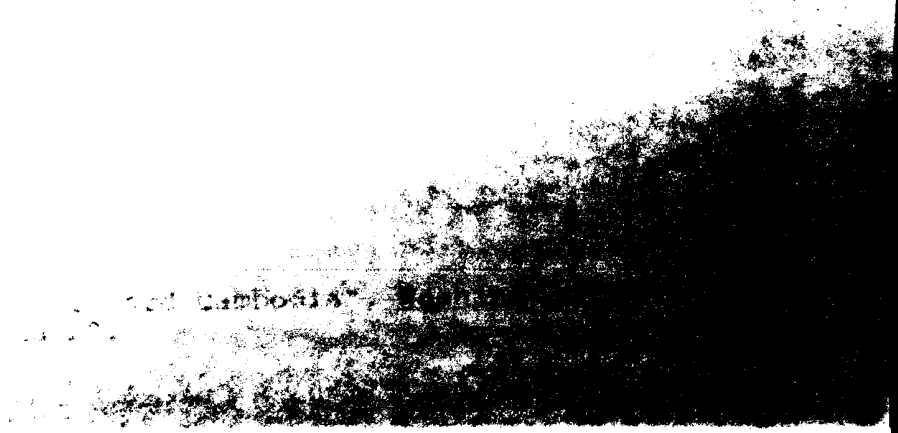
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Midyear, 1991

AMERICAN BAR ASSOCIATION
 STANDING COMMITTEE ON WORLD ORDER UNDER LAW
 REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED that the American Bar Association strongly	1
supports the peace plan prepared jointly by the five permanent	2
members of the United Nations Security Council and the decision	3
of the United States Government to engage in direct communication	4
with the Phnom Penh government in Cambodia and the government of	5
Vietnam as a means of furthering progress toward a peaceful	6
resolution of the two-decades long conflict in Cambodia,	7
supports the establishment of a United Nations Transitional	8
Authority for Cambodia (UNTAC) which would have a major role in	9
organizing, monitoring and administering a ceasefire and	10
elections in Cambodia, and urges that further steps necessary to	11
promote the peace process and prevent the Khmer Rouge from	12
returning to power now be taken, including prompt establishment	13
of the proposed Supreme National Council on which the two	14
opposing Cambodian parties would be equally represented, the	15
immediate cessation of outside military aid, and the lifting of	16
the United States trade embargo.	17



I. Purpose of the Recommendation

Goal VIII of the American Bar Association is to advance the rule of law in the world, and in particular to provide leadership for the development of the rule of law through resolution of conflict between nations, and by supporting the growth of democratic institutions and respect for human rights throughout the world. In fulfillment of this goal, in February 1987 the Association's House of Delegates unanimously adopted a resolution condemning "the documented genocide in Cambodia" and resolving "to work ... towards bringing those responsible to justice through all appropriate legal steps." The supporting report provided a systematic, documented account of the atrocities committed by the Khmer Rouge during their three and a half years of genocidal rule, in which one to two million people out of a total population of seven million died from execution, starvation, forced labor, torture and disease.

At this time there is an opportunity to achieve a peaceful resolution of the civil war and restoration of human rights in Cambodia, and the recommendation supports the efforts of the United Nations and the United States in this direction. In particular, the recommendation supports the agreement on the framework for a comprehensive political settlement and the peace plan to implement it that were prepared by the group of five permanent members of the Security Council and the good offices of the Secretary-General, the establishment of a United Nations Transitional Authority in Cambodia (UNTAC) which would have a major role in organizing, monitoring and administering a ceasefire and elections in Cambodia, and the decision of the United States to engage in direct communication with the Phnom Penh Government in Cambodia and the government of Vietnam, and urges that certain specific steps necessary to promote the peace process and prevent the Khmer Rouge from returning to power now be taken, including prompt establishment of the proposed Supreme National Council, the immediate cessation of outside military aid, and the lifting of the United States trade embargo.

II. Background

On July 18, 1990, United States Secretary of State James A. Baker III announced changes in U.S. policy on Cambodia.¹ Amidst increasing concern at the growing military strength of the Khmer Rouge, Secretary Baker stated that "It is very important, we think, to do all we can to prevent a return to power by the Khmer Rouge." He declared that the United States would withdraw support for United Nations recognition of the coalition of three resistance groups, the Coalition Government of Democratic Kampuchea, as the recognized government of Cambodia occupying Cambodia's U.N. seat, and would "open a dialogue with Vietnam" about Cambodia in an effort to persuade Vietnam to use its influence with the Hun Sen government "to help us construct

1. "U.S. Shifts Policy Toward Cambodia", Washington Post, July 19, 1990, pp. 1 and 28.

or create the conditions that would permit the election of a free government in Cambodia." The coalition is composed of three groups: the Khmer Rouge, by far the strongest, and two non-communist groups, the Sihanouk National Army led by former head of state Prince Norodom Sihanouk and commanded by his son Prince Norodom Ranariddh, and the Khmer People's National Liberation Front led by former prime minister Son Sann.

Secretary Baker stated that the United States would continue to provide assistance to the two non-communist groups and "will be prepared to enhance our economic assistance" to Cambodia.² Assistant Secretary for East Asian and Pacific Affairs Richard H. Solomon later explained that the U.S. will be "looking carefully at additional humanitarian programs for Vietnam and Cambodia ... and will implement a new program designed to aid Cambodian children -- both those within the country as well as in camps along the Thai-Cambodian border."³

Internationally, two separate efforts have been undertaken to reach a peaceful settlement in Cambodia, one a primarily regional effort initiated by the Prime Minister of Thailand, the 19-nation Conference on Cambodia co-chaired by Indonesia and France, and the other involving the five permanent members of the United Nations Security Council, the United States, China, the Soviet Union, Britain and France.

In June, 1990, a conference was held in Tokyo by the multinational group, with the purposes of a) recognizing and establishing the fact that there are essentially two sides in the war in Cambodia, not four: the Khmer Rouge, Sihanouk National Army, Khmer People's National Liberation Front Coalition, and the Hun Sen government, b) setting up a supreme national council to represent these two sides in the international process of arranging for elections, and c) ratifying a call for voluntary self-restraint in the use of force prior to a monitored cease-fire. A Tokyo communique issued at the conclusion of the conference was signed by Sihanouk and Han Sen, but the Khmer Rouge refused to participate.⁴

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2. Ibid., page 28.
 3. Statement before the Subcommittee on East Asian and Pacific Affairs, Senate Foreign Relations Committee, July 20, 1990, Reproduced in U.S. Department of State Current Policy No.1291.
 4. Statement of Hon. Edmund S. Muskie, Chairman, Center for National Policy, Washington, D.C., before the Senate Foreign Relations Committee, July 20, 1990.

In his July 20 statement, Secretary Baker pointed to a similar intransigence on the part of the Khmer Rouge in connection with the peace efforts of the five permanent members of the U.N. Security Council: "For over a year now, we've been trying to have a political dialogue The Khmer Rouge has succeeded in turning that political dialogue into a dialogue of the battlefield. And the fighting continues, and Cambodians continue to suffer, and Cambodians continue to die."⁵

Nevertheless, on August 28, 1990, the five permanent members of the United Nations Security Council announced an agreement on a framework for a comprehensive political settlement of the Cambodian conflict, which was endorsed by the Security Council on September 20 and by the General Assembly on October 15. It was significant in that it was the first time that the permanent members, supporting opposing groups in Cambodia (China has been supporting the Khmer Rouge, the Soviet Union the Hun Sen government, and the United States the Sihanouk and Son Sann groups), had been able to reach agreement. Under this plan, a Supreme National Council would be established by the two Cambodian sides to represent Cambodia during the interim period before elections and occupy the Cambodian seat in the United Nations, and the United Nations would supervise the administration of the country and supervise and monitor a cease-fire and withdrawal of foreign forces in the interim period.⁶

On November 25 the permanent members approved a detailed peace plan to implement the earlier framework, providing for United Nations administration of the country in the transitional period leading to elections, a cease-fire and withdrawal of foreign forces, and establishment of a Supreme National Council to represent the state of Cambodia in the interim.⁷ The main document and five annexes create a United Nations Transitional Authority for Cambodia (UNTAC), establish the mandate for the civil administration, elections, and protection of human rights, and contain provisions for a cease-fire, withdrawal of armed forces, refugee repatriation, and principles for a constitution, and call for a United Nations peace-keeping force and immediate deployment of a monitoring force.

The agreement cannot come into effect, however, until it is formally adopted at an international conference, and that cannot be done until the two Cambodian sides agree on the composition and leadership of the Supreme National Council.

5. Supra, n. 1, p. 28

6. "Five U.N. Powers Announce Accord on Cambodia War", New York Times, August 29, 1990, p.1.

7. "Big Powers Advance Cambodian Peace Plan", Washington Post, November 26, 1990.

This is proving to be exceedingly difficult to achieve. Although there appears to be general agreement on a 12-seat Council, with 6 representatives of the Phnom Penh government and 6 of the resistance factions, including the Khmer Rouge, and agreement that Sihanouk should be the Chair, the question is whether Hun Sen should be appointed Vice-Chair, so that each side would have 6 seats plus the Chair or Vice-Chair, or whether the Sihanouk/Khmer Rouge coalition should have a 7 to 6 seat advantage. As an imbalance in representation is clearly unacceptable and will prevent the peace process from going forward, the sponsors of this resolution think that the dispute must be resolved by adopting the equal representation formula.

The recommendation also urges the immediate cessation of outside military aid. Clearly, no peaceful solution can be achieved as long as either side continues to receive foreign military aid. Nevertheless China continues to supply the Khmer Rouge with such aid, and delivered 24 tanks as recently as October, 1990. There is evidence that the Khmer Rouge are making significant military gains, securing territory, and infiltrating villages close to the capital, and that there is increased coordination between the Khmer Rouge and the non-Communist resistance in mounting attacks. There is a very real danger that the Khmer Rouge may succeed in taking power in Phnom Penh once again.⁸

Finally, the resolution recommends that the United States immediately lift its embargo on trade with Cambodia. As pointed out by Senator Muskie, the economy of Cambodia is under extreme pressure, which can only hinder the prospects for a peaceful settlement. "The burden of prosecuting the guerrilla war in combination with the severe embargo that the United States has enforced against trade, development aid, and even humanitarian assistance has had an increasingly severe effect. The economy is further threatened by the prospect of an impending aid cutoff by the former Soviet Bloc countries." He concludes, "[T]here is absolutely no reason to continue to press an embargo [on Cambodia and Vietnam]. These embargoes are hurting Cambodia. ... They are adding to the effectiveness of the Khmer Rouge. ... And they are not advancing U.S. values or interests."⁹

Respectfully submitted,

Paul C. Warnke, Chair,
Standing Committee on World Order
Under Law

February, 1991

8. Statement of Hon. Edmund Muskie, supra, note 4.

9. Ibid.

GENERAL INFORMATION FORM

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Submitting Entity: Standing Committee on World Order Under Law

Submitted By: Paul C. Warnke, Chair

1. Summary of Recommendation(s).

Expresses strong support for the peace plan prepared jointly by the five permanent members of the United Nations Security Council and the decision of the United States Government to engage in direct communication with the Phnom Pehn government in Cambodia and the government of Vietnam as a means of furthering a peaceful resolution of the civil war in Cambodia, supports the establishment of a United Nations Transitional Authority in Cambodia (UNTAC) with a major role in organizing, monitoring and administering a ceasefire and elections in Cambodia, and urges that certain specific steps necessary to prevent the Khmer Rouge from returning to power now be taken, including prompt establishment of the proposed interim Supreme National Council, the immediate cessation of outside military aid, and the lifting of the United States trade embargo.

2. Approval by Submitting Entity.

Approved by Standing Committee at Fall, 1990 meeting, September 28, 1990.

3. Previous submission to the House or relevant Association position.

February 1987 resolution unanimously adopted by House of Delegates condemning the documented genocide in Cambodia and resolving to work towards bringing those responsible to justice through all appropriate legal steps.

4. Need for Action at This Meeting.

Ongoing peace negotiations and critical danger of takeover by Khmer Rouge. Need for ABA to express support for United Nations and United States efforts towards a peace settlement in Cambodia and recommend action that will further contribute to the peace process.

5. Status of Legislation. (If applicable.)

No legislation directly on point. Some bills introduced in House and Senate.

6. Cost to the Association. (Both direct and indirect costs.)

None

7. Disclosure of Interest. (If applicable.)

None

8. Referrals.

Section of International Law and Practice
Section of Individual Rights and Responsibilities
Standing Committee on Law and National Security

9. Contact Person. (Prior to meeting.)

The Honorable Edmund S. Muskie
1101 Vermont Avenue, N.W., Suite 900
Washington, D.C. 20005
(202) 289-3000

10. Contact Person. (Who will present the report to the House.)

Paul C. Warnke
815 Connecticut Avenue, N.W., 12th Floor
Washington, D.C. 20006
(202) 828-4246

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