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Q&A: On Future of Khmer Rouge Tribunal

By Chun Han Wong

Michael Karnavas, an American defense lawyer, has spent more than a third of his 30-year career in international criminal justice, representing defendants in war crimes tribunals at The Hague and in Cambodia.



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Defense counsel Michael Karnavas during the trial hearing of Case 002 in Cambodia on Jul. 18, 2012.

In the Khmer Rouge tribunal's flagship case, Case 002, Mr. Karnavas represented Ieng Sary, once the regime's foreign minister, who died this March at the age of 87. Ieng Sary's death left the tribunal with just two defendants in Case 002—Nuon Chea, 87, the Khmer Rouge's former chief ideologue and deputy to leader Pol Pot; and 82-year-old Khieu Samphan, the regime's former head of state.

Messrs. Nuon Chea and Khieu Samphan have been charged with committing crimes against humanity, genocide and war crimes—allegations they deny. To make the proceedings more manageable, the tribunal decided to split their trial into several "mini trials," the first of which has entered closing arguments and involves charges related mainly to the mass evictions that took place after the Khmer Rouge took power in 1975.

The tribunal hopes to start a second mini-trial—which would include genocide charges—against the two men once closing arguments for the [first trial](#) end this month.

Under Cases 003 and 004, prosecutors have investigated five more suspects for alleged crimes against humanity and war crimes (one, a former air force chief, died in June). But the tribunal hasn't decided whether to indict them. Mr. Karnavas is representing a suspect in Case 003, who has neither been

named by the tribunal nor charged with any wrongdoing. (*The court has not identified the other suspects.)

Mr. Karnavas got his start in international criminal law at the International Criminal Tribunal for the former Yugoslavia—a United Nations-backed court set up to prosecute war crimes committed during the Yugoslav Wars in the 1990s.

He previously represented Col. Vidoje Blagojević, a former Bosnian Serb army commander who was found guilty of crimes against humanity related to the 1995 Srebrenica massacre, a conviction for which he was sentenced to 15 years in prison. He also continues to represent a defendant there, Jadranko Prlić, a former Croatian politician, who is appealing war-crimes convictions that have drawn a 25-year jail sentence.

Mr. Karnavas discussed his views on the Khmer Rouge tribunal with The Wall Street Journal over email. The following are edited excerpts:

WSJ: Trial monitors and victims groups have accused the Cambodian government of interfering with the tribunal's proceedings through public comments – by Prime Minister Hun Sen and other officials – that indicate their resistance toward further prosecutions. Do you agree with these criticisms?

Mr. Karnavas: I never saw or felt any real government interference in [the Khmer Rouge tribunal's first two cases]. The government or some members of it may not have fully cooperated with the [tribunal], but I saw no attempts by the government—directly or indirectly—to influence the outcomes.

In retrospect, one can see how these two cases could have been more efficiently investigated and tried. There have been lots of errors and missed opportunities, but this is all part of the process. Certain procedures were unnecessarily adopted and have caused delays. For instance, many of the evidential documentary issues could have been dealt with prior to trial. Overall, however, the trial went as expected and more or less as trials of this nature generally go.

As for Cases 003 and 004 [involving five unnamed suspects who haven't been charged, one of whom has died], the government has been overly intrusive by making public statements that display a lack of understanding or tolerance for the independence of the tribunal. Considering that the national prosecutors and judges are either members of, affiliated with, or beholden to the government and the ruling Cambodian People's Party, shadow influence is to be suspected.

That said, all international tribunals are subject to political influence and politics—this is widely accepted. It would be unwise to conclude that the government is or should be solely responsible for the slow progress or even the death of Cases 003 and 004.

Note: The Cambodian government has denied accusations that it has interfered with the tribunal's proceedings. "The Royal Government has never interfered in any judicial process including the [Khmer Rouge tribunal] and we will never do so," government spokesman Ek Tha said in an e-mail response to queries from the Journal. "Cambodia's government respects the rule of law and due process. We have no intention to take shortcuts [to justice]."

David Scheffer, a U.N. adviser to the tribunal, told the Journal that, “any delays since October 2012 have had to do with getting the required international staff hired and at work, a process that always takes time, and are not because of any action or inaction on the part of the government.” He also said that, “there have been no public statements by senior government officials on investigations in Cases 003 and 004 for more than a year, and the confidential work required for professional investigations is proceeding.”

WSJ: Funding shortfalls have been a recurrent problem for the tribunal’s domestic division. Do you think fiscal problems could cripple the court, or are they manageable?

Mr. Karnavas: Funding is always a problem for all the international tribunals—international criminal justice is expensive.

Considering what is involved in setting up a tribunal—drafting up the charging documents, investigating the cases, going through the pre-trial challenges and then trying the cases—I would say that the [Khmer Rouge tribunal] is relatively efficient.

WSJ: When can we expect to see Cases 003 and 004 go to trial, if the tribunal decides to prosecute the suspects?

Mr. Karnavas: No one can actually say whether Cases 003 and 004 will actually go to trial; there are too many variables. All I can say is that the defense lawyers involved in Cases 003 and 004 have not been as welcomed by the tribunal as the lawyers in Case 001 and 002 were.

Mr. Ang Udom [a Cambodian defense counsel] and I have been struggling for over a year to be assigned to represent our client in Case 003. We have yet to have full access to the case file. In this system [modeled on the French legal system], it is at this point of the proceedings that the defense is most active and instrumental. There is no equality of arms [a legal principle that defense and the prosecution must have procedural equality in a trial] when you consider that the prosecution and civil parties have access to the case file while the defense does not.

Note: The tribunal ruled in July against a request from defense lawyers to access case files related to an unnamed suspect under investigation by the court. In its decision, [the tribunal said](#) it believed that the suspect, who hasn’t been charged, has sufficient protection of his rights, given that he is “currently represented by counsel, is sufficiently informed of the allegations against him, and is aware of his right to remain silent.”

WSJ: Why did you go into international criminal law as a defense counsel?

Mr. Karnavas: I always had an interest in international affairs, which is what I majored in as an undergraduate. After law school, I gravitated to criminal defense, initially to get trial experience, and there it seemed as if I had found my calling. When international tribunals started forming, it was only natural that I should get involved.

The cases are really challenging and often historic. I truly believe in the vital role good defense lawyers play in ensuring integrity and fairness. Most accused are presumed guilty and, in the court of public opinion, they have already been convicted. I am not naïve enough to assume that the judges have not also formed negative opinions before even hearing any evidence. This being reality, I see my function as indispensable.

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