

Full text of the Paris agreements with commentary

Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (Paris, 23 October 1991)

	Page
Introductory Comment	
Final Act of the Paris Conference on Cambodia	44
Comment on the 'comprehensive' political settlement - By Chhay Yiheang	
Agreement on a Comprehensive Political Settlement of the Cambodia Conflict	48
Comment on achieving national reconciliation - By Say Bory	
Annex 1 UNTAC Mandate	52
Comment on UNTAC's 'top-down' approach - By Alexandra Tennant	
Annex 2 Withdrawal, ceasefire and related measures	56
Comment on the failed demobilisation - By Col. David Mead (Rtd)	
Annex 3 Elections	62
Comment on UNTAC's flawed electoral strategy - By David Ashley	
Annex 4 Repatriation of Cambodian refugees and displaced persons	62
Comment on Cambodia's repatriation gamble - By Dylan Hendrickson	
Annex 5 Principles for a new constitution for Cambodia	64
Comment on enabling Cambodia's Constitution - By Son Chhay	
Agreement Concerning the Sovereignty, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia	66
Comment on the prevention of human rights abuses - By Thun Saray	
Declaration on the Rehabilitation and Reconstruction of Cambodia	70
Comment on the impact of international assistance - By Bit Seanglim	

*The full text of the 1993 Constitution can be found at:
www.cambodia.org/facts/constitution.html*

The Paris agreements in critical perspective

The international community, so quick to proclaim UNTAC a success, urgently needs to reflect more honestly on its experiences in Cambodia. That UNTAC has to date escaped a comprehensive, critical review is largely because of strong political pressures emanating from the UN and various countries to maintain the initial positive gloss thrown on the internationally-inspired peace process. Some have also argued that it is simply too soon to assess in any meaningful manner the political outcome of the Paris agreements. Recent events, however, suggest that other countries engaged in the search for peace have much to learn from Cambodia's painful post-1993 experiences.

Measuring success

Many early analyses of Cambodia's peace process focused on the internal successes and failures of UNTAC. A surprising number of scholars were quick to equate its undisputed technical successes in organising elections and repatriating refugees from Thailand with the overall success of the peace-keeping mission. The inevitable comparisons between UNTAC and early post-Cold War UN debacles such as Somalia and Bosnia lent a further gloss to the Cambodia mission which its many failings initially did little to tarnish.

The paradox was that UNTAC could be seen to have fulfilled its primary mandate (bringing about an internationally-recognised government through elections) even though the internal factors driving Cambodia's war remained largely unaddressed. These were not taken into account because many analyses, in line with the international community's general approach to the Cambodian problem itself, were based on predominantly 'external' assessments of the conflict. These attributed the longevity of the conflict predominantly to friction between outside powers and optimistically assumed that the Cold War's end would spell the end of the factions' capacity or will to fight.

Insufficient effort was made to understand the complex internal dynamics of Cambodia's conflict, its historical roots, what the peace process meant to the Cambodian people, and why all the faction leaders harboured deep-seated resentment over many aspects of the final settlement. This gave the impression that peace was something that could somehow be bequeathed by the international community to Cambodians who were hopefully responsible enough to nurture it wisely — rather than a dynamic, open-ended process whose outcome would largely be decided long after UNTAC's departure.

Beyond the settlement

With the benefit of hindsight in the Cambodian case and a clearer understanding of the difficulties of consolidating peace in war-torn societies more generally, awareness is growing that what happens in the post-settlement phase is perhaps most important in assessing the viability of international peace-making efforts. How far did UNTAC go in putting into place a robust institutional arrangement which would allow the competition between Cambodia's deeply divided factions to be waged in a non-violent manner following UNTAC's departure?

While the Paris agreements committed Cambodians to constitutional provisions enshrining liberal democracy and pluralism, it was left to them to integrate this commitment with the harsh political, military and economic realities facing Cambodia after UNTAC was gone. For a nation recovering from two decades of war and social upheaval, the challenges were enormous. Crucial pre-conditions for democracy such as advanced levels of economic development and social mobilisation were not present in Cambodia. With the reserves of goodwill assumed to be sufficient among the former enemies, few contingency plans were made by the international community in the event that these ran out.

In the circumstances, it was claimed that the Paris agreements were the best that could be done given the availability of resources and international political will at the time. This has led to statements such as 'it is up to Cambodians to take over now' which betray the fact that the international community still remains heavily involved in Cambodia, at least in financial terms. This raises the question of how these resources can better be complemented with more creative developmental, diplomatic and political initiatives to build a stronger peace.

Institutional guarantees

UNTAC's greatest legacy to Cambodians was the hope of democracy and the knowledge of how it should work. Yet in the absence of a capacity to build a viable institutional framework which has the power to preserve liberty and the rule of law, it has been small consolation for Cambodians to take part in either the 1993 or 1998 elections. The articles in this section make clear that consolidating Cambodia's fledgling peace was always going to be a long and difficult task culminating well after UNTAC left the country. The question nonetheless remains: to what degree did it lay the groundwork for this to be achieved? ■

Final Act of the Paris Conference on Cambodia

1 Concerned by the tragic conflict and continuing bloodshed in Cambodia, the Paris Conference on Cambodia was convened, at the invitation of the Government of the French Republic, in order to achieve an internationally guaranteed comprehensive settlement which would restore peace to that country. The Conference was held in two sessions, the first from 30 July to 30 August 1989, and the second from 21 to 23 October 1991.

2 The co-Presidents of the Conference were H. E. Mr. Roland Dumas, Minister for Foreign Affairs of the French Republic, and H. E. Mr. Ali Alatas, Minister for Foreign Affairs of the Republic of Indonesia.

3 The following States participated in the Conference: Australia, Brunei Darussalam, Cambodia, Canada, the People's Republic of China, the French Republic, the Republic of India, the Republic of Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Socialist Republic of Viet Nam.

In addition, the Non-Aligned Movement was represented at the Conference by its current Chairman at each session, namely Zimbabwe at the first session and Yugoslavia at the second session.

4 At the first session of the Conference, Cambodia was represented by the four Cambodian Parties. The Supreme National Council of Cambodia, under the leadership of its President, H.R.H. Prince Norodom Sihanouk, represented Cambodia at the second session of the Conference.

5 The Secretary-General of the United Nations, H.E. Mr. Javier Pérez de Cuéllar and his Special Representative, Mr. Rafeeuddin Ahmed, also participated in the Conference.

6 The Conference organised itself into three working committees of the whole, which met throughout the first session of the Conference. The First Committee dealt with military matters, the Second Committee dealt with the question of international guarantees, and the Third Committee with the repatriation of refugees and displaced persons and the eventual reconstruction of Cambodia.

The officers of each committee were as follows:

First Committee

Co-Chairmen: Mr. C.R. Gharekhan (India); Mr. Allan Sullivan (Canada)
Rapporteur: Ms. Victoria Sisante-Bataclan (Philippines)

Second Committee

Co-Chairmen: Mr. Soulivong Phrasithideth (Laos); Dato' Zainal Abidin Ibrahim (Malaysia)
Rapporteur: Mr. Hervé Dejean de La Batie (France)

Third Committee

Co-Chairmen: Mr. Yukio Imagawa (Japan); Mr. Robert Merrillees (Australia)
Rapporteur: Colonel Ronachuck Swasdikiat (Thailand)

The Conference also established an Ad Hoc Committee, composed of the representatives of the four Cambodian Parties and chaired by the representatives of the two co-Presidents of the Conference, whose mandate involved matters related to national reconciliation among the Cambodian Parties. The Ad Hoc Committee held several meetings during the first session of the Conference.

The Co-ordination Committee of the Conference, chaired by the representatives of the two co-Presidents, was established and given responsibility for general co-ordination of the work of the other four committees. The Co-ordination Committee met at both the first and second sessions of the Conference. An informal meeting of the Co-ordination Committee was also held in New York on 21 September 1991.

7 At the conclusion of the first session, the Conference had achieved progress in elaborating a wide variety of elements necessary for the achievement of a comprehensive settlement of the conflict in Cambodia. The Conference noted, however that it was not yet possible to achieve a comprehensive settlement. It was therefore decided to suspend the Conference on 30 August 1989. However, in doing so, the Conference urged all parties concerned to intensify their efforts to achieve a comprehensive settlement, and asked the co-Presidents to lend their good offices to facilitate these efforts.

- 8 Following the suspension of the first session of the Conference, the co-Presidents and the Secretary-General of the United Nations undertook extensive consultations, in particular with the five permanent members of the United Nations Security Council, with the Supreme National Council of Cambodia, and with other participants in the Paris Conference. The object of these consultations was to forge agreement on all aspects of a settlement, to ensure that all initiatives to this end were compatible and to enhance the prospects of ending the bloodshed in Cambodia at the earliest possible date. The efforts of the co-Presidents and the Secretary-General paved the way for the reconvening of the Paris Conference on Cambodia.
- 9 At the inaugural portion of the final meeting of the Paris Conference, on 23 October 1991, the Conference was addressed by H.E. Mr. François Mitterrand, President of the French Republic, H.R.H. Prince Norodom Sihanouk, President of the Supreme National Council of Cambodia, and H.E. Mr. Javier Pérez de Cuéllar, Secretary-General of the United Nations.
- 10 At the second session, the Conference adopted the following instruments:
- 1) **Agreement on a comprehensive political settlement of the Cambodia conflict**, with annexes on the mandate for UNTAC, military matters, elections, repatriation of Cambodian refugees and displaced persons, and the principles for a new Cambodian constitution;
 - 2) **Agreement concerning the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia**; and
 - 3) **Declaration on the rehabilitation and reconstruction of Cambodia.**
- These instruments represent an elaboration of the "Framework for a Comprehensive Political Settlement of the Cambodia Conflict" adopted by the five permanent members of the United Nations Security Council on 28 August 1990, and of elements of the work accomplished at the first session of the Conference. They entail a continuing process of national reconciliation and an enhanced role for the United Nations, thus enabling the Cambodian people to determine their own political future through free and fair elections organised and conducted by the United Nations in a neutral political environment with full respect for the national sovereignty of Cambodia.
- 11 These instruments, which together form the comprehensive settlement the achievement of which was the objective of the Paris Conference, are being presented for signature to the States participating in the Paris Conference. On behalf of Cambodia, the instruments will be signed by the twelve members of the Supreme National Council of Cambodia, which is the unique legitimate body and source of authority enshrining the sovereignty, independence and unity of Cambodia.
- 12 The States participating in the Conference call upon the co-Presidents of the Conference to transmit an authentic copy of the comprehensive political settlement instruments to the Secretary-General of the United Nations. The States participating in the Conference request the Secretary-General to take the appropriate steps in order to enable consideration of the comprehensive settlement by the United Nations Security Council at the earliest opportunity. They pledge their full co-operation in the fulfilment of this comprehensive settlement and their assistance in its implementation.
- Above all, in view of the recent tragic history of Cambodia, the States participating in the Conference commit themselves to promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia, as embodied in the relevant international instruments to which they are party.
- 13 The States participating in the Conference request the International Committee of the Red Cross to facilitate, in accordance with its principles, the release of prisoners of war and civilian internees. They express their readiness to assist the ICRC in this task.
- 14 The States participating in the Conference invite other States to accede to the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict and to the Agreement concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia.
- 15 Further recognising the need for a concerted international effort to assist Cambodia in the tasks of rehabilitation and reconstruction, the States participating in the Conference urge the international community to provide generous economic and financial support for the measures set forth in the Declaration on the Rehabilitation and Reconstruction of Cambodia.
- In witness whereof the representatives have signed this Final Act.
- Done at Paris this twenty-third day of October one thousand nine hundred and ninety-one, in two copies in the Chinese, English, French, Khmer and Russian languages, each text being equally authentic. The originals of this Final Act shall be deposited with the Governments of the French Republic and of the Republic of Indonesia.

Cambodia's comprehensive political settlement: *closing a tragic chapter on Cambodia's past?*

Documenting and punishing war crimes is seen as the key to establishing justice, consolidating peace and promoting the rehabilitation of deeply divided societies. In this regard, the victimisation of Cambodians by Cambodians during their long conflict (Khmer Rouge atrocities, in particular) is rightly receiving much attention by the international community today. In the process, however, the complex historical legacy of outside involvement in Cambodia's war is often downplayed. This has hampered understanding of the country's continuing political problems and has also made it difficult for Cambodians to close a turbulent chapter on their past.

External interventions

A vicious interaction of variables at domestic, regional and global levels has shaped Cambodia's tragic destiny. Repeated incursions by Cambodia's expansionist neighbours Vietnam and Thailand, starting in the 1500s, were followed in the 19th and 20th centuries by French colonisation, the US bombing and invasion of Cambodia at the height of the Vietnam war, and Chinese backing for the genocidal Khmer Rouge regime. Vietnam's 1979 invasion of Cambodia, ostensibly to save the Khmers from the Khmer Rouge, itself resulted in an eight-year foreign occupation. The ensuing US and Chinese-led international isolation of Cambodia effectively allowed the Khmer Rouge to retain Cambodia's UN seat through the 1980s and various armed groups to wage a destructive war against the government.

These foreign interventions both resulted from and intensified weaknesses within Cambodian society. Since the 1500s, one Khmer faction or another — often led by the country's ruler — has been complicitous with outside parties in the violation of Cambodia's sovereignty. Foreign values and political systems — such as communism — were often accepted blindly by Cambodia's people, stemming more from their need to survive than from any legitimate affinity with outside cultures. Along the way, Cambodians at all levels of society have lost faith in the viability of their own culture and in their ability to regain full control of their destiny as was promised by the Paris agreements.

Contradictory impulses

This crisis of confidence among Cambodians manifests itself in contradictory ways. On the one hand, there is still a general suspicion of foreigners and a tendency by Cambodians to blame them for the country's persisting problems. The historical fear of being 'swallowed up' by Vietnam, for instance, continues to be manipulated by politicians playing the nationalist card for short-term political gain. The reality is that for most Cambodians 'anti-Vietnamese' sentiment stems more from a fear of Vietnamese hegemony than from a hatred of the Vietnamese people themselves. However, with historical patterns of foreign abuse and exploitation weighing heavily on their psyche Cambodians are often guilty of failing to separate the two.

On the other hand, there is still a widespread belief that peace — when it finally comes to Cambodia — will come from the international community. This explains the dramatic expectations created among many Cambodians by the Paris agreements and the deep disillusionment which has followed since 1993 as the promises of democracy, human rights and peace have failed to materialise. Though increasingly aware that they must look within their country for both the causes of and solutions to Cambodia's persisting problems, there is also a lingering belief among many Cambodians that the international community has left them ill-equipped to bring about the difficult political changes necessary.

Closing a tragic chapter?

The comprehensive nature of the final settlement was intended to remove once and for all the external factors driving Cambodia's war by including guarantees to defend Cambodia's sovereignty. With the emphasis placed on Cambodians 'determining their own political future' through elections, the international community could in effect wash its hands of the problems bound to emerge during consolidation of the fragile peace. Not only has this made it difficult to achieve a full accounting of foreign involvement in Cambodia's long conflict, it has also meant that the country's powerful elites themselves face few external pressures to remain accountable to the people. ■

Agreement on a Comprehensive Political Settlement of the Cambodia Conflict

The States participating in the Paris Conference on Cambodia, namely Australia, Brunei Darussalam, Cambodia, Canada, the People's Republic of China, the French Republic, the Republic of India, the Republic of Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Socialist Republic of Viet Nam and the Socialist Federal Republic of Yugoslavia,

In the presence of the Secretary-General of the United Nations,

In order to maintain, preserve and defend the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia,

Desiring to restore and maintain peace in Cambodia, to promote national reconciliation and to ensure the exercise of the right to self-determination of the Cambodian people through free and fair elections,

Convinced that only a comprehensive political settlement to the Cambodia conflict will be just and durable and will contribute to regional and international peace and security,

Welcoming the Framework document of 28 August 1990, which was accepted by the Cambodian Parties in its entirety as the basis for settling the Cambodia conflict, and which was subsequently unanimously endorsed by Security Council resolution 668 (1990) of 20 September 1990 and General Assembly resolution 45/3 of 15 October 1990,

Noting the formation in Jakarta on 10 September 1990 of the Supreme National Council of Cambodia as the unique legitimate body and source of authority in Cambodia in which, throughout the transitional period, national sovereignty and unity are enshrined, and which represents Cambodia externally,

Welcoming the unanimous election, in Beijing on 17 July 1991, of H.R.H. Prince Norodom Sihanouk as the President of the Supreme National Council,

Recognising that an enhanced United Nations role requires the establishment of a United Nations Transitional Authority in Cambodia (UNTAC)

with civilian and military components, which will act with full respect for the national sovereignty of Cambodia,

Noting the statements made at the conclusion of the meetings held in Jakarta on 9-10 September 1990, in Paris on 21-23 December 1990, in Pattaya on 24-26 June 1991, in Beijing on 16-17 July 1991, in Pattaya on 26-29 August 1991, and also the meetings held in Jakarta on 4-6 June 1991 and in New York on 19 September 1991,

Welcoming United Nations Security Council resolution 717 (1991) of 16 October 1991 on Cambodia,

Recognising that Cambodia's tragic recent history requires special measures to assure protection of human rights, and the non-return to the policies and practices of the past,

Have agreed as follows:

Part I Arrangements During the Transitional Period

Section I Transitional Period

Article 1 For the purposes of this Agreement, the transitional period shall commence with the entry into force of this Agreement and terminate when the constituent assembly elected through free and fair elections, organised and certified by the United Nations, has approved the constitution and transformed itself into a legislative assembly, and thereafter a new government has been created.

Section II United Nations Transitional Authority in Cambodia

Article 2

1) The Signatories invite the United Nations Security Council to establish a United Nations Transitional Authority in Cambodia (hereinafter referred to as "UNTAC") with civilian and military components under the direct responsibility of the Secretary-General of the United Nations. For this purpose the Secretary-General will designate a Special Representative to act on his behalf.

2) The Signatories further invite the United Nations Security Council to provide UNTAC with the mandate set forth in this Agreement and to keep its implementation under continuing review through periodic reports submitted by the Secretary-General.

National reconciliation in Cambodia: *can there be forgiveness in the absence of the rule of law?*

The Paris agreements set as a key objective the promotion of 'national reconciliation' in Cambodia's profoundly divided society. While of crucial importance to consolidating Cambodia's long-term peace, it is a difficult and open-ended task. Little was said in the actual text of the agreements concerning how genuine national reconciliation would come about. Though it must ultimately end at the individual level, through a process of healing and forgiveness, this process is arguably best promoted by the establishment of a legal framework which secures and protects both the rights of the individual and the broader public interest.

The difficulty of forgetting

Most Cambodians desperately want peace. The reality, however, is that people have different capacities to forgive and forget. The legacy of gross human rights abuses committed by the Khmer Rouge, along with outstanding grievances between Cambodia's political parties, have created an environment that is not readily conducive to cooperation among Cambodians. The country's 'winner-take-all' political system serves as a further disincentive to cooperation because the livelihoods of so many people are directly linked to the success of the political parties they support.

The difficulties of forgetting are illustrated at a political level by the post-1993 power-sharing arrangement which emerged between the CPP and FUNCINPEC in an initial attempt to foster reconciliation. This coalition came about not so much because the parties were ready to compromise on power-sharing, but because they had little choice but to work together. The apparent cooperation on one level between CPP and FUNCINPEC officials was undermined on another by deep-rooted distrust and an unwillingness to compromise. It soon became clear that each party wanted political reconciliation on its own terms.

This essentially meant holding on to power or swaying the political system to the party's benefit. As competition increased and the coalition government weakened, both Hun Sen and Ranariddh began to use the rhetoric of national reconciliation to justify building alliances with the Khmer Rouge to bolster their political positions. The public rationale for their actions was that they were seeking to end the war and reintegrate

the Khmer Rouge in Cambodian society. National reconciliation was thus pursued in the name of peace, which presented real dilemmas for Cambodia's people, many of whom were not ready to simply overlook the past.

Peace or justice?

There are two prevailing views regarding the roles of peace and justice in shaping reconciliation. Some believe justice should be traded against the overriding aim of ending Cambodia's long war. The opportunity to prevent more deaths should not be taken lightly. However, the controversial amnesties given to Khmer Rouge leaders like Ieng Sary in recent years create a dangerous precedent of impunity for Cambodian society, threatening longer-term peace and stability. The prospect that Ieng Sary will not be brought to justice is almost unbearable for many people, all the more so because many believe he was granted an amnesty for the gain of the country's political leaders.

Others believe there can be no healing without justice. No one who suffered at the hands of the Khmer Rouge will ever forget; many will not be able to forgive. Retribution for those guilty of war crimes — both past and present — is for some, therefore, necessary to promote healing. But justice must not simply be sought for narrow political or personal gain, nor at any cost. The establishment of an effective rule of law in Cambodia which treats all equally — or at least a real hope that such a rule of law will come about soon — is crucial in promoting cooperation between Cambodians and allowing rebuilding to continue.

The collective interest

The need for the rule of law was emphasised in both the Paris agreements and Cambodia's new Constitution. Article 31 states that 'every Khmer citizen shall be equal before the law'. Yet different conditions for different people in effect authorise those with greater power or wealth to place their personal interest before that of the public. The development of a legal system which defends the public interest is therefore in many ways the precursor for genuine national reconciliation among Cambodians. ■

Section III Supreme National Council

Article 3 The Supreme National Council (hereinafter referred to as "the SNC") is the unique legitimate body and source of authority in which, throughout the transitional period, the sovereignty, independence and unity of Cambodia are enshrined.

Article 4 The members of the SNC shall be committed to the holding of free and fair elections organised and conducted by the United Nations as the basis for forming a new and legitimate Government.

Article 5 The SNC shall, throughout the transitional period, represent Cambodia externally and occupy the seat of Cambodia at the United Nations, in the United Nations specialised agencies, and in other international institutions and international conferences.

Article 6 The SNC hereby delegates to the United Nations all powers necessary to ensure the implementation of this Agreement, as described in annex 1.

In order to ensure a neutral political environment conducive to free and fair general elections, administrative agencies, bodies and offices which could directly influence the outcome of elections will be placed under direct United Nations supervision or control. In that context, special attention will be given to foreign affairs, national defence, finance, public security and information. To reflect the importance of these subjects, UNTAC needs to exercise such control as is necessary to ensure the strict neutrality of the bodies responsible for them. The United Nations, in consultation with the SNC, will identify which agencies, bodies and offices could continue to operate in order to ensure normal day-to-day life in the country.

Article 7 The relationship between the SNC, UNTAC and existing administrative structures is set forth in annex 1.

Section IV Withdrawal of Foreign Forces and its Verification

Article 8 Immediately upon entry into force of this Agreement, any foreign forces, advisers, and military personnel remaining in Cambodia, together with their weapons, ammunition, and equipment, shall be withdrawn from Cambodia and not be returned. Such withdrawal and non-return will be subject to UNTAC verification in accordance with annex 2.

Section V Ceasefire and Cessation of Outside Military Assistance

Article 9 The ceasefire shall take effect at the time this Agreement enters into force. All forces shall immediately disengage and refrain from all hostili-

ties and from any deployment, movement or action which would extend the territory they control or which might lead to renewed fighting.

The Signatories hereby invite the Security Council of the United Nations to request the Secretary-General to provide good offices to assist in this process until such time as the military component of UNTAC is in position to supervise, monitor and verify it.

Article 10 Upon entry into force of this Agreement, there shall be an immediate cessation of all outside military assistance to all Cambodian Parties.

Article 11 The objectives of military arrangements during the transitional period shall be to stabilise the security situation and build confidence among the parties to the conflict, so as to reinforce the purposes of this Agreement and to prevent the risks of a return to warfare.

Detailed provisions regarding UNTAC's supervision, monitoring, and verification of the ceasefire and related measures, including verification of the withdrawal of foreign forces and the regrouping, cantonment and ultimate disposition of all Cambodian forces and their weapons during the transitional period are set forth in annex 1, section C, and annex 2.

Part II Elections

Article 12 The Cambodian people shall have the right to determine their own political future through the free and fair election of a constituent assembly, which will draft and approve a new Cambodian Constitution in accordance with Article 23 and transform itself into a legislative assembly, which will create the new Cambodian Government. This election will be held under United Nations auspices in a neutral political environment with full respect for the national sovereignty of Cambodia.

Article 13 UNTAC shall be responsible for the organisation and conduct of these elections based on the provisions of annex 1, section D, and annex 3.

Article 14 All Signatories commit themselves to respect the results of these elections once certified as free and fair by the United Nations.

Part III Human Rights

Article 15

1) All persons in Cambodia and all Cambodian refugees and displaced persons shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments.

2) To this end,

a) Cambodia undertakes:

- ♦ to ensure respect for and observance of human rights and fundamental freedoms in Cambodia;
- ♦ to support the right of all Cambodian citizens to undertake activities which would promote and protect human rights and fundamental freedoms;
- ♦ to take effective measures to ensure that the policies and practices of the past shall never be allowed to return;
- ♦ to adhere to relevant international human rights instruments;

b) the other Signatories to this Agreement undertake to promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia as embodied in the relevant international instruments and the relevant resolutions of the United Nations General Assembly, in order, in particular, to prevent the recurrence of human rights abuses.

Article 16 UNTAC shall be responsible during the transitional period for fostering an environment in which respect for human rights shall be ensured, based on the provisions of annex 1, section F.

Article 17 After the end of the transitional period, the United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings annually to the Commission and to the General Assembly.

Part IV International Guarantees

Article 18 Cambodia undertakes to maintain, preserve and defend, and the other Signatories undertake to recognise and respect, the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia, as set forth in a separate Agreement.

Part V Refugees and Displaced Persons

Article 19 Upon entry into force of this Agreement, every effort will be made to create in Cambodia political, economic and social conditions conducive to the voluntary return and harmonious integration of Cambodian refugees and displaced persons.

Article 20

1) Cambodian refugees and displaced persons, located outside Cambodia, shall have the right to return to Cambodia and to live in safety, security and dignity, free from intimidation or coercion of any kind.

2) The Signatories request the Secretary-General of the United Nations to facilitate the repatriation in safety and dignity of Cambodian refugees and displaced persons, as an integral part of the comprehensive political settlement and under the overall authority of the Special Representative of the Secretary-General, in accordance with the guidelines and principles on the repatriation of refugees and displaced persons as set forth in annex 4.

Part VI Release of Prisoners of War and Civilian Internee

Article 21 The release of all prisoners of war and civilian internees shall be accomplished at the earliest possible date under the direction of the International Committee of the Red Cross (ICRC) in co-ordination with the Special Representative of the Secretary-General, with the assistance, as necessary, of other appropriate international humanitarian organisations and the Signatories.

Article 22 The expression "civilian internees" refers to all persons who are not prisoners of war and who, having contributed in any way whatsoever to the armed or political struggle, have been arrested or detained by any of the parties by virtue of their contribution thereto.

Part VII Principles for a New Constitution for Cambodia

Article 23 Basic principles, including those regarding human rights and fundamental freedoms as well as regarding Cambodia's status of neutrality, which the new Cambodian Constitution will incorporate, are set forth in annex 5.

Part VIII Rehabilitation & Reconstruction

Article 24 The Signatories urge the international community to provide economic and financial support for the rehabilitation and reconstruction of Cambodia, as provided in a separate declaration.

Part IX Final Provisions

Article 25 The Signatories shall, in good faith and in a spirit of co-operation, resolve through peaceful means any disputes with respect to the implementation of this Agreement.

Article 26 The Signatories request other States, international organisations and other bodies to co-operate and assist in the implementation of this Agreement and in the fulfilment by UNTAC of its mandate.

Article 27 The Signatories shall provide their full co-operation to the United Nations to ensure the implementation of its mandate, including by the provision of privileges and immunities, and by facilitating freedom of movement and communication within and through their respective territories.

In carrying out its mandate, UNTAC shall exercise due respect for the sovereignty of all States neighbouring Cambodia.

Article 28

1) The Signatories shall comply in good faith with all obligations undertaken in this Agreement and shall extend full co-operation to the United Nations, including the provision of the information which UNTAC requires in the fulfilment of its mandate.

2) The signature on behalf of Cambodia by the members of the SNC shall commit all Cambodian parties and armed forces to the provisions of this Agreement.

Article 29 Without prejudice to the prerogatives of the Security Council of the United Nations, and upon the request of the Secretary-General, the two co-Chairmen of the Paris Conference on Cambodia, in the event of a violation or threat of violation of this Agreement, will immediately undertake appropriate consultations, including with members of the Paris Conference on Cambodia, with a view to taking appropriate steps to ensure respect for these commitments.

Article 30 This Agreement shall enter into force upon signature.

Article 31 This Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Governments of the French Republic and the Republic of Indonesia. For each State acceding to the Agreement it shall enter into force on the date of deposit of its instruments of accession. Acceding States shall be bound by the same obligations as the Signatories.

Article 32 The originals of this Agreement, of which the Chinese, English, French, Khmer and Russian texts are equally authentic, shall be deposited with the Governments of the French Republic and the Republic of Indonesia, which shall transmit certified true copies to the Governments of the other States participating in the Paris Conference on Cambodia, as well as the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorised there-to, have signed this Agreement.

Done at Paris this twenty-third day of October; one thousand nine hundred and ninety-one.

Annex 1 UNTAC Mandate

Section A General Procedures

1 In accordance with Article 6 of the Agreement, UNTAC will exercise the powers necessary to ensure the implementation of this Agreement, including those relating to the organisation and conduct of free and fair elections and the relevant aspects of the administration of Cambodia.

2 The following mechanism will be used to resolve all issues relating to the implementation of this Agreement which may arise between the Secretary-General's Special Representative and the Supreme National Council (SNC):

a) The SNC offers advice to UNTAC, which will comply with this advice provided there is a consensus among the members of the SNC and provided this advice is consistent with the objectives of the present Agreement;

b) If there is no consensus among the members of the SNC despite every endeavour of its President, H.R.H. Samdech Norodom Sihanouk, the President will be entitled to make the decision on what advice to offer to UNTAC, taking fully into account the views expressed in the SNC. UNTAC will comply with the advice provided it is consistent with the objectives of the present Agreement;

c) If H.R.H. Samdech Norodom Sihanouk, President of the SNC, the legitimate representative of Cambodian sovereignty, is not, for whatever reason, in a position to make such a decision, his power of decision will transfer to the Secretary-General's Special Representative. The Special Representative will make the final decision, taking fully into account the views expressed in the SNC;

d) Any power to act regarding the implementation of this Agreement conferred upon the SNC by the Agreement will be exercised by consensus or, failing such consensus, by its President in accordance with the procedure set out above. In the event that H.R.H. Samdech Norodom Sihanouk, President of the SNC, the legitimate representative of Cambodian sovereignty, is not, for whatever reason, in a position to act, his power to act will transfer to the Secretary-General's Special Representative, who may take the necessary action;

e) In all cases, the Secretary-General's Special Representative will determine whether advice or action of the SNC is consistent with the present Agreement.

UNTAC's 'top-down' approach: *insensitivity or pragmatism?*

Six months after the signing of the Paris agreements, UNTAC arrived in Cambodia to an environment of extreme tension and hostility. Given the deep and persisting antagonism amongst the Cambodian factions, UNTAC faced a formidable task in consolidating the precarious peace by facilitating the transition to a non-violent political system which would outlive its stay. Since UNTAC's mandate did not permit the use of force by its peacekeeping troops, it was entirely dependent on the goodwill and cooperation of the Cambodian people, which were rapidly undermined by its 'top-down' approach.

High-impact operation

In keeping with its mandate, and following the pattern of previous UN missions, a high-impact, short-term operation was put in place. At its peak, UNTAC consisted of over 22,000 military and civilian personnel, drawn from over 100 countries, and cost the international community in excess of US \$2 billion. However, in a fragile society that had endured many years of violent conflict, as well as a decade of international isolation, little thought had been given to the possible impact of such a large-scale operation. Indeed, the effect on Cambodia's economy was significant, contributing to distorted patterns of economic growth that further intensified vulnerability for many Cambodians already living near the poverty line, and stifling local initiatives and capacities.

UNTAC's approach to the complex tasks assigned to it was based essentially on the transfer of expertise, via its numerous international personnel. Little recognition was given to the achievements of Cambodian people in rebuilding their own lives after the 'zero years' of the Pol Pot regime. Local skills and knowledge were instead marginalised as UNTAC, rather than encouraging the participation of local communities as partners to the peace process, treated the Cambodian people as targets of the peacebuilding operation — 'victims' rescued from a disaster of their own making.

It has been argued that Cambodia's climate of mistrust and hostility forced UNTAC to adopt this 'top-down' approach since, to involve Khmer personnel in anything other than a basic role would have undermined the neutrality of the operation, and further destabilised Cambodian politics. The antipathy with which UNTAC was viewed by the

Cambodian People's Party and the Khmer Rouge in particular — the two most powerful factions with the most to lose from successful implementation of the Paris agreements — was an additional obstacle, as was its short-term mandate which militated against participatory peacebuilding.

Cultural insensitivity

UNTAC's 'top-down' approach may also be explained as symptomatic of the UN's bureaucratic culture which failed to recognise local resources or customs or the benefits of participatory development. Certainly, UNTAC as a whole showed very little interest in developing an understanding of the national culture with which it was engaging. Despite a number of fact-finding missions prior to its arrival, information and training on Cambodian culture available to staff remained vague in the planning stages and indeed, throughout the whole operation. It became apparent that the UN placed little importance on designing a culturally-appropriate peacebuilding model, or promoting culturally-sensitive behaviour by its personnel.

This was most evident in the widely reported antics of a number of UNTAC's peacekeepers. Outside commentators observed that 'as stories of outrageous acts by individual ill-disciplined soldiers piled up and were told and retold, UNTAC was seen with horror as a horde of drinking, whoring, half-naked drivers who ran over people and couldn't care less'. In retrospect, Yasushi Akashi, the Secretary-General's Special Representative to Cambodia, admitted that the effectiveness of the operation had been limited by a lack of cultural awareness: "...in the future we should have more strict, clearer criteria and standards of recruitment. If possible, we should have more training before we send peacekeeping forces and civilians to make them more sensitive and more attuned to the local and national cultures, manners and languages".

Participation as imperative

While such measures would be welcomed, it is imperative that the UN goes further in rethinking its whole approach to its peacekeeping operations. Where local cooperation is essential to the success of the operation, a politically-attuned, participatory approach can no longer be perceived as an optional extra, but must be recognised as purely pragmatic in building sustainable peace. ■

- 3 The Secretary-General's Special Representative or his delegate will attend the meetings of the SNC and of any subsidiary body which might be established by it and give its members all necessary information on the decisions taken by UNTAC.

Section B Civil Administration

- 1 In accordance with Article 6 of the Agreement, all administrative agencies, bodies and offices acting in the field of foreign affairs, national defence, finance, public security and information will be placed under the direct control of UNTAC, which will exercise it as necessary to ensure strict neutrality. In this respect, the Secretary-General's Special Representative will determine what is necessary and may issue directives to the above-mentioned administrative agencies, bodies and offices. Such directives may be issued to and will bind all Cambodian Parties.
- 2 In accordance with Article 6 of the Agreement, the Secretary-General's Special Representative, in consultation with the SNC, will determine which other administrative agencies, bodies and offices could directly influence the outcome of elections. These administrative agencies, bodies and offices will be placed under direct supervision or control of UNTAC and will comply with any guidance provided by it.
- 3 In accordance with Article 6 of the Agreement, the Secretary-General's Special Representative, in consultation with the SNC, will identify which administrative agencies, bodies and offices could continue to operate in order to ensure normal day-to-day life in Cambodia, if necessary, under such supervision by UNTAC as it considers necessary.
- 4 In accordance with Article 6 of the Agreement, the authority of the Secretary-General's Special Representative will include the power to:
 - a) Install in administrative agencies, bodies and offices of all the Cambodian Parties United Nations personnel, who will have unrestricted access to all administrative operations and information;
 - b) Require the reassignment or removal of any personnel of such administrative agencies, bodies and offices.
- 5 a) On the basis of the information provided in Article I, paragraph 3, of annex 2, the Special Representative of the Secretary-General will determine, after consultation with the Cambodian Parties, those civil police necessary to perform law enforcement in Cambodia. All Cambodian Parties hereby undertake to comply with the determination made by the Special Representative in this regard;

b) All civil police will operate under UNTAC supervision or control, in order to ensure that law and order are maintained effectively and impartially, and that human rights and fundamental freedoms are fully protected. In consultation with the SNC, UNTAC will supervise other law enforcement and judicial processes throughout Cambodia to the extent necessary to ensure the attainment of these objectives.

- 6 If the Secretary-General's Special Representative deems it necessary, UNTAC, in consultation with the SNC, will undertake investigations of complaints and allegations regarding actions by the existing administrative structures in Cambodia that are inconsistent with or work against the objectives of this comprehensive political settlement. UNTAC will also be empowered to undertake such investigation on its own initiative. UNTAC will take, when necessary, appropriate corrective steps.

Section C Military Functions

- 1 UNTAC will supervise, monitor and verify the withdrawal of foreign forces, the ceasefire and related measures in accordance with annex 2, including:
 - a) Verification of the withdrawal from Cambodia of all categories of foreign forces, advisers and military personnel and their weapons, ammunition and equipment, and their non-return to Cambodia;
 - b) Liaison with neighbouring Governments over any developments in or near their territory that could endanger the implementation of this Agreement;
 - c) Monitoring the cessation of outside military assistance to all Cambodian Parties;
 - d) Locating and confiscating caches of weapons and military supplies throughout the country;
 - e) Assisting with clearing mines and undertaking training programmes in mine clearance and a mine awareness programme among the Cambodian people.
- 2 UNTAC will supervise the regrouping and relocating of all forces to specifically designated cantonment areas on the basis of an operational timetable to be agreed upon, in accordance with annex 2.
- 3 As the forces enter the cantonments, UNTAC will initiate the process of arms control and reduction specified in annex 2.
- 4 UNTAC will take necessary steps regarding the phased process of demobilisation of the military forces of the parties, in accordance with annex 2.

- 5 UNTAC will assist, as necessary, the International Committee of the Red Cross in the release of all prisoners of war and civilian internees.

Section D Elections

- 1 UNTAC will organise and conduct the election referred to in Part II of this Agreement in accordance with this section and annex 3.
- 2 UNTAC may consult with the SNC regarding the organisation and conduct of the electoral process.
- 3 In the exercise of its responsibilities in relation to the electoral process, the specific authority of UNTAC will include the following:
 - a) The establishment, in consultation with the SNC, of a system of laws, procedures and administrative measures necessary for the holding of a free and fair election in Cambodia, including the adoption of an electoral law and of a code of conduct regulating participation in the election in a manner consistent with respect for human rights and prohibiting coercion or financial inducement in order to influence voter preference;
 - b) The suspension or abrogation, in consultation with the SNC, of provisions of existing laws which could defeat the objects and purposes of this Agreement;
 - c) The design and implementation of a voter education programme, covering all aspects of the election, to support the election process;
 - d) The design and implementation of a system of voter registration, as a first phase of the electoral process, to ensure that eligible voters have the opportunity to register, and the subsequent preparation of verified voter registration lists;
 - e) The design and implementation of a system of registration of political parties and lists of candidates;
 - f) Ensuring fair access to the media, including press, television and radio, for all political parties contesting in the election;
 - g) The adoption and implementation of measures to monitor and facilitate the participation of Cambodians in the elections, the political campaign and the balloting procedures;
 - h) The design and implementation of a system of balloting and polling, to ensure that registered voters have the opportunity to vote;
 - i) The establishment, in consultation with the SNC, of co-ordinated arrangements to facilitate the presence of foreign observers wishing to observe the campaign and voting;
 - j) Overall direction of polling and the vote count;
 - k) The identification and investigation of complaints of electoral irregularities, and the taking of appropriate corrective action;
 - l) Determining whether or not the election was free and fair and, if so, certification of the list of persons duly elected.
- 4 In carrying out its responsibilities under the present section, UNTAC will establish a system of safeguards to assist it in ensuring the absence of fraud during the electoral process, including arrangements for Cambodian representatives to observe the registration and polling procedures and the provision of an UNTAC mechanism for hearing and deciding complaints.
- 5 The timetable for the various phases of the electoral process will be determined by UNTAC, in consultation with the SNC as provided in paragraph 2 of this section. The duration of the electoral process will not exceed nine months from the commencement of voter registration.
- 6 In organising and conducting the electoral process, UNTAC will make every effort to ensure that the system and procedures adopted are absolutely impartial, while the operational arrangements are as administratively simple and efficient as possible.

Section E Human Rights

In accordance with Article 16, UNTAC will make provisions for:

- a) The development and implementation of a programme of human rights education to promote respect for and understanding of human rights;
- b) General human rights oversight during the transitional period;
- c) The investigation of human rights complaints, and, where appropriate, corrective action.

Annex 2 Withdrawal, Ceasefire and Related Measures

Article I Ceasefire

- 1 All Cambodian Parties (hereinafter referred to as "the Parties") agree to observe a comprehensive ceasefire on land and water and in the air. This ceasefire will be implemented in two phases. During the first phase, the ceasefire will be observed with the assistance of the Secretary-General of the United Nations through his good offices. During the second phase, which should commence as soon as possible, the ceasefire will be supervised, monitored and verified by UNTAC. The Commander of the military component of UNTAC, in consultation with the Parties, shall determine the exact time and date at which the second phase will commence. This date will be set at least four weeks in advance of its coming into effect.
- 2 The Parties undertake that, upon the signing of this Agreement, they will observe a ceasefire and will order their armed forces immediately to disengage and refrain from all hostilities and any deployment, movement or action that would extend the territory they control or that might lead to a resumption of fighting, pending the commencement of the second phase. "Forces" are agreed to include all regular, provincial, district, paramilitary and other auxiliary forces.

During the first phase, the Secretary-General of the United Nations will provide his good offices to the Parties to assist them in its observance. The Parties undertake to co-operate with the Secretary-General or his representatives in the exercise of his good offices in this regard.

- 3 The Parties agree that, immediately upon the signing of this Agreement, the following information will be provided to the United Nations:
 - a) Total strength of their forces, organisation, precise number and location of deployments inside and outside Cambodia. The deployment will be depicted on a map marked with locations of all troop positions, occupied or unoccupied, including staging camps, supply bases and supply routes;
 - b) Comprehensive lists of arms, ammunition and equipment held by their forces, and the exact locations at which those arms, ammunition and equipment are deployed;
 - c) Detailed record of their minefields, including types and characteristics of mines laid and information of booby traps used by them together with any information available to them about minefields laid or booby traps used by the other Parties;

d) Total strength of their police forces, organisation, precise numbers and locations of deployments as well as comprehensive lists of their arms, ammunition and equipment and the exact locations at which those arms, ammunition and equipment are deployed.

- 4 Immediately upon his arrival in Cambodia, and not later than four weeks before the beginning of the second phase, the Commander of the military component of UNTAC will, in consultation with the Parties, finalise UNTAC's plan for the regroupment and cantonment of the forces of the Parties and for the storage of their arms, ammunition and equipment, in accordance with Article III of this annex. This plan will include the designation of regroupment and cantonment areas, as well as an agreed timetable. The cantonment areas will be established at battalion size or larger.
- 5 The Parties agree to take steps to inform their forces at least two weeks before the beginning of the second phase, using all possible means of communication, about the agreed date and time of the beginning of the second phase, about the agreed plan for the regroupment and cantonment of their forces and for the storage of their arms, ammunition and equipment and, in particular, about the exact locations of the regroupment areas to which their forces are to report. Such information will continue to be disseminated for a period of four weeks after the beginning of the second phase.
- 6 The Parties shall scrupulously observe the ceasefire and will not resume any hostilities by land, water or air. The commanders of their armed forces will ensure that all troops under their command remain on their respective positions, pending their movement to the designated regroupment areas, and refrain from all hostilities and from any deployment or movement or action which would extend the territory they control or which might lead to a resumption of fighting.

Article II Liaison System and Mixed Military Working Group

A Mixed Military Working Group (MMWG) will be established with a view to resolving any problems that may arise in the observance of the ceasefire. It will be chaired by the most senior United Nations military officer in Cambodia or his representative. Each Party agrees to designate an officer of the rank of brigadier or equivalent to serve on the MMWG. Its composition, method of operation and meeting places will be determined by the most senior United Nations military officer in consultation with the Parties. Similar liaison arrangements will be made at lower military command levels to resolve practical problems on the ground.

Business by the gun: *lethal consequences of failed demobilisation*

The recent collapse of the Khmer Rouge and the resistance forces loyal to ousted Premier Prince Ranariddh heralds the end of large-scale military resistance to a Cambodian government for the first time since the mid-1970s. Yet the suspension in 1992 of the demobilisation of the four Khmer military factions called for by the Paris agreements has translated into a mounting security problem of a different sort since UNTAC's departure. Underlying this problem are the precariousness of rural livelihoods, the wide availability of guns and the tightening links between business and organised violence.

Generalised lawlessness

With the breakdown of state authority in Cambodia since 1993, various 'strongmen' — be they officers of the security forces, government officials or bandit chiefs — have become increasingly engaged in a wide range of illicit commercial activities backed by the gun. The timber trade is the most lucrative, involving illegal logging, the exaction of protection money from logging companies, and the unofficial taxation of transported wood, especially as it crosses Cambodia's borders. High-ranking political leaders are complicit in this trade, selling permits to fell timber to the highest bidder — usually foreign companies.

Little of the potential revenue from this activity, estimated at as much as US \$100 million in 1996 and 1997 by the IMF, reaches government coffers. Moreover, little thought is given to proper forestry management and Cambodia's forests, its most valuable natural resource, are shrinking rapidly. The stagnation of government revenues has made it difficult to pay the country's security forces which have become increasingly involved in commercial activities as their military utility has decreased.

Master-servant relationships

Soldiers receive salaries of some US \$12-15 a month which represents barely a third of the minimum needed to survive. As a consequence, master-servant relationships — whereby soldiers are totally dependent on their commanders for the handouts needed to supplement their salaries — have become accentuated. Inducements such as the promise of looting or involvement in illicit commercial activities further strengthens this relationship and have in effect become the only way to maintain a standing military force in Cambodia today.

At the heart of the problem are Cambodia's bloated, corrupt and unprofessional armed forces which

drain the national budget. Paradoxically, the decline of the Khmer Rouge threat has led to the swelling of the Royal Cambodian Armed Forces (RCAF) as thousands of defecting Khmer Rouge soldiers have been integrated into its ranks between 1995 and 1998. Of the RCAF's current 140,000 soldiers (three times the number currently needed), up to one third are 'ghosts' whose salaries are regularly siphoned off by their commanders.

The village-based militia system — an armed wing of district, commune, or village chiefs — constitutes an additional, lingering problem. Though once serving as an effective bulwark against the Khmer Rouge in areas left uncovered by the RCAF, their local protection function is no longer necessary. But the guns remain — an estimated 500,000 small arms throughout the country — and when political tensions rise or livelihoods become precarious, they come out again, often with tragic consequences.

Security reforms

Cambodia's environmental and security problems are closely linked, but neither can be effectively tackled in the absence of political reforms. An August 1997 eight-point plan proposed by Hun Sen to reduce the security problem included restrictions on the number of personal body guards, the outlawing of illegal check-points and reductions in the size of local militias. These measures provided relief in Phnom Penh and — at least by day — on Cambodia's highways, but fell far short of what is needed to tackle the security problem effectively.

The plan to demobilise 40,000 soldiers set in motion in 1997 with World Bank assistance was an important first step, though it was cut short by the July 1997 coup. This in itself, however, would have had little impact on the overall security situation without a weapons amnesty, better border controls and the creation of alternative employment for demobilised soldiers. Given the key business interests outside Cambodia which profit enormously from the rape of its forests, any solution must have both a local and an international component.

Membership of ASEAN would offer Cambodia a platform to begin addressing the regional dimensions of the illegal timber trade, though this will do little to tackle lawlessness back home. The success of future security reforms in Cambodia is dependent on greater political stability and more accountable state institutions. ■

Article III Regroupment and cantonment of the forces of the Parties and storage of their arms, ammunition and equipment

- 1 In accordance with the operational timetable referred to in paragraph 4 of Article I of the present annex, all forces of the Parties that are not already in designated cantonment areas will report to designated regroupment areas, which will be established and operated by the military component of UNTAC. These regroupment areas will be established and operational not later than one week prior to the date of the beginning of the second phase. The Parties agree to arrange for all their forces, with all their arms, ammunition and equipment, to report to regroupment areas within two weeks after the beginning of the second phase. All personnel who have reported to the regroupment areas will thereafter be escorted by personnel of the military component of UNTAC, with their arms, ammunition and equipment, to designated cantonment areas. All Parties agree to ensure that personnel reporting to the regroupment areas will be able to do so in full safety and without any hindrance.
- 2 On the basis of the information provided in accordance with paragraph 3 of Article I of the present annex, UNTAC will confirm that the regroupment and cantonment processes have been completed in accordance with the plan referred to in paragraph 4 of Article I of this annex. UNTAC will endeavour to complete these processes within four weeks from the date of the beginning of the second phase. On the completion of regroupment of all forces and of their movement to cantonment areas, respectively, the Commander of the military component of UNTAC will so inform each of the four Parties.
- 3 The Parties agree that, as their forces enter the designated cantonment areas, their personnel will be instructed by their commanders to immediately hand over all their arms, ammunition and equipment to UNTAC for storage in the custody of UNTAC.
- 4 UNTAC will check the arms, ammunition and equipment handed over to it against the lists referred to in paragraph 3. b) of Article I of this annex, in order to verify that all the arms, ammunition and equipment in the possession of the Parties have been placed under its custody.

Article IV Resupply of forces during cantonment

The military component of UNTAC will supervise the resupply of all forces of the Parties during the regroupment and cantonment processes. Such resupply will be confined to items of a non-lethal nature such as food, water, clothing and medical supplies as well as provision of medical care.

Article V Ultimate disposition of the forces of the Parties and of their arms, ammunition and equipment

- 1 In order to reinforce the objectives of a comprehensive political settlement, minimise the risks of a return to warfare, stabilise the security situation and build confidence among the Parties to the conflict, all Parties agree to undertake a phased and balanced process of demobilisation of at least 70 per cent of their military forces. This process shall be undertaken in accordance with a detailed plan to be drawn up by UNTAC on the basis of the information provided under Article I of this annex and in consultation with the Parties. It should be completed prior to the end of the process of registration for the elections and on a date to be determined by the Special Representative of the Secretary-General.
- 2 The Cambodian Parties hereby commit themselves to demobilise all their remaining forces before or shortly after the elections and, to the extent that full demobilisation is unattainable, to respect and abide by whatever decision the newly elected government that emerges in accordance with Article 12 of this Agreement takes with regard to the incorporation of parts or all of those forces into a new national army. Upon completion of the demobilisation referred to in paragraph 1, the Cambodian Parties and the Special Representative of the Secretary-General shall undertake a review regarding the final disposition of the forces remaining in the cantonments, with a view to determining which of the following shall apply:
 - a) If the Parties agree to proceed with the demobilisation of all or some of the forces remaining in the cantonments, preferably prior to or otherwise shortly after the elections, the Special Representative shall prepare a timetable for so doing, in consultation with them;
 - b) Should total demobilisation of all of the residual forces before or shortly after the elections not be possible, the Parties hereby undertake to make available all of their forces remaining in cantonments to the newly elected government that emerges in accordance with Article 12 of this Agreement, for consideration for incorporation into a new national army.

They further agree that any such forces which are not incorporated into the new national army will be demobilised forthwith according to a plan to be prepared by the Special Representative. With regard to the ultimate disposition of the remaining forces and all the arms, ammunition and equipment, UNTAC, as it withdraws from Cambodia, shall retain such authority as is necessary to ensure an orderly transfer to the newly elected government of those responsibilities it has exercised during the transitional period.

- 3 UNTAC will assist, as required, with the reintegration into civilian life of the forces demobilised prior to the elections.
- 4
 - a) UNTAC will control and guard all the arms, ammunition and equipment of the Parties throughout the transitional period;
 - b) As the cantoned forces are demobilised in accordance with paragraph 1 above, there will be a parallel reduction by UNTAC of the arms, ammunition and equipment stored on site in the cantonment areas. For the forces remaining in the cantonment areas, access to their arms, ammunition and equipment shall only be on the basis of the explicit authorisation of the Special Representative of the Secretary-General;
 - c) If there is a further demobilisation of the military forces in accordance with paragraph 2. a) above, there will be a commensurate reduction by UNTAC of the arms, ammunition and equipment stored on site in the cantonment areas;
 - d) The ultimate disposition of all arms, ammunition and equipment will be determined by the government that emerges through the free and fair elections in accordance with Article 12 of this Agreement.

Article VI Verification of withdrawal from Cambodia and non-return of all categories of foreign forces

- 1 UNTAC shall be provided, no later than two weeks before the commencement of the second phase of the ceasefire, with detailed information in writing regarding the withdrawal of foreign forces. This information shall include the following elements:
 - a) Total strength of these forces and their organisation and deployment;
 - b) Comprehensive lists of arms, ammunition and equipment held by these forces, and their exact locations;
 - c) Withdrawal plan (already implemented or to be implemented), including withdrawal routes, border crossing points and time of departure from Cambodia.

- 2 On the basis of the information provided in accordance with paragraph 1 above, UNTAC will undertake an investigation in the manner it deems appropriate. The Party providing the information will be required to make personnel available to accompany UNTAC investigators.
- 3 Upon confirmation of the presence of any foreign forces, UNTAC will immediately deploy military personnel with the foreign forces and accompany them until they have withdrawn from Cambodian territory. UNTAC will also establish checkpoints on withdrawal routes, border crossing points and airfields to verify the withdrawal and ensure the non-return of all categories of foreign forces.
- 4 The Mixed Military Working Group (MMWG) provided for in Article II of this annex will assist UNTAC in fulfilling the above-mentioned tasks.

Article VII Cessation of outside military assistance to all Cambodian Parties

- 1 All Parties undertake, from the time of the signing of this Agreement, not to obtain or seek any outside military assistance, including weapons, ammunition and military equipment from outside sources.
- 2 The Signatories whose territory is adjacent to Cambodia, namely, the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand and the Socialist Republic of Viet Nam, undertake to:
 - a) Prevent the territories of their respective States, including land territory, territorial sea and air space, from being used for the purpose of providing any form of military assistance to any of the Cambodian Parties. Resupply of such items as food, water, clothing and medical supplies through their territories will be allowed, but shall, without prejudice to the provisions of sub-paragraph c) below, be subject to UNTAC supervision upon arrival in Cambodia;
 - b) Provide written confirmation to the Commander of the military component of UNTAC, not later than four weeks after the second phase of the ceasefire begins, that no forces, arms, ammunition or military equipment of any of the Cambodian Parties are present on their territories;
 - c) Receive an UNTAC liaison officer in each of their capitals and designate an officer of the rank of colonel or equivalent, not later than four weeks after the beginning of the second phase of the ceasefire, in order to assist

UNTAC in investigating, with due respect for their sovereignty, any complaints that activities are taking place on their territories that are contrary to the provisions of the comprehensive political settlement.

- 3 To enable UNTAC to monitor the cessation of outside assistance to all Cambodian Parties, the Parties agree that, upon signature of this Agreement, they will provide to UNTAC any information available to them about the routes and means by which military assistance, including weapons, ammunition and military equipment, have been supplied to any of the Parties. Immediately after the second phase of the ceasefire begins, UNTAC will take the following practical measures:

- a) Establish checkpoints along the routes and at selected locations along the Cambodian side of the border and at airfields inside Cambodia;
- b) Patrol the coastal and inland waterways of Cambodia;
- c) Maintain mobile teams at strategic locations within Cambodia to patrol and investigate allegations of supply of arms to any of the Parties.

Article VIII Caches of weapons and military supplies

- 1 In order to stabilise the security situation, build confidence and reduce arms and military supplies throughout Cambodia, each Party agrees to provide to the Commander of the military component of UNTAC, before a date to be determined by him, all information at its disposal, including marked maps, about known or Suspected caches of weapons and military supplies throughout Cambodia.
- 2 On the basis of information received, the military component of UNTAC shall, after the date referred to in paragraph 1, deploy verification teams to investigate each report and destroy each cache found.

Article IX Unexploded ordnance devices

- 1 Soon after arrival in Cambodia, the military component of UNTAC shall ensure, as a first step, that all known minefields are clearly marked.
- 2 The Parties agree that, after completion of the regroupment and cantonment processes in accordance with Article III of the present annex, they will make available mine-clearing teams which, under the supervision and control of UNTAC military personnel, will leave

the cantonment areas in order to assist in removing, disarming or deactivating remaining unexploded ordnance devices. Those mines or objects which cannot be removed, disarmed or deactivated will be clearly marked in accordance with a system to be devised by the military component of UNTAC.

- 3 UNTAC shall:
 - a) Conduct a mass public education programme in the recognition and avoidance of explosive devices;
 - b) Train Cambodian volunteers to dispose of unexploded ordnance devices;
 - c) Provide emergency first-aid training to Cambodian volunteers.

Article X Investigation of violations

- 1 After the beginning of the second phase, upon receipt of any information or complaint from one of the Parties relating to a possible case of non-compliance with any of the provisions of the present annex or related provisions, UNTAC will undertake an investigation in the manner which it deems appropriate. Where the investigation takes place in response to a complaint by one of the Parties, that Party will be required to make personnel available to accompany the UNTAC investigators. The results of such investigation will be conveyed by UNTAC to the complaining Party and the Party complained against, and if necessary to the SNC.
- 2 UNTAC will also carry out investigations on its own initiative in other cases when it has reason to believe or suspect that a violation of this annex or related provisions may be taking place.

Article XI Release of prisoners of war

The military component of UNTAC will provide assistance as required to the International Committee of the Red Cross in the latter's discharge of its functions relating to the release of prisoners of war.

Article XII Repatriation and resettlement of displaced Cambodians

The military component of UNTAC will provide assistance as necessary in the repatriation of Cambodian refugees and displaced persons carried out in accordance with Articles 19 and 20 of this Agreement, in particular in the clearing of mines from repatriation routes, reception centres and resettlement areas, as well as in the protection of the reception centres.

The undoing of UNTAC's elections: *no mechanism for a transfer of power*

The principal focus of the Paris agreements was on the holding of UN-organised elections in which the factions, and any other political parties formed, would compete. It was foreseen that, after no more than three months, the constituent assembly would adopt a new constitution and choose a government which would receive international recognition. This would then signal the end of UNTAC's mandate, though the sustainability of the political transition — not to mention Cambodia's fragile peace — would hinge precariously on the factions' willingness to respect the election results.

Elections as 'war by other means'

The importance accorded to the elections by the international community was not so much because it insisted Cambodia had to be a democracy, but because it seemed to be the only available means to end the violence. Only through elections could international insistence that all factions cease hostilities and participate in a settlement be reconciled with the factions' refusal to share power. The elections were therefore to be 'war by other means' and held open to each of the factions the possibility of achieving final victory in their long struggle for power.

Arguably this strategy was the only one available in 1991 given domestic and international realities. Nonetheless, it failed and its failure can be traced to three flaws in the Paris agreements:

First, the agreements treated the elections as a one-off 'exercise of the right to self-determination of the Cambodian people', more akin to a referendum on independence (such as the UN had organised elsewhere) than part of a long-term democratic transition. The agreements said nothing about how such a transition would work in practice or how the election results would be implemented. The agreements foresaw how a new government could be formed (albeit after a potentially dangerous hiatus of three months) but not how a new state structure would be put into place.

For example, no clear mechanism was created by which the security forces and bureaucracies of the competing factions would be transformed into a single, apolitical state apparatus. Whilst UNTAC was supposed to control the factional structures prior to elections, it was not empowered to permanently reform and unite them. One consequence was that, when a relatively weak FUNCINPEC

won the polls, it had no practical means with which to enforce its democratic mandate.

Peacebuilding delayed

Second, the relatively limited mandate of UNTAC meant that the longer-term challenges of consolidating the peace would be left to the post-election government. Even if UNTAC achieved disarmament, numerous other challenges would remain after its departure. These included uniting the factional armies and administrations, building a viable market economy and creating a new set of laws and institutions to protect human rights, including the first independent judiciary in Cambodian history.

A crucial prerequisite for the other steps would be a genuine willingness by the factions to set aside their differences. But by envisaging a short transition ending in elections, the agreements obstructed rather than promoted reconciliation. Parties contesting elections inevitably stress their differences. But where the contestants are factions who, after a decade-long war, retain their animosities, territories and structures intact, no election campaign can expect to foster reconciliation and goodwill.

Electoral stakes too high

Thirdly, the agreements simply made electoral victory too important an arbiter of power. If the potential rewards of winning the election were enormous — virtually absolute power and patronage, including over the courts, bureaucracy, economy and media — the consequences of losing were more significant still. For the factions relegated to the role of political opposition, there were to be no effective institutions, no enforceable legal provisions, and no indigenous traditions to protect their interests once UNTAC left. Their political and economic interests, not to mention their lives and liberty, would be at the discretion of their former enemies.

What had protected the factions hitherto — their armed strength — was supposed to be given up at precisely the moment of greatest vulnerability. It should have come as no surprise, therefore, that no faction was prepared to accept electoral defeat. Instead each used every means at its disposal in the pursuit of victory and it was ultimately the CPP's superior military power and dominance of the administration which made the difference. ■

Annex 3 Elections

- 1 The constituent assembly referred to in Article 12 of the Agreement shall consist of 120 members. Within three months from the date of the election, it shall complete its tasks of drafting and adopting a new Cambodian Constitution and transform itself into a legislative assembly which will form a new Cambodian Government.
- 2 The election referred to in Article 12 of the Agreement will be held throughout Cambodia on a provincial basis in accordance with a system of proportional representation on the basis of lists of candidates put forward by political parties.
- 3 All Cambodians, including those who at the time of signature of this Agreement are Cambodian refugees and displaced persons, will have the same rights, freedoms and opportunities to take part in the electoral process.
- 4 Every person who has reached the age of eighteen at the time of application to register; or who turns eighteen during the registration period, and who either was born in Cambodia or is the child of a person born in Cambodia, will be eligible to vote in the election.
- 5 Political parties may be formed by any group of five thousand registered voters. Party platforms shall be consistent with the principles and objectives of the Agreement on a comprehensive political settlement.
- 6 Party affiliation will be required in order to stand for election to the constituent assembly. Political parties will present lists of candidates standing for election on their behalf, who will be registered voters.
- 7 Political parties and candidates will be registered in order to stand for election. UNTAC will confirm that political parties and candidates meet the established criteria in order to qualify for participation in the election. Adherence to a Code of Conduct established by UNTAC in consultation with the SNC will be a condition for such participation.
- 8 Voting will be by secret ballot, with provision made to assist those who are disabled or who cannot read or write.
- 9 The freedoms of speech, assembly and movement will be fully respected. All registered political parties will enjoy fair access to the media, including the press, television and radio.

Annex 4 Repatriation of Cambodian Refugees and Displaced Persons

Part I Introduction

- 1 As part of the comprehensive political settlement, every assistance will need to be given to Cambodian refugees and displaced persons as well as to countries of temporary refuge and the country of origin in order to facilitate the voluntary return of all Cambodian refugees and displaced persons in a peaceful and orderly manner. It must also be ensured that there would be no residual problems for the countries of temporary refuge. The country of origin with responsibility towards its own people will accept their return as conditions become conducive.

Part II Conditions Conducive to the Return of Refugees and Displaced Persons

- 2 The task of rebuilding the Cambodian nation will require the harnessing of all its human and natural resources. To this end, the return to the place of their choice of Cambodians from their temporary refuge and elsewhere outside their country of origin will make a major contribution.
- 3 Every effort should be made to ensure that the conditions which have led to a large number of Cambodian refugees and displaced persons seeking refuge in other countries should not recur. Nevertheless, some Cambodian refugees and displaced persons will wish and be able to return spontaneously to their homeland.
- 4 There must be full respect for the human rights and fundamental freedoms of all Cambodians, including those of the repatriated refugees and displaced persons, in recognition of their entitlement to live in peace and security, free from intimidation and coercion of any kind. These rights would include, inter alia, freedom of movement within Cambodia, the choice of domicile and employment, and the right to property.
- 5 In accordance with the comprehensive political settlement, every effort should be made to create concurrently in Cambodia political, economic and social conditions conducive to the return and harmonious integration of the Cambodian refugees and displaced persons.
- 6 With a view to ensuring that refugees and displaced persons participate in the elections, mass repatriation should commence and be completed as soon as possible, taking into account all the political, humanitarian, logistical, technical

Cambodia's refugee repatriation: *hostage to a precarious peace*

The treatment of refugees was a central concern of the Paris agreements and the repatriation of some 350,000 refugees in 1992 and 1993 became one of UNTAC's landmark accomplishments. Cambodian refugees did not, however, return to a working peace plan, let alone peace: many returned to areas of substantial insecurity and open conflict. Repatriation was a gamble that would only pay off if the groundwork for a durable peace was successfully established during UNTAC's 18-month mission.

Uprooted again

By March 1994, barely three months after UNTAC's mission ended, that gamble had not paid off; 25,000 Cambodians were forced to flee into Thailand following renewed fighting between government forces and the Khmer Rouge. Many other Cambodians would be displaced over the next three years, most of whom had been repatriated from Thailand during 1992-93. Just months before the 1998 elections, following fighting between forces loyal to the two Prime Ministers, some 60,000 Cambodians were still sheltering on Thai territory. At least as many again — predominantly women and children — were internally displaced inside Cambodia.

Political priorities hold sway

The post-1994 population displacements in Cambodia should not mask the fact that the UNTAC-led repatriation effort had been carried out with extreme technical proficiency, and in safety. Repatriation was an integral part of the overall peacekeeping mission and its humanitarian objectives — closing the squalid border camps and fulfilling the overwhelming desire of the refugees to go home — closely matched three political objectives at that time:

First, in terms of ending the war, repatriation would allow the border refugee camps, from which the three resistance factions had drawn the bulk of their soldiers and provisions, to be closed.

Second, repatriation would help set the stage for the 1993 elections by giving the right to vote to the maximum possible number of Cambodians. Finally, repatriation would relieve the massive burdens placed on Thailand which had generously hosted the Cambodian refugees for over a decade.

However, the Paris agreements fell short of spelling out the conditions under which the return of Cambodian refugees could be deemed safe and

the contingencies under which it was not. In particular, the agreements tied the United Nations High Commissioner for Refugees (UNHCR) to UNTAC's demanding timetable, since it was central to the agreements that repatriation be completed before the May 1993 elections. Slowing down or halting the repatriation would deal a crippling blow to the credibility, even the viability, of the elections and the UN mission itself. Consequently, crucial questions of reintegration and ensuring the protection of returnees once they were home received less attention than they should have done.

Persisting vulnerability

Until a new government was formed, UNTAC would be the key guarantor of the safety of repatriated refugees. However, it could ultimately do little to curb the violence which plagued Cambodia's rural areas. Moreover, in the absence of adequate information, many refugees ended up returning to places which were already unstable and which the UNHCR itself had designated 'no go areas'. Certain districts in Battambang province, for instance, Cambodia's 'bread-basket' and the favoured destination of refugees, were heavily mined and lacked sufficient farmland to resettle all who came.

The repatriation's general success, moreover, did not preclude the possibility of future population displacements. The renewed refugee movements into Thailand in 1994 were initially pushed back by the authorities, though the Thais would be more accommodating in later incidents. By 1994, the UNHCR itself had largely ceased providing support to returnees and had reduced its presence in Cambodia. It had no official mandate to deal with those people subsequently displaced internally, many of them the so-called 'old refugees' repatriated in 1993, simply because they had not crossed Cambodia's borders

Cambodia's repatriation was therefore ambitious, with little margin for error. Its humanitarian concerns were in many ways held hostage to its avowedly political aims. Even though the repatriation, like the 1993 elections, was a tangible technical success, its sustainability would ultimately depend on the success of the political transition underway in Cambodia at the time. In the absence of a durable peace, the 'privilege' of returning home has meant, for many Cambodian refugees, little more than a sentence to increased vulnerability. ■

and socio-economic factors involved, and with the co-operation of the SNC.

- 7 Repatriation of Cambodian refugees and displaced persons should be voluntary and their decision should be taken in full possession of the facts. Choice of destination within Cambodia should be that of the individual. The unity of the family must be preserved.

Part III Operational Factors

- 8 Consistent with respect for principles of national sovereignty in the countries of temporary refuge and origin, and in close co-operation with the countries of temporary refuge and origin, full access by the Office of the United Nations High Commissioner for Refugees (UNHCR), CRC and other relevant international agencies should be guaranteed to all Cambodian refugees and displaced persons, with a view to the agencies undertaking the census, tracing, medical assistance, food distribution and other activities vital to the discharge of their mandate and operational responsibilities; such access should also be provided in Cambodia to enable the relevant international organisations to carry out their traditional monitoring as well as operational responsibilities.
- 9 In the context of the comprehensive political settlement, the Signatories note with satisfaction that the Secretary-General of the United Nations has entrusted UNHCR with the role of leadership and co-ordination among intergovernmental agencies assisting with the repatriation and relief of Cambodian refugees and displaced persons. The Signatories look to all non-governmental organisations to co-ordinate as much as possible their work for the Cambodian refugees and displaced persons with that of UNHCR.
- 10 The SNC, the Governments of the countries in which the Cambodian refugees and displaced persons have sought temporary refuge, and the countries which contribute to the repatriation and integration effort will wish to monitor closely and facilitate the repatriation of the returnees. An ad hoc consultative body should be established for a limited term for these purposes. The UNHCR, the ICRC, and other international agencies as appropriate, as well as UNTAC, would be invited to join as full participants.
- 11 Adequately monitored short-term repatriation assistance should be provided on an impartial basis to enable the families and individuals returning to Cambodia to establish their lives and livelihoods harmoniously in their society. These interim measures would be phased out and replaced in the longer term by the reconstruction programme.

- 12 Those responsible for organising and supervising the repatriation operation will need to ensure that conditions of security are created for the movement of the refugees and displaced persons. In this respect, it is imperative that appropriate border crossing points and routes be designated and cleared of mines and other hazards.
- 13 The international community should contribute generously to the financial requirements of the repatriation operation.

Annex 5 Principles for a New Constitution for Cambodia

- 1 The constitution will be the supreme law of the land. It may be amended only by a designated process involving legislative approval, popular referendum, or both.
- 2 Cambodia's tragic recent history requires special measures to assure protection of human rights. Therefore, the constitution will contain a declaration of fundamental rights, including the rights to life, personal liberty, security, freedom of movement, freedom of religion, assembly and association including political parties and trade unions, due process and equality before the law, protection from arbitrary deprivation of property or deprivation of private property without just compensation, and freedom from racial, ethnic, religious or sexual discrimination. It will prohibit the retroactive application of criminal law. The declaration will be consistent with the provisions of the Universal Declaration of Human Rights and other relevant international instruments. Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights.
- 3 The constitution will declare Cambodia's status as a sovereign, independent and neutral State, and the national unity of Cambodian people.
- 4 The constitution will state that Cambodia will follow a system of liberal democracy, on the basis of pluralism. It will provide for periodic and genuine elections. It will provide for the right to vote and to be elected by universal and equal suffrage. It will provide for voting by secret ballot, with a requirement that electoral procedures provide a full and fair opportunity to organise and participate in the electoral process.
- 5 An independent judiciary will be established, empowered to enforce the rights provided under the constitution.
- 6 The constitution will be adopted by a two-thirds majority of the members of the constituent assembly.

Breathing life into Cambodia's Constitution: *constraints to debate in the National Assembly*

Despite its good provisions, the liberal democratic Constitution bequeathed to Cambodia by the Paris agreements remains largely inoperative five years after its promulgation. With UNTAC's mandate drawing to a close, intense pressure was placed on Cambodians to form a legitimate government and to adopt a new Constitution within three months of the May 1993 elections. The difficult task of formulating and passing the organic laws required to enable the Constitution was effectively deferred until after UNTAC's departure.

Still-born Constitution

As the Royal Government's first parliament drew to a close following the 1998 elections, key laws governing the activities of judges and public prosecutors, as well as the organisation of the courts and other legal bodies, had still not been enacted. Moreover, the Constitutional Council, which is charged with interpreting these laws and ensuring their legality, was only formed two months before the July elections. The Council's legality and legitimacy were questioned from the start because it had not been formed in accordance with constitutional procedures and was seen to be biased in favour of the Cambodian People's Party.

These problems highlight the fact that political conceptions and practices of an earlier era do not simply come to an end by the mere adoption of new principles, no matter how attractive or appropriate these may seem on paper. Since many of the new laws under discussion in the new National Assembly were politically controversial, the ability to debate, (together with a willingness to search for common ground and to compromise in the interests of progress), was perhaps the most important skill the new deputies would need. No amount of outside technical support would make a difference in passing the new legislation required as long as the political and cultural barriers to debate in Cambodia's traditionally hierarchical political system were not addressed.

Barriers to debate

Under the communist regime of the 1980s, in particular, debate within the National Assembly was from the top down and the role of parliamentarians was essentially to approve laws formulated by party leaders rather than to discuss them. Today, parliamentarians have the right — in prin-

ciple — to table propositions for new laws, though in practice the only ones accepted for debate come from the government. Few parliamentarians — be they from the CPP or FUNCINPEC — dared challenge their respective party lines during the 1993-97 period. Moreover, FUNCINPEC's leadership was reluctant to risk its delicate power-sharing relationship with the CPP by tabling sensitive issues for discussion in the National Assembly.

Behind these political barriers to debate lie more enduring cultural constraints. In the Khmer culture, to simply question someone can often be misinterpreted as criticising or placing blame on them. Many people are still not comfortable with the idea that political opponents can harangue each other in a parliamentary session, as happens in Western parliamentary systems, without one of them losing face. Women deputies, in particular, are still often expected to conform to rigid Khmer cultural norms requiring them to be soft-spoken and submissive.

Despite growing awareness of the need to exchange ideas in the interests of the broader public good, many parliamentarians lack the skills and confidence to debate. Already overworked, few have the time to learn these skills or to prepare for parliamentary sessions. Although CPP deputies are often better prepared for debate than their counterparts in other parties, their rigid line of argumentation — which is still determined by strict party guidelines — leaves them poorly placed to engage in broader discussions, to respond constructively to opposing viewpoints, or to compromise.

Repudiating past practices

It is worth recalling that the international community became involved in Cambodia in the first place because the Khmer factions would not speak with each other. While foreign technical assistance has played an important role in supporting the National Assembly's activities, this has rarely been accompanied by enough monitoring or follow-up to ensure concrete results. Nevertheless, if their Constitution is to be enabled, Cambodians must themselves take the lead by making conscious efforts to repudiate past ways of thinking and by creating a climate more conducive to genuine dialogue. ■

Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia

Australia, Brunei Darussalam, Cambodia, Canada, the People's Republic of China, the French Republic, the Republic of India, the Republic of Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Socialist Republic of Viet Nam and the Socialist Federal Republic of Yugoslavia,

In the presence of the Secretary-General of the United Nations,

Convinced that a comprehensive political settlement for Cambodia is essential for the long-term objective of maintaining peace and security in Southeast Asia,

Recalling their obligations under the Charter of the United Nations and other rules of international law,

Considering that full observance of the principles of non-interference and non-intervention in the internal and external affairs of States is of the greatest importance for the maintenance of international peace and security,

Reaffirming the inalienable their own political, economic, cultural and social will of their peoples, without outside interference, any form whatsoever, right of States freely to determine systems in accordance with the subversion, coercion or threat in

Desiring to promote respect for and observance of human rights and fundamental freedoms in conformity with the Charter of the United Nations and other relevant international instruments, have agreed as follows:

Article 1

- 1 Cambodia hereby solemnly undertakes to maintain, preserve and defend its sovereignty, independence, territorial integrity & inviolability, neutrality, and national unity; the perpetual neutrality of Cambodia shall be proclaimed and enshrined in the Cambodian constitution to be adopted after free and fair elections.
- 2 To this end, Cambodia undertakes:
 - a) To refrain from any action that might impair the sovereignty, independence and territorial integrity and inviolability of other States;
 - b) To refrain from entering into any military alliances or other military agreements with other States that would be inconsistent with its neutrality, without prejudice to Cambodia's right to acquire the necessary military equip-

ment, arms, munitions and assistance to enable it to exercise its inherent right of self-defence and to maintain law and order;

c) To refrain from interference in any form whatsoever, whether direct or indirect, in the internal affairs of other States;

d) To terminate treaties and agreements that are incompatible with its sovereignty, independence, territorial integrity and inviolability, neutrality, and national unity;

e) To refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

f) To settle all disputes with other States by peaceful means;

g) To refrain from using its territory or the territories of other States to impair the sovereignty, independence, and territorial integrity and inviolability of other States;

h) To refrain from permitting the introduction or stationing of foreign forces, including military personnel, in any form whatsoever, in Cambodia, and to prevent the establishment or maintenance of foreign military bases, strong points or facilities in Cambodia, except pursuant to United Nations authorisation for the implementation of the comprehensive political settlement.

Article 2

- 1 The other parties to this Agreement hereby solemnly undertake to recognise and to respect in every way the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia.
- 2 To this end, they undertake:
 - a) To refrain from entering into any military alliances or other military agreements with Cambodia that would be inconsistent with Cambodia's neutrality, without prejudice to Cambodia's right to acquire the necessary military equipment, arms, munitions and assistance to enable it to exercise its inherent right of self-defence and to maintain law and order;
 - b) To refrain from interference in any form whatsoever, whether direct or indirect, in the internal affairs of Cambodia;
 - c) To refrain from the threat or use of force against the territorial integrity or political independence of Cambodia, or in any other manner inconsistent with the purposes of the United Nations;

Preventing future human rights abuses: *whose responsibility?*

The 1991 political settlement envisaged a joint effort by Cambodians and the international community to protect human rights following UNTAC's departure. In practice, however, the Cambodian legal system lacks the capacity or independence to work effectively while the international community lacks an official mandate to take vigorous action where required. Though Article 3 of this agreement commits the international community to help prevent a 'recurrence of human rights abuses' in Cambodia, this responsibility is effectively diluted by Article 2, which demands that it 'refrain from interference in any form ... in the internal affairs of Cambodia'.

Impunity institutionalised

This agreement called for the United Nations to monitor the human rights situation closely in Cambodia as well as to appoint a Special Rapporteur to assist in this task and report back to the Commission and the General Assembly annually. Working hand in hand with local human rights NGOs, the Cambodian office of the United Nations High Commissioner for Human Rights (UNHCHR) and the Special Rapporteur have played a key role in recent years in highlighting persisting human rights abuses, a fact illustrated by government calls on various occasions to have the local UNHCHR office closed down.

Human rights successes during the 1993-97 period were nonetheless mixed and partial, and recent events illustrate that a culture of impunity has again been institutionalised in Cambodia. No action has been taken to punish those guilty of the March 1997 massacre of public demonstrators in front of the National Assembly or the executions of some 40 of Prince Ranariddh's military advisers following his July overthrow. Despite detailed findings on these and a wide range of other human rights abuses by Thomas Hammarberg, the Special Rapporteur, no effective mechanism exists within the UN to translate them into strong international action.

Limits of external influence

External influence — be it direct political pressure by countries or international public opinion expressed through NGOs such as Amnesty International — will continue to face limits in preventing human rights abuses in Cambodia due to this inability of outsiders to interfere in the country's internal affairs. One consequence has been recent interest within the international community in trying Khmer Rouge leaders guilty of gross abuses of

human rights, outside the country. Without a doubt, such a trial would send a strong message of moral support to the Cambodian people as well as putting current perpetrators of human rights abuses on their guard.

However, the key question is how such a trial would, if conducted overseas, link into the development of a local capacity and will to try past and present war crimes, and effectively deter those in the future. Although there exists a general consensus in Cambodia on the need to try senior Khmer Rouge leaders, their crimes against humanity cannot easily be dissociated from those committed more recently. Moreover, given the extreme volatility of international support for such a trial, it is perhaps the case that more efforts should be made to see justice served in Cambodia, by Cambodians.

The importance of local capacity

Despite their small successes in collaboration with the UNHCHR, Cambodia's human rights organisations still lack official clout. Their activities are further hampered by a weak and politicised judiciary and inadequate legislation protecting their rights to conduct human rights education and to monitor the current situation. In this context, the establishment of a National Human Rights Commission, with a mandate to investigate human rights abuses and to provide the information needed for the courts to prosecute offenders, has been suggested as a way forward to tackle human rights abuses more effectively.

Making the Commission independent (accountable to the King), strong and impartial would nonetheless be difficult, and would require both a constitutional provision to legitimise its activities and concurrent reform of the judiciary and police. Until these conditions are met, such a commission would be dependent on strong support from the international community. Should the government seek to use the establishment of a National Commission as justification for closing down the UNHCHR office, for example, this would need to be strongly resisted.

Cambodia's present culture of impunity is the greatest barrier to the consolidation of its peace. Tackling it is a long-term challenge which the international community can do much to support. Without a doubt, however, the most meaningful measure of progress will be the degree to which Cambodian society gains awareness of human rights and its institutions are enabled to exercise effectively a mandate to protect them. ■

- d) To settle all disputes with Cambodia by peaceful means;
- e) To refrain from using their territories or the territories of other States to impair the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia;
- f) To refrain from using the territory of Cambodia to impair the sovereignty, independence and territorial integrity and inviolability of other States;
- g) To refrain from the introduction or stationing of foreign forces, including military personnel, in any form whatsoever, in Cambodia and from establishing or maintaining military bases, strong points or facilities in Cambodia, except pursuant to United Nations authorisation for the implementation of the comprehensive political settlement.

Article 3

- 1 All persons in Cambodia shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments.
- 2 To this end,
 - a) Cambodia undertakes:
 - to ensure respect for and observance of human rights and fundamental freedoms in Cambodia
 - to support the right of all Cambodian citizens to undertake activities that would promote and protect human rights and fundamental freedoms;
 - to take effective measures to ensure that the policies and practices of the past shall never be allowed to return;
 - to adhere to relevant international human rights instruments;
 - b) The other parties to this Agreement undertake to promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia as embodied in the relevant international instruments in order, in particular, to prevent the recurrence of human rights abuses.
- 3 The United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings annually to the Commission and to the General Assembly.

Article 4

The parties to this Agreement call upon all other States to recognise and respect in every way the sovereignty, independence, territorial integrity and

inviolability, neutrality and national unity of Cambodia and to refrain from any action inconsistent with these principles or with other provisions of this Agreement.

Article 5

- 1 In the event of a violation or threat of violation of the sovereignty, independence, territorial integrity and inviolability, neutrality or national unity of Cambodia, or of any of the other commitments herein, the parties to this Agreement undertake to consult immediately with a view to adopting all appropriate steps to ensure respect for these commitments and resolving any such violations through peaceful means.
- 2 Such steps may include, inter alia, reference of the matter to the Security Council of the United Nations or recourse to the means for the peaceful settlement of disputes referred to in Article 33 of the Charter of the United Nations.
- 3 The parties to this Agreement may also call upon the assistance of the co-Chairmen of the Paris Conference on Cambodia.
- 4 In the event of serious violations of human rights in Cambodia, they will call upon the competent organs of the United Nations to take such other steps as are appropriate for the prevention and suppression of such violations in accordance with the relevant international instruments.

Article 6

This Agreement shall enter into force upon signature.

Article 7

This Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Governments of the French Republic and the Republic of Indonesia. For each State acceding to this Agreement, it shall enter into force on the date of deposit of its instrument of accession.

Article 8

The original of this Agreement, of which the Chinese, English, French, Khmer and Russian texts are equally authentic, shall be deposited with the Governments of the French Republic and the Republic of Indonesia, which shall transmit certified true copies to the Governments of the other States participating in the Paris Conference on Cambodia and to the Secretary-General of the United Nations.

In witness whereof the undersigned plenipotentiaries, being duly authorised thereto, have signed this Agreement. Done at Paris this twenty-third day of October, one thousand nine hundred and ninety-one.

International assistance: *reinforcing dependency or fostering self-sufficiency?*

In recognition of Cambodia's massive needs, the Paris agreements made generous provisions for international reconstruction assistance beginning with the arrival of UNTAC and continuing well after its departure. This assistance has been invaluable and, in response, Cambodians have usually expressed sincere gratitude to international donors. Too often, however, insufficient attention has been paid by both the providers and the recipients of this aid to ensuring it has a long-term impact which will move Cambodians toward progressive independence and greater cooperation.

Overcoming obstacles to long-term community development

Since 1991 the foreign assistance agenda, underpinned by the notion that Cambodia has been 'devastated', has been dominated by emergency aid and repairs of physical infrastructure. Due to an overwhelming reliance on outside 'expertise' and resources, there has been inadequate consultation of the 'beneficiaries', an absence of public debate and insufficient attention paid to the longer-term goal of self-sustaining community development. In the rush to rebuild there has often been an unwillingness to consider that there is an intangible element relating to the ownership of the reconstruction process which should perhaps take priority over the concrete one.

Given the weakness of Cambodia's state institutions and its extremely low levels of human resource development, the international community faces genuine dilemmas in helping Cambodians assume responsibility for their own affairs. In the current politically divisive environment, it is particularly hard for donors to know which groups to support or at what point these groups are in a position to be accountable in terms of quality and coverage of programmes as well as use of donor funds. Many Cambodians themselves willingly buy into the 'magic' of outside assistance without adequate consideration given to how the country can gradually alleviate its current culture of dependency.

Cambodia's politicians, for instance, have a tendency to subscribe to short-term goals and the use of overwhelmingly concrete indicators to measure progress in rebuilding the country. Their uncritical glorification of the country's past triumphs deflects attention from the difficult choices Cambodia must make regarding the future and further reinforces

the focus on what has been destroyed at the expense of what exists and can be built upon. Without prudence and cross-cultural sensitivity, international assistance can reinforce these narrow and ultimately self-destructive attitudes.

Recognising local resourcefulness

Foreigners are, however, well placed due to their positions of influence, to help unleash creativity inherent in Cambodian society and promote the idea that a return to pre-war patterns of social interaction is not only impossible, but undesirable. Provided a long-term perspective is adopted, much can be done to counter Cambodia's profound social malaise by promoting the development of local leadership resources and a critical capacity for self-evaluation.

More than financial and leadership resources are required, however, for Cambodia does not have a strong tradition of voluntary or cooperation-based development efforts. The prevailing attitude towards community involvement among many Cambodians is that helping others is against one's own self-interest. International assistance since 1991 has clearly shown an important lesson: non-profit principles and management skills have to be nurtured through practical examples and careful training. The staff of international NGOs, in particular, are in excellent positions to promote an attitude-change and demonstrate through personal commitment that options and advantages are expanded when people work together.

Re-opening dialogue

With due cross-cultural sensitivity, outsiders can also facilitate cooperative efforts between Cambodians at other levels which would not otherwise come about without their involvement. The lack of trust, particularly within the intellectual and political leadership, stands in stark contrast to the reception Cambodians give to many foreign workers or diplomats. This gives the latter an important opportunity to play emissary roles in rebuilding confidence and re-opening lines of communication between Cambodians. The importance of this cannot be over-emphasised: the historical legacy of foreign interventions in Cambodia has been to fuel competition among its people and many still seek outside support today for partisan political gain at home. ■

Declaration on the Rehabilitation and Reconstruction of Cambodia

- 1 The primary objective of the reconstruction of Cambodia should be the advancement of the Cambodian nation and people, without discrimination or prejudice, and with full respect for human rights and fundamental freedom for all. The achievement of this objective requires the full implementation of the comprehensive political settlement.
- 2 The main responsibility for deciding Cambodia's reconstruction needs and plans should rest with the Cambodian people and the government formed after free and fair elections. No attempt should be made to impose a development strategy on Cambodia from any outside source or deter potential donors from contributing to the reconstruction of Cambodia.
- 3 International, regional and bilateral assistance to Cambodia should be co-ordinated as much as possible, complement and supplement local resources and be made available impartially with full regard for Cambodia's sovereignty, priorities, institutional means and absorptive capacity.
- 4 In the context of the reconstruction effort, economic aid should benefit all areas of Cambodia, especially the more disadvantaged, and reach all levels of society.
- 5 The implementation of an international aid effort would have to be phased in over a period that realistically acknowledges both political and technical imperatives. It would also necessitate a significant degree of co-operation between the future Cambodian Government and bilateral, regional and international contributors.
- 6 An important role will be played in rehabilitation and reconstruction by the United Nations system. The launching of an international reconstruction plan and an appeal for contributions should take place at an appropriate time, so as to ensure its success.
- 7 No effective programme of national reconstruction can be initiated without detailed assessments of Cambodia's human, natural and other economic assets. It will be necessary for a census to be conducted, developmental priorities identified, and the availability of resources, internal and external, determined.
- 8 To this end there will be scope for sending to Cambodia fact-finding missions from the United Nations system, international financial institutions and other agencies, with the consent of the future Cambodian Government.
- 8 With the achievement of the comprehensive political settlement, it is now possible and desirable to initiate a process of rehabilitation, addressing immediate needs, and to lay the groundwork for the preparation of medium- and long-term reconstruction plans.
- 9 For this period of rehabilitation, the United Nations Secretary-General is requested to help co-ordinate the programme guided by a person appointed for this purpose.
- 10 In this rehabilitation phase, particular attention will need to be given to food security, health, housing, training, education, the transport network and the restoration of Cambodia's existing basic infrastructure and public utilities.
- 11 The implementation of a longer-term international development plan for reconstruction should await the formation of a government following the elections and the determination and adoption of its own policies and priorities.
- 12 This reconstruction phase should promote Cambodian entrepreneurship and make use of the private sector, among other sectors, to help advance self-sustaining economic growth. It would also benefit from regional approaches, involving, inter alia, institutions such as the Economic and Social Commission for Asia and the Pacific (ESCAP) and the Mekong Committee, and Governments within the region; and from participation by non-governmental organisations.
- 13 In order to harmonise and monitor the contributions that will be made by the international community to the reconstruction of Cambodia after the formation of a government following the elections, a consultative body to be called the International Committee on the Reconstruction of Cambodia (ICORC), should be set up at an appropriate time and be open to potential donors and other relevant parties. The United Nations Secretary-General is requested to make special arrangements for the United Nations system to support ICORC in its work, notably in ensuring a smooth transition from the rehabilitation to reconstruction phases.