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Editors

The Extraordinary Chambers in the Courts of Cambodia

Assessing their Contribution to International
Criminal Law

 ASSER PRESS

 Springer

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The Extraordinary Chambers in the Courts of Cambodia

Assessing their Contribution to International Criminal Law

The Extraordinary Chambers in the Courts of Cambodia (ECCC) were established in 2006 to bring to trial senior leaders and those most responsible for serious crimes committed under the notorious Khmer Rouge regime. Established by domestic law following an agreement in 2003 between the Cambodia and the UN, the ECCC's hybrid features provide a unique approach of accountability for mass atrocities. The book entails an analysis of the work and jurisprudence of the ECCC, providing a detailed assessment of their legacy and contribution to international criminal law. The collection, providing a foreword by Judge Chung and containing twenty chapters from leading scholars and practitioners with intimate knowledge of the ECCC, discuss the most pressing topics and its implications for international criminal law. These include the establishment of the court, subject matter crimes, joint criminal enterprise and procedural aspects of the ECCC procedure.

Phnom Penh. Khmer Rouge. Killing Fields. Cambodia's bloody past before the ECCC despite all political obstacles. New terms, a different methodology and the influence of the Asian way of thinking provide fresh food for thought. The ECCC demonstrates that there is not only The Hague's understanding of our new currency, namely vigorously applied international criminal law. Apparently, distance and (not only) legal culture may also make a difference in such a hybrid court.

The editors' systematic approach grants genuine access to the history of this extraordinary court and its achievements in developing further substantive and procedural international criminal law. Impressive contributors reflect the role and in part changing opinion of judges and counsel working in this different environment. Apparently the broader the research and its legal basis the more tangible becomes the tension between the identification of customary international law since Nuremberg and adherence to fundamental principles of criminal law (e.g. *nullum crimen sine lege*).

This book is a must for all open-minded practitioners, scholars and young professionals in ICL.

Professor Wolfgang Schomburg

DCL (Durham, UK)

former Judge at the

*International Criminal Tribunal for the former Yugoslavia
and International Criminal Tribunal for Rwanda*

For almost a decade, the Extraordinary Chambers of the Courts of Cambodia (ECCC) have been investigating and trying crimes of a scale not seen since the Nuremberg Tribunal. An estimated 1.7 million Cambodians lost their lives during the Khmer Rouge regime of 1975–1979. When justice was finally promised, many doubted it could be delivered, particularly as it was born of a UN–Cambodia compromise under which national authorities would have the greater power. This volume of essays shows how the ECCC has struggled with the challenges and in varying measure has succeeded in creating a jurisprudence of global significance, a new model for adjudication of mass crimes under a civil-law and victim-participating procedure, and an evidentiary record, tested by courtroom confrontation, that for Cambodians may be its most important legacy.

Stephen J. Rapp

former international prosecutor and

former US ambassador-at-large for global criminal justice

Foreword

Since its establishment, the ECCC, as a mixed court, has proved that it can handle international crimes in accordance with international standards of due process and the rule of law. Through the participation of the Cambodian Judiciary in the ECCC proceedings, the ECCC has enhanced the sense of involvement of the Cambodian people in the court cases. By collecting and exchanging information on capacity-needs, the ECCC has strengthened the national justice system and its capacity. In this regard, the ECCC has provided the most valuable example of implementation of the Principle of Complementarity of the ICC.

Furthermore, the ECCC is the first international court to allow victims to participate as full parties in the proceedings, and has demonstrated that victims' full participation can be balanced with the rights of other parties. The ECCC's unique position to clarify the state of International Humanitarian Law prior to 1975–1979 has resulted in certain landmark decisions demonstrating the development of the International Humanitarian Law by bridging the 50 years gap between the Post-World War Courts and the UN-backed international tribunals. These achievements of the ECCC are more valuable because they have been achieved while overcoming the inherent limits arising from its mixed character such as a lack of adequate funding and complex structure.

As the only international tribunal established in Asia, the ECCC has shown vast potential for development in the areas of the rule of law and human rights throughout Asia. The legacy of the ECCC may enable the integrated and well-balanced development of the rule of law and human rights in this region. And the legacy of the ECCC could be continuously and systematically disseminated throughout Asia by establishing the Asian Court of Human Rights. Given the immense population of Asia, the fast economic growth of Asian states, and the great enthusiasm of Asian people, it is now the right time to open up discussions for the establishment of the Asian Court of Human Rights, and the experience and jurisprudence of the ECCC would be very useful for this purpose.

The ECCC is now facing challenges to provide an efficient and productive manner by which it could conclude proceedings while taking full advantage of its resources. To this end, the 11th Plenary Session of the ECCC in 2015 adopted

the amendment of the Internal Rules of the ECCC, allowing a selection and concentration process based on the representativeness of the cases. By continuously providing the ECCC with various views and solutions on how to overcome those challenges faced by the Court as we can find in this book, more meaningful and expeditious procedures and practices would certainly arise for the ECCC to complete its mission.

The Hague, Autumn 2015

Chang-ho Chung
Judge at the International Criminal Court
former United Nations International Judge at the
Extraordinary Chambers in the Courts of Cambodia

Contents

1	Introduction: An Extraordinary Court	1
	Simon M. Meisenberg and Ignaz Stegmiller	
Part I Assessing the History, Establishment, Judicial Independence and Legacy		
2	Trials and Tribulations: The Long Quest for Justice for the Cambodian Genocide	13
	Helen Jarvis	
3	Allegations of Political Interference, Bias and Corruption at the ECCC	45
	Shannon Maree Torrens	
4	The 1979 Trial of the People’s Revolutionary Tribunal and Implications for ECCC	77
	Frank Selbmann	
5	Expectations, Challenges and Opportunities of the ECCC	103
	Jeudy Oeung	
6	The Legacy of the ECCC	123
	Viviane E. Dittrich	
Part II Assessing the Contributions to Substantive International Criminal Law		
7	The <i>Duch</i> Case: The ECCC Supreme Court Chamber’s Review of Case 001	159
	Franziska C. Eckelmans	
8	The Case 002/01 Trial Judgment: A Stepping Stone from Nuremberg to the Present?	181
	Russell Hopkins	

9	The Theory of Joint Criminal Enterprise at the ECCC: A Difficult Relationship	203
	Lachezar Yanev	
10	Legal Constraints in the Interpretation of Genocide.	255
	Mélanie Vianney-Liaud	
11	Forced Transfer and Customary International Law: Bridging the Gap Between Nuremberg and the ICTY	291
	Nathan Quick	
12	Issues of Sexual and Gender-Based Violence at the ECCC.	321
	Valerie Oosterveld and Patricia Viseur Sellers	
13	The Grave Breaches Charges at the ECCC: An Analysis of International Humanitarian Law in the <i>Duch</i> Case	353
	Noëlle Quéniwet	
14	Past Crimes and the Effect of Statutory Limitations on the ECCC . . .	375
	David Boyle	
 Part III Assessing the Contributions to International Criminal Procedure		
15	Trial Process at the ECCC: The Rise and Fall of the Inquisitorial Paradigm in International Criminal Law?	389
	Sergey Vasiliev	
16	Managing Enormous Mass Crimes Indictments: The ECCC Severance Experiment	435
	Anne Heindel	
17	Frail Accused and Fitness to Stand Trial	461
	Roger L. Phillips	
18	The Admission of Torture Statements into Evidence.	491
	Tobias Thienel	
19	Recognizing the Limits of Victims Participation: A Comparative Examination of the Victim Participation Schemes at the ECCC and the ICC	515
	Binxin Zhang	
20	Legal Developments of Civil Party Participation at the ECCC	535
	Ignaz Stegmiller	
	ANNEX	551
	Bibliography	569
	Table of Cases	585
	Index.	603

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Abbreviations

CAT	Convention against Torture (1984)
CIJ	Co-Investigating Judges, ECCC
CPK	Communist Party of Kampuchea
DC-Cam	Documentation Center of Cambodia
DK	Democratic Kampuchea
DSS	Defence Support Section, ECCC
ECCC Agreement	Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (signed 6 June 2003, promulgated as Law on 19 October 2004 and entered into force on 29 April 2005)
ECCC Law	Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006). <i>Reprinted in the Annex</i>
ECCC or the Court	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IMT	International Military Tribunal
IMTFE	International Military Tribunal for the Far East
IR	Internal Rules of the ECCC
JCE	Joint Criminal Enterprise
OClJ	Office of the Co-Investigating Judges, ECCC
OCP	Office of the Co-Prosecutors, ECCC

PTC	Pre-Trial Chamber, ECCC
RPE	Rules of Procedure and Evidence
SCC	Supreme Court Chamber, ECCC
SCSL	Special Court for Sierra Leone
SPSC	Special Panels for Serious Crimes, East Timor
STL	Special Tribunal for Lebanon
TC	Trial Chamber
UN	United Nations
UNAKRT	United Nations Assistance Mission to the Khmer Rouge Trials
UNWCC	United Nations War Crimes Commission
VSS	Victims Support Section, ECCC