



**CAMBODIA : NEGOTIATING THE
PEACE ACCORDS**

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ABSTRACT

Five years after the Paris Peace Accords were reached on Cambodia, little analysis has been performed on the negotiations road that led to United Nations Transitional Authority in Cambodia (UNTAC). At the start of this paper, the scene is set for the negotiations that preceded the creation of UNTAC. Following a brief section on the distributive aspect of the negotiations, i.e., the aspects in which the sides were cutting-up a fixed pie (where one's gain was the other's loss), the crux of the paper is in its analysis of the integrative negotiations that lead to the unprecedented creation of UNTAC, and, as it were, the creation of UN operation centered around fundamental principals of mediation. The paper ends with remarks on the post-settlement settlement possibilities in the aftermath of UNTAC.

RESUME

Cinq ans après la conclusion des Accords de paix de Paris, peu d'analyses se sont penchées sur le processus des négociations entre parties adverses qui a conduit à la mise sur pied de l'Autorité provisoire des Nations Unies au Cambodge (APRONUC). La première section de cet article est consacrée à la mise en perspective de ces négociations à travers un compte-rendu des gains et pertes encourus par chacune des parties. L'article focalise ensuite son attention sur la conception intégrative des négociations adoptée par les Nations Unies. Une conception qui a permis la création d'une opération de maintien de la paix fondée sur le principe de médiation entre parties adverses. L'article s'achève par un bilan de cette opération et par quelques remarques générales sur les leçons que l'on peut en tirer.

CAMBODIA: NEGOTIATING THE PEACE ACCORDS

After four years and several false starts, the four parties involved in Cambodia's twenty year-old conflict signed a negotiated agreement in October 1991 that marked the end of hostilities and the beginning of reconstruction in Cambodia. In fact, this set of agreements was a comprehensive peace accord that required agreement from the four parties, the United Nations' support, and several bilateral agreements between Cambodia and her neighbors. It represented aspects of multiparty negotiations, mediation, integrative and of course distributive negotiations. This paper outlines the negotiations road to the Paris Peace Agreements, stressing in particular the major (successful) distributive breakthrough in UN Peacekeeping that has refashioned that world body into a meaningful mediator for Peace.

The paper begins with some background on the Cambodian conflict in order to set the scene for the negotiations that preceded in the creation of the United Nations Transitional Authority in Cambodia (UNTAC). It follows with a brief section on the distributive aspect of the negotiations, i.e., the aspects in which the sides were cutting-up a fixed pie (where one's gain was the other's loss). The crux of the paper is in the following section on integrative negotiations that lead to the unprecedented creation of UNTAC, and, as it were, the creation of a UN operation centered around fundamental principals of mediation. By no means can this paper be comprehensive in its examination of the negotiation sphere, for there were too many dimensions to it, but it offers a glimpse of that exciting potential. The paper ends with remarks on the post-settlement settlement possibilities in the aftermath of UNTAC.

Background to the Agreements

After 1975, Cambodia was placed in total disarray. With the US bombing of the country ending only two years earlier, and now communist victories sweeping through Indochina, Cambodia was ready for respite. But the fanatical regime of Pol Pot and the Khmer Rouge lie led did provide neither a moment of rest nor of peace. Cambodia was plunged into an abyss of backwardness and genocide.

With the Khmer Rouge in power and radical agrarian collectivization resulting in the death of 25% of the population, the country was invaded by Vietnam on Christmas day, 1978. It took the Vietnamese less than one month to oust the nearly 4 year-old Khmer Rouge regime from Phnom Penh, Cambodia's capital. Yet the Vietnamese took one decade to leave Cambodia. Though a conflict between the Khmer Rouge and the Vietnamese is sure to be at the center of this story, in Cambodia, there are always at least four sides to every story. Because of Cambodia's long-lasting monarchy, one of the parties seeking Vietnam's departure from Cambodia was the Royalist party known by its acronym as FUNCINPEC. The party was headed by the former King turned politician, Prince Norodom Sihanouk. The fourth party to peace was the Republican-era (1970-1975) KPNLF that was established in the early 1980s with a non-communist and non-royalist credo.

Together with the Khmer Rouge, in an unholy alliance to say the least, FUNCINPEC and KPNLF were known as the Coalition Government of Democratic Kampuchea (CGDK). They were in fact nothing more than rebels in a resistance movement along the Thai border, who sought to retake Cambodia from the Vietnamese. Together, the Khmer Rouge, the Vietnamese-backed regime known as the People's Republic of Kampuchea (PRK), FUNCINPEC, and the KPNLF were forced by the pressures of an ending Cold War and its changing realities to lay down their weapons and start talking to one another. In no small part, the international community had a lot to do with that. Indonesia and France played hosts, while Australia pushed American ideas. The comprehensive set of agreements they reached in 1991 revealed some ugly realities like allowing the Khmer Rouge back into society and politics without so much as a slap on their wrists. The election which was planned for 1993 had to be free and fair, and this meant giving the Khmer Rouge as much say as anyone else.

The external dynamics pitted the PRK against the CGDK. But internally, the CGDK was far from monolithic, after all, here would have been the lions and the lambs sleeping next to one another. These were the very same Khmer Rouge who had killed *en masse* Republicans and Royalists, and here were the same Republicans who had overthrown the monarchy in 1970. Each had its own army and each its own interests. While the Royalists and the Republicans may have had more in common with one another than

either of them had with the Khmer Rouge, together they were not powerful enough to put sufficient pressure on the PRK regime. Internationally, there were patron States interested in pushing their own agendas. China backed the Khmer Rouge from day-one in a containment policy of Vietnam. Vietnam's interest were clearly heeded by the PRK, while the Royalists had long ties with France and the Republicans with the United States.

The Distributive Dimension

The stylized facts indicate a strong rivalry, at least between China and Vietnam, which saw one another as threats. After Vietnam invaded Cambodia in 1979, China, with the tacit agreement of the United States made an unsuccessful attack on Northern Vietnam. Thailand's interest lay in containing Vietnam's aspirations for a pan-Southeast Asian communist dominion. Détente between Thailand and China would make this more difficult for Vietnam. Attempts at peace in the form of a Vietnamese withdrawal started as soon as 1980, when a conference on Cambodia was held. But the USSR and its client-State, Vietnam, boycotted that meeting, meaning automatic non-participation by the PRK. Year-after-year, the United Nations passed resolution-after-resolution condemning Vietnam's occupation of Cambodia. One early attempt at bringing the parties together is said to have managed to have them sit at one table, side-by-side with an exceedingly long sign reading "CAMBODIA". It was not until the geopolitical cards changed that a window of opportunity, emerged in 1987 for the first high-level face-to-face meeting between the PRK and FUNCINPEC.

At that time, the PRK offered symbolic concessions meant to increase goodwill. The proposed concessions were (1) the adoption of a new flag that resembled the old, pre-Revolutionary flag, and (2) an official change of name for the country from the People's Republic of Kampuchea to the State of Cambodia. Only the latter was voluntarily adopted in 1989 by the PRK regime. These symbols would change in time, but the distributive aspects of the negotiation called on far meaningful changes to take place. At stake was a country's heart and soul, the PRK, FUNCINPEC and its coalition partners understood that perfectly.

First, there was the issue of the Vietnamese occupation. That was simple enough, but the Vietnamese maintained from 1979 onward that their action was irreversible. As a distributive measure, no-one

suggested partial withdrawal just as there cannot be partial pregnancies. In negotiating with the PRK, the Coalition singled out five ministries deemed too powerful to remain in the control of the PRK should the country hold a general election to determine whom the people wanted as their leaders (the Khmer Rouge, FUNCINPEC, KPNLF, or the PRK regime). These were the ministries of public safety, defense, finance, foreign affairs, and information. As a matter of principle, the PRK was not about to simply hand these over to their former enemies (more on this later in the integrative section). And so long as they could outlast the Coalition, they would not have to accept any change. As it were, things did change dramatically with the decline of Soviet support to Vietnam.

By 1988, there was, to be sure, a seismic shift taking place where both China and the USSR were trying to rid themselves of the baggage of foreign dependents and commitments: the Khmer Rouge and Vietnam, respectively. Communist generosity had hit an all time low. The Vietnamese, even more so, felt that their chance at international recognition was withering with their continued occupation of Cambodia. And so it became possible for the leaders and their parties to discuss peace while continuing to fight. The result of these talks from 1987 to 1991 culminated in the signing by all four parties of a set of comprehensive agreements known as the 1991 Paris Accords.

Integrative Breakthrough

One of the Paris Agreements' American insiders, State Department lawyer Steven Ratner, observed in his recent book *The New UN Peacekeeping* (1995) that: "The process that I witnessed was one of an amalgam of global powers and regional actors, motivated by intentions both self-serving and beneficent, groping to solve a seemingly intractable conflict - one the Cambodian political factions themselves seemed unwilling or unable to end."¹ The fact that after more than fifteen years of war, there seemed still to be no light at the end of the tunnel when suddenly it shone is a testament to the unmistakable introduction of integrative elements to the negotiations. Hopelessly deadlocked—in a struggle for control, the United Nations was brought in to become the third-party that would break the tie and set things in motion. Although the UN had long ago been involved in peacekeeping missions, never had it faced the challenge of virtually running an entire nation for the period needed to conduct a general

¹ Ratner 1995: XXI

election. Once this element was introduced, it became easy for instance to solve the problem of who would be trusted to oversee the five key ministries during the elections. The UN would fill that role as both an overseer and as a mediator.

The idea of mediation is one that one often sees in other types of dispute settlement mechanisms. When two sides cannot agree, they can turn to a mutual friend someone deemed objective in judgement.² It should surprise us, perhaps, that this method was not used sooner with respect to UN Peacekeeping. This was the major breakthrough in Congressman Stephen Solarz' suggestion that the United Nations take transitional authority of Cambodia in the time it took to have an election. The UN's own charter, Article 78, precludes it from taking over any country, unless it is at the invitation of the Government and only in the sense that it would be working beneath the Government.

Mediation in Peacekeeping via UNTAC was a perfect instance of third-party involvement and the creation of an integrative solution. Moreover, the idea itself seems to have been one that no-one within the organization could have suggested without destroying the idea completely at first mention. Ratner writes:

The concept of UNTAC thus originated from outside the Organization, from several diplomat players seeking a way out of the ongoing impasse. Indeed, this had to be so: Ahmed [the UN Secretary General's Special Representative to Southeast Asia] and his team could not have proposed such a far-reach plan, for the permanent members of the Security Council would have likely regarded it as irresponsible for international civil servants to make such an overture.³

This was like having a solution but being unable to suggest it, because it simply cannot be introduced by its own implementers. In many ways, this resembles the type of scenario between two intensely competing parties, say between the United States and the Soviet Union, that do not want to be perceived as backing down. Perhaps either one or both have ideas to break the dead-lock, but neither can suggest it for fear of appearing weak. This is when a mediator benefits these parties most. In other words, the mediator can innocently introduce an idea without purporting to have motives or biases and without loss to his own reputation.

In many ways, Indonesia was already acting in a manner supportive of mediation years earlier. It had sponsored the first "Cocktail Party" for Cambodia's four factions. It was their first time together. Moreover, the Indonesians were actually able to get the factions to agree at the first meeting on a

² Mediation, it should be noted, is not the same as arbitration, where the rulings are binding.

memorandum of understanding, though it took more than another half-dozen years to get to the Paris Agreements breakthrough. Ratner writes, "The JIM [Jakarta Informal Meeting]'s communiqué, the first consensus document in the peace process, stressed the need for a comprehensive settlement of the internal and external elements of the conflict, as well as Cambodian self-determination and national reconciliation."⁴ Yet Indonesia had not been able to come-up with the solutions with neither the resources nor the prestige of the United Nations, even with its leadership of the Association of Southeast Asian Nations, a major regional body. What was needed was a mediator with deeper pockets and the right person to suggest it at the right time.

Not only would Solarz do that, but he would set a new precedent in what the United Nations could now do. In Cambodia's case, this was the most dramatic voluntary handing-over of authority by any country, to a supranational entity.

The New UN Peacekeeping

(1) Face-saving and escape routes: The UN officials in charge of a mission can propose solutions to asses that neither party could on its own, offering a way for one or both sides to back down in a IMP graceful way.
(2) Redefinition of issues: The United Nations may be able to characterize the divisive issue completely differently from the parties, and thereby contribute to its resolution. The mediator can bring in additional issues to be traded against one another or propose a @-win" solution.
(3) Containment of disputes: if the mediator believes that a certain issue cannot be satisfactorily resolved, it can attempt to define common ground and leave resolution until later. The success of this mediation technique depends upon bath the amenability of the parties to "agree to disagree" and the UN's ability to undertake its administrative function in the absence of agreement on the matter under dispute.
(4) Follow-through on resolution: Because of the two hats of the UN, it can exert its influence to ensure that the parties comply with their bargain, enhancing its credibility as a mediator.
(5) Finally, the UN's role as mediator does not preclude other third-party intermediary roles in carrying out a peace plan. It can engage in good offices by passing information between parties; enquiry by investigating disputes; and conciliation as well.

Source: Ratner 1995: 43.

In the above chart, Ratner outlines five elements to the New UN Peacekeeping. In particular, the first one suggests Solarz' contribution to the Agreements and to the UN itself One of the solutions for handing over control of Cambodia's Provincial governorships during the elections was to simply place them in dual control with the United Nations. All of Cambodia's provinces remained in the control of bath the UN and their respective PRK governors. At the same time, the cantonment of military personal from all four

³ Ratner 1995: 144.

⁴ Ratner 1995: 143

armies would be supervised by the UN. As an example of Ratner's third point in Cambodia's case, it became apparent early during the elections that the Khmer Rouge did not intend to give-up their weapons. As a direct violation of the Agreements, this would have placed severe pressure on all parties to annul the elections or worse, resume armed conflict. Instead, the UN Representative in charge chose to allow the Khmer Rouge to keep their weapons without confrontation.⁵ He did this at a major price, at the cost of demilitarization and future conflict. The UN would again be put to the test when the Khmer Rouge chose to boycott the elections, this time no-one complained. But when the Khmer Rouge began to attack UN officers, killing five, the UN had to prove credible on its commitment by not pulling out of the country. It chose to stay.

To be sure, Cambodia was also lucky to have a survivor in Prince Sihanouk. Often described as unpredictable, mercurial, autocratic and self-indulgent, he was once quoted as saying, "Cambodians are all naughty boys-and that includes me." As he had presided over modern Cambodia and given her independence from France, his legitimacy as a moderate voice emerged, despite his prior support for the Khmer Rouge after the 1970 coup d'etat that would depose him and before he would become their prisoner in 1976. He was also the former King, which made his stature all the more symbolic. Used to taking the high-ground, he was the natural choice for leader of the so-called Supreme National Council that would reign but not rule over Cambodia with UNTAC doing its bidding. As another breakthrough (along the lines of integrative negotiations' objective criterion) he was granted special powers to break deadlocks in cases of impasse on the SNC.

After intense negotiations, the Cambodian factional leaders elected Prince Sihanouk as president of the SNC and amended the draft peace accords to grant him special powers to break deadlocks in the SNC during the implementation of the accord (more on this later). They also compromised over demobilization of their military forces so that the weakening SOC [State of Cambodia] would not lose its entire army.⁶

The fact remained however that what was on paper need not follow reality. As a further safety, the United Nations Special Representative was given powers that seem unimaginable to any international civil servant. He could, if Sihanouk did nothing to end an impasse, supersede the authority of the SNC.

If the twelve Cambodians representing the four factions could agree upon a course of action, or Prince Sihanouk relied upon his stature to speak on behalf of the SNC, the Special Representative could only reject its views if he found them inconsistent with the

⁵ See Shawcross 1994: 15

⁶ Ratner 1995: 146

objectives of the accords. But it also created a potentially extraordinarily powerful UN mission, as the Special Representative could act whenever the SNC proved deadlocked (and Prince Sihanouk chose not resolve the matter), and could overrule all the faction if lie round their decision inconsistent with the settlement.⁷

This seems not to have been used by the Special Representative, in practice. He was later also accused of inaction in Bosnia, though lie does not regret it and has been defiant about defending his record there and in Cambodia.⁸

Post-settlement settlement?

With 20/20 hindsight, one can easily spot the problems that would erupt as UNTAC left Cambodia. For instance, the non-cantonment of the armies left normal citizens in the same vulnerable position as they were prior to the Accords. But that would have been impossible - logistically the 22,000 UN Peacekeepers did not intend to fight for the weapons which the Accords had called on demobilizing. In retrospect, we may look at the Accords for areas where, perhaps, a post-settlement settlement could have been reached but not without the benefit of history. Human rights and civil society are still fantasy, but does this mean they should not have been articulated" Certainly not. The naïve would be disappointed, surely, but no-one with realistic expectations of seeing peace and democracy in a country tom by war would be so gullible as to think that after this everyday would be fine. The Accords had their problems, but they really were the best any one could have hoped for in light of where Cambodia stood immediately prior to signing. Ratner's own conclusion confirm that given the realities, the agreement was the best any one could have expected. He writes:

The Paris accords represented the product of years of negotiation by both the Cambodian factions and their external supporters. They reflect compromises stemming from the strengths and weaknesses of those parties during the bargaining process, as well as coalitions of former adversaries (for example China and Vietnam) and longtime friends (for example, Thailand and the United States). From this author's perspective, the Paris accords represented a realistic solution that advanced the interests of the Cambodian people and of regional stability as well.⁹

After nearly 3 billion dollars spent on Cambodia for UNTAC, increasing human rights abuses and corruption, and in the aftermath of recent massive defections by the Khmer Rouge, there is still confusion

⁷ Ratner 1995: 148

⁸ Akashi came to Princeton to give a lecture, where I had the opportunity to ask him.

as to whether the spirit of the Accords is being fulfilled and whether all sides could have done better. In the end, the final lesson learned here is that even with the United Nations and an Accord signed by 19 nations, it still only takes one naughty party to alter everything.

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⁹ Rainer 1995: 155