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ANGLETERRE

**COPY FOR YOUR
INFORMATION**

Wednesday, 13 March, 1996

Dear Mary Lee:

It was a pleasure to speak to you and to learn more about the project. As I said, it sounds both fascinating and much needed. It also sounds as if the right people are involved. I shall be very happy to be a part of your team, provided, as I say, that it does not become too time consuming.

I am enclosing a brochure of my firm which includes some biographical information.

I look forward to meeting you in the not too distant future. Please feel free to call me at any time or to give my name to others involved in the project. My home phone number is (33) 42-92-00-35.

Sincerely yours,



Ronald P. Sokol

Copy: Prof. Daniel J. Meador

Wednesday, 13 March, 1996
STAPPMAR.LEE

CONFIDENTIAL REPORT AND RECOMMENDATIONS

To: Ms. Gay McDougall
Executive-Director, International Human Rights Law Group
Washington D.C.

Copy: Professor Daniel J. Meador
James Monroe Professor of Law, University of Virginia, School of
Law, Charlottesville, Virginia

From: Ronald P. Sokol

Date: March 02, 1996

Re: **Report and Recommendations**

After visit to Cambodia between February 10th and March 4th 1996 to teach contract and tort law to Cambodian judges and clerks as part of the Law Group's Cambodian Court Training Project ("CCTP"). Visited: Kampong Chnang, Kandal, Kampong Cham, Prey Veng, Svay Rieng, Seam Riep, Kampot.

Background

In the summer of 1995 Dan Meador visited us in France and asked if I would be interested in teaching in Cambodia. He suggested that my work in both common and civil law systems as well as my multi-cultural experience might prove to be an asset to the Law Group. His question threw me back some 25 years. For then my wife and I, not long after our return to France from Japan, had first met Khantavy Kong, her brothers and fiance, Hou Nhean. They were all Cambodian students in France. For the past 25 years we have remained close friends with all of them as they have risen into the professions in France and elsewhere. And of course the current 1st Prime Minister of Cambodia, Prince Sihanouk, was studying law in Aix-en-Provence where we lived. He attended the marriage of our friends and I briefly met him. We often spoke of Cambodia, and I thus knew from afar something of the tragedies of this country and was close personal friends with some of its more fortunate citizens. And so I replied to Dan that if I could get away, I would be interested. Not long thereafter I received a letter from Laura McGrew, the head of the CCTP in Washington D.C. I confirmed my interest. Then silence until January of this year when I received a fax from her asking if I could go to Cambodia in February to train judges for a month in tort and contract law. On February 10th I landed at the Phnom Penh airport.

Advance Preparation: Security

The advance preparation of persons such as myself, which the Law Group refers to as "International Mobile Trainers", left much to be desired. I was naturally concerned about issues of security and disease. Yet these issues were not treated in any organized or comprehensive way by the Law Group. Only after repeated questioning was I able to elicit enough information to satisfy myself that I would not be in unreasonable danger. And some of the information I was given turned out to be wrong. Moreover, the Law Group's Center in Phnom Penh was itself not well informed, and on one occasion I had to insist on getting information from the Australian Embassy on the safety of the road to Kampot and the danger of landmines because I was misinformed by one of the resident lawyers making melodramatic statements.

I think one explanation of what I considered a casual attitude to these issues is that many of the people I met were not really interested in the dangers either because of their youth, their desire for adventure, or their desire actually to be where it was dangerous. I do not criticize this, but it is obviously not the attitude of an International Mobile Trainer coming from the civilized world for a short stay and who probably has a wife and children to worry about.

I recommend that the resident director or deputy director in Phnom Penh prepare a one page monthly report on issues of security, disease and other potential dangers which targets the geographic areas where the Law Group personnel is operating. This would of course be done on the basis of reports from personnel in the field as well as the security officers of the U.S. and Australian Embassy. I should perhaps note that Australia has a substantial presence in Cambodia and all the Australians I met were most cooperative. I could have been spared much concern and loss of time if I had been given a timely, adequate briefing.

Finally, I should state that my assessment on the ground of the actual dangers is that they are minimal. Malaria is confined to certain forested areas of the country. There are no landmines on paved roads or in the cities. There is little automobile traffic, and it moves slowly. If one drives at a moderate speed, the dangers of a serious accident are almost non-existent. If one does not go out at night and stays in populated areas during the day and does not engage in reckless behavior, the danger of theft is also almost non-existent. If one does not drink the tap water, use ice, eat raw vegetables or the produce of sidewalk vendors, the risk of stomach upsets appears slight. In my entire stay I did not once feel sick or have an upset stomach. The only medical problems I heard about were one case of Dengue fever and one case of an ulcer resulting from medication being taken to protect against malaria.

My conclusion was that there is less risk in living in Cambodia than in France, England or the United States. In fact, as the IRA began to explode bombs in Canary Wharf and Shaftesbury Avenue, I had to phone my wife and children who were then in London to warn them to avoid shopping in Oxford Street as it is a favorite target of the IRA. The irony of my phoning London from Cambodia to urge my family to take certain precautions was not lost upon me.

The most significant risk I felt was of a freak accident or an unexpected disease. This would be serious because there is effectively no adequate medical care in the country, and one would need to be flown to Bangkok or Singapore. The delay in getting care could be significant. It is thus desirable to bring in only people who are in good health. I was surprised that no serious inquiry was made by the Law Group into this subject prior to my departure.

Advance Preparation: Cultural

No advance material was given to assist me in knowing what to expect upon arrival. This could easily have been done. For example, there exists an excellent short history of Cambodia by David Chandler published in 1992. I would have appreciated having this book called to my attention so that I could have read it prior to my arrival. Likewise a few pages of general introduction or description of the current political situation and customs in Phnom Penh and the provinces, current legal topics being discussed and debated, other non-government organizations present, something about the Khmer language, and similar matters would have been of considerable help. The State Department may have such material already prepared for foreign service officers and embassy personnel which they would give to the Law Group. It would certainly be helpful to new persons arriving in Phnom Penh.

Coordination

The Law Group does not appear to be effectively coordinating with anyone, and better coordination with the Ministry of Justice ("MOJ"), other Non-Governmental Organizations ("NGO's"), the Cambodian bar, the small expatriate bar, and the Cambodian Law School, must surely rank as one of my principal recommendations for improvement. Not only is there no effective, ongoing contact with our Embassy and our own government, but there is likewise no close cooperation with the MOJ. There is of course some contact, but there is not what I would characterize as a close, working relationship. In my entire stay I did not once meet anyone from the MOJ. One might contrast to this, the presence of a few legal advisers that the French Government has placed right in the MOJ.

The French may be getting more influence in the MOJ and hence on the administration of justice in Cambodia from one or two advisers strategically placed than the Law Group is getting from ten to fifteen young lawyers in the provincial courts. In the absence of a close, working relationship with the MOJ, the CCTP cannot, in my judgment, have any meaningful impact on the administration of justice in Cambodia.

There are many other NGO's in Cambodia involved in the administration of justice, ranging from the U.N. Judicial Mentor Program which places a Western-trained lawyer in the courthouse of provincial courts to teach and advise the judges and clerks to a planned US\$ 12.5 million Australian project relating to the criminal justice system to other projects run by the Asia Foundation. While I tried to learn about these different NGO programs, I found that the Law Group knew little about them and did not coordinate at all with them. To me this made no sense whatsoever, and I would recommend that the Law Group endeavor to learn about all the NGO programs related to the administration of justice and attempt to coordinate with them, compare notes, problems, solutions, and future plans. There is apparently a monthly meeting of the directors of USAID sponsored NGO's, but this routine meeting unfortunately leads to no genuine cooperation.

I was also surprised by the absence of coordination or interest in the Cambodian Law School. As the institution that has primary responsibility for the training of future lawyers and judges, I would recommend that the Law Group develop a working relationship with the Law School administration, faculty, and students. It may be that a program could be developed wherein students in their last year accompany some of the Law Group's trainers into the provincial courts. This type of initiative would involve minimal costs.

On March 1st I visited the Law School together with the deputy director, Thierry Fagart. We met with three young Frenchmen performing their one year compulsory military service in Cambodia at the Phnom Penh Law School. France makes extensive use of such experiences for its young people as a substitute for actual military service in a uniform. They were law students in France whose student career had been interrupted. They stated there was one French law professor based at the Phnom Penh Law School whose name is Jean-Marie Crouzatier. He was not there at the time. He is head of a project to provide assistance to the Khmer law professors and to assist in the administration of the Law School. They were not doing any law teaching directly in French. There is also a French language professor to help the students with their French.

The project is also translating Khmer laws into French which raises the issue of whether the Law Group is translating the same laws. They also produced a 1995 Law Report in both French and Khmer and would be producing another in 1996 collecting all the laws with some legal commentary, although the commentary is slight.

Arrival in Phnom Penh: My "Judicial Assistant"

I was met at the airport by Kevin Landy, a young American lawyer who had already been with the CCTP for nine months. He had been based in the province of Kampong Chom as a "Judicial Assistant". He was a bright, conscientious, hard-working young man who took good care of me. We set to work at once preparing hypotheticals and notes for sessions on torts and contracts. We soon decided to divide up the material. I would do contracts and Kevin torts. We continued this division throughout our sessions. I enjoyed working with him. He had a sharp mind, and we spent many enjoyable hours while winding our way between bicycles, motorbikes, errant cows, pigs, chickens, children, oxen-pulled carts, stray water buffalo, saffron-robed monks, and once even an elephant as Kevin piloted the Law Group's jeep over pot-holed dirt roads, and we discussed and refined legal issues under Cambodian, French, and American law trying to shape our presentation to fit our audiences. The abstruseness of our discussions had a soporific effect on our interpreters Sovana Mann and Yuth Soserey who dozed tranquilly in the back seat.

Kevin was well organized, efficient and pleasant to work with. In fact, I could not have had a more agreeable companion. Yet despite these great virtues Kevin, and all the other monolingual lawyers and personnel, are severely handicapped by their lack of knowledge of the Khmer language and their lack of an understanding of any culture other than their own. All of their perceptions are thus forced through the single channel of their own culture and language, and the necessity of this passage significantly narrows their understanding.

I too suffered from an inability to speak Khmer. Teaching through an interpreter is not only a time-consuming process, but it makes it difficult to decipher the feed-back from the class. I did have the advantage of being able to get some direct feed-back by speaking in French to the few judges who spoke it. I also had the advantage of knowing and feeling a hierarchic language with some similarities to Khmer, of having lived in a Confucian and Buddhist culture and having lived with my wife for 27 years who was born, bred, and raised in such a culture.

Certainly a major conclusion that I draw from my experience is that the Law Group must recruit lawyers who are willing to make the commitment to learn the Khmer language and to assist and support them in that task. That would require a minimum three year commitment. During my stay I met only three people who had made that effort.

In Kampot I met Catherine Gleach, a young English violinist, who had founded a music school for orphans and handicapped children. She had begun Khmer at the Institute of Oriental Studies in London and had been in Kampot for six years. She spoke fluent Khmer. At the Kandal Court I met Karen Tse, a Chinese-American lawyer who had been with the Law Group for two years but had left it to go with the United Nations Mentor Program and is now a mentor to the Kandal Court. She too has made a serious effort to learn the language. While she is not yet fluent she estimates that she will be within another year. That will make a total of three years which corresponds with my own estimate of the time needed to become reasonably fluent. Within the Law Group Judge Juanita Rice is making an effort to learn the language, but she is not yet too far along in the process. None of the others in the current Law Group personnel in Cambodia appears to be making a serious effort to learn Khmer.

I should perhaps mention Sos Kem, a retired State Department Foreign Service Officer now teaching the Khmer language at Cornell University. He was travelling with a USAID evaluation team, and we had dinner with him in Kampot. He is an American of Cambodian birth and origin who came to the United States in 1962. His native language is Khmer, and he speaks English well. He said that he has seven to ten students studying Khmer at Cornell and that Khmer is taught in the United States only at Cornell and the University of Hawaii. I would recommend that the Law Group explore the possibility of sharing costs with those universities to send some of their students studying Khmer as summer trainees to assist the CCTP. They would improve their Khmer, provide some help to the project and become an excellent pool of future recruits.

Our Interpreters

To complicate further the teaching process not only are the Law Group's teachers ignorant of the only language spoken by their students, the judges and clerks, but the Cambodian interpreters being used are not fluent in English and not versed in law. This is such an extreme situation that I found it comical. The following are a few of the sentences that I literally transcribed while one of the interpreters (Yuth) translated a question asked by a Cambodian judge:

“The AIDS cannot affect his life without unreasonable.”

“We put something not good we have to that person.”

“He should tie strong more rope.”

“That boy has AIDS diseases already have.”

“He affected to a society problem.”

The interpreters were conscientious, but they lack the necessary English-language competency. I worked only with two interpreters. Yuth, quoted above, clearly does not dominate English syntax and would benefit greatly from private tutoring. My interpreter, Sovana, had a better command of English syntax but does not fully command the English phonemes and would benefit from the assistance of a qualified phonetics teacher. A few hours with such a teacher would probably do wonders for his English. They would also benefit from instruction by a qualified, experienced interpreter on some of the problems and rules of interpretation.

The Law Group’s Cambodian Office

On my very first day at the Law Group’s Office I felt something was amiss. The place didn’t feel right. As I began to spend more time there over the next few weeks and to meet most of the key and non-key players, it soon became apparent that the morale of all the personnel, lawyers and non-lawyers, was abysmally low. Some personnel had already left the Law Group because of the situation. Everyone I spoke to had either decided to leave, was planning on leaving or thinking about leaving. I did not meet a single person who expressed even qualified satisfaction with their job and the Law Group except the director and deputy director.

Based on my conversations with both legal and non-legal staff, I could not entirely rule out the possibility of a mass defection. I would not foresee it happening as an organized palace coup. I saw nothing to indicate that. In fact, everyone I spoke to expressed disappointment that it was not a better place to work. They wanted the CCTP to succeed. I was also favorably impressed with the quality and seriousness of a number of the people I met. Yet I can quite easily conceive of a situation where over a short period of time the Law Group suddenly finds that it no longer has anyone left.

There already appears to be little planning for the transition from Phase I to Phase II of the project by the retention of judicial assistants and senior advisers who will provide the necessary on-site experience and institutional memory between the two phases. No doubt part of this is explainable by reference to the USAID funding which is itself uncertain and the Law Group's lack of endowment. Yet I have the distinct impression that this institutional uncertainty does not entirely explain the lack of planning.

All of my meetings with the director, Gene Murret, and the deputy director, Thierry Fagart, were cordial. I liked them both, and both made an effort to make my visit comfortable and were attentive to my needs. Gene undoubtedly has a good knowledge of the federal judiciary and certain organizational skills. It is equally clear that he is not in the right job, and this perception is shared by everyone at the Law Group to whom I spoke, the only difference between them being their degree of fervor or disgust. It is unclear to me whether Gene himself understands that he is not in the right job, but if I were forced to guess, I would guess that he does know.

Thierry is personally popular with everyone, but his rudimentary English is recognized by the staff and presents serious obstacles to his functioning effectively in an English-speaking environment. While his spoken English is weak, he is able to communicate. His real handicap is in comprehension of spoken English. He is far enough along so that his comprehension may improve significantly with time.

Finally, I confess to a certain unease about his political background, not because of the politics but because of the instability such a background suggests. Thierry told me that he has been a militant for many years in the Trotskyite Party in France. The political spectrum in France runs from the extreme right of the National Front, to the Gaullists, some centrist parties, then on the left the Socialist Party, the French Communist Party, then at the outer fringes of the left the Trotskyite Party. There the political spectrum ends except for an occasional anarchist. The Trotskyite Party is of no political significance whatsoever in French politics and never has been; it is the "extreme left" and as such generally garners less than 1% of the national vote.

My conclusion is that the Law Group's office in Phnom Penh and the CCTP are not functioning well. The Law Group's highest priority should be to correct this situation as quickly as possible.

Specific Recommendations

1. A short summary explanation of the Law Group and the CCTP Project should be prepared in English, French, and Khmer. I had an introduction to the First Secretary in the Ministry of Health and when I inquired of the Law Group whether such an explanation existed in French or Khmer so that I could give it to him, I discovered that none existed in any language.
2. Some of the provincial courthouses do not have signs stating that they are courthouses. The symbolic value of the courthouse is apparent. As the Law Group is already furnishing material assistance to the provincial courts and the cost of providing signs in Khmer, English and French should be nominal, I would recommend that this be done for those courts which do not have signs.
3. One court trainer should be responsible for one topic such as torts, contract or land law and for developing teaching materials in his or her topic.
4. Given the limited resources of the Law Group I would recommend attempting to cover less courts but to cover them in more depth. It might be possible to target one or two courts as pilot courts and attempt to raise those courts to a higher level.
5. It should be possible to create a research assistance center much like the CRIDON that exists in France for the use of French notaries or like student legal research groups in the U.S. It could be based either at the Law Group's office in Phnom Penh or at the Law School. A court could then consult this research center on specific questions of law or by putting to it a specific set of facts and requesting help in the analysis. It would thus get the benefit of an independent analysis and research and would not have to rely on the MOJ.
6. The Law Group should set forth in writing a clear and unambiguous policy on bribery and corruption of government officials. For example, is it permissible for the Law Group to pay an employee of the Cambodian Ministry of Justice to assist in the Court Training Project? If it is not, does it make a difference if the employee takes a leave of absence? Does it matter that the employee cannot live on his government salary? Does it matter whether the money is paid directly to the employee or to the Ministry? Does it matter whether the Ministry is unaware of what its employee is doing? There appears to be no policy or guidance on these kinds of issues, some of which came up during my stay.
7. It would be desirable for the Law Group to encourage American law and pre-law students to come to Cambodia as language students so that the number of Khmer-speaking Americans is increased.

8. It would be desirable to prepare in the Khmer language simple pamphlets on such subjects as "The Rights of a Victim of an Accident", "The Rights of Businessmen", "Citizens' Rights", "The Rights of a Defendant in a Criminal Case". The French Ministry of Justice produced a number of such pamphlets in the early 1980's that were quite well done.
9. All materials distributed to the courts and outside parties should be marked with the name of the Law Group. The marking should be standardized so that all members of the Law Group are using the same one. It should include at the minimum the name of the organization, the name of the project, the name of the author of the materials, the name of the Cambodian translator, the date initially prepared, the last update, the computer file reference, why and for whom the materials were prepared. It might also be desirable to include the Law Group's logo so that non-literate people can learn to recognize it.
10. Age and gender are both significant factors in Cambodia, age perhaps more than gender. Pairing a younger judicial assistant with a more senior lawyer, preferably more than forty years old would be a desirable practice.

Corruption

It is widely acknowledged by everyone that I spoke to that corruption pervades the entire system including the courts and MOJ. Yet no one that I spoke to has any detailed knowledge of exactly what the term "corruption" means. The term can mean paying money to obtain a specific result in a specific case or paying to get a trial date or both. In fact, the nature, range, and meaning of the term "corruption" is considerable.¹

One would think that if the judges were being paid to reach a certain result in all or in most cases then they would show no interest or only a feigned interest in the CCTP. Prior to my arrival in Cambodia, I expected that would be the case, but it turned out not to be.

¹ Judge Noonan of the 9th Circuit wrote an enlightening book on this subject surveying it historically as well as attempting to analyze it. Noonan, J., **Bribery**, U. California Press, 19____). See Also, the Foreign Corrupt Practices Act and commentary related to it.

I was pleasantly surprised to find both judges and clerks in all seven provincial courts genuinely interested in what I had to say. Some of the courts were composed of brighter judges and clerks than others; some were more ready to ask questions; some were more formal and ritualistic in their responses to questions; in some courts a few of the clerks were deadbeats, but I reached the conclusion that there was a genuine interest on the part of all the judges and most of the clerks in learning contract law, in understanding the analysis of cases and in legal and judicial methodology. They also showed a keen interest in methods of proof and the burden of proof in contract disputes.

CONCLUSION

As I traveled through the Cambodian provinces, studying Chandler's, *The History of Cambodia*, conversing with judges and lawyers, standing in wonder before the temples of Angkor Wat in Siem Reap, admiring 6th and 7th century marble, bronze, and sandstone statuary in the National Museum in Phnom Penh, and pondering the problems of Cambodia and the mission of the Law Group, an analogy began to shape itself in my mind and would not leave. The analogy haunted me, and I decided to name it the *American Confucian Training Project*.

The American Confucian Training Project

In 1996 the world's population is about six billion people. Of that figure 20% are Chinese. Let us imagine that 50 or 100 years hence 70% of the world's population is Chinese and a grave political conflict develops between the United States and China. Rather than risk a nuclear holocaust, the United States decides that it will peacefully submit to China which then announces that it will henceforth be the guardian and the United States its ward. The Chinese thereupon decide to send a mission to the United States to teach the Americans how to resolve disputes. Disputes will no longer be decided by courts but by Confucian methods. The community will thus decide disputes; village elders will help; disputing parties should look to what is best for the community and purify themselves; respect should be shown by everyone for elders and incense sticks should be placed in small temples out of respect for one's ancestors.

To implement this project the Chinese send over a delegation of people none of whom speaks English and none of whom has ever been outside of China. To make their delegation more international they take with them a Tibetan priest and a Laotian monk, each of which speaks broken Chinese and no English but are Confucian scholars.

Upon arriving in Washington D.C. they hire several Americans who speak Chinese and inform the President and the Attorney-General that henceforth disputes should not be submitted to courts. A team of two Chinese Confucian trainers and two American translators who have never been outside the United States and whose knowledge of Chinese is fragmentary then travel to Waycross, Georgia, Sioux City, Iowa, Omaha, Nebraska, Madison, Wisconsin, Providence, Rhode Island, and Newport Beach, California to teach federal and state judges and local officials how disputes are handled Chinese-style by Confucian methods and the use of village elders.

What would be the likelihood that such a mission could succeed? One's first reaction is that this is absurd. There is no way that Americans are going to learn to resolve disputes by Confucian methods. It is impossible. But if one persists and says, "Yes, but the world is now 70% Chinese. Is there any way that Confucian methods can be taught to Americans?" Surely one must respond that it seems an impossible task, but if one insists on pursuing the apparently impossible, then at the minimum Americans must achieve a genuine understanding of Confucianism, and they cannot do so if the Chinese teachers do not even speak English. There must be teachers who can explain Confucianism to us in our own language and who understand our culture. Some Americans must go to China to study Confucianism and perhaps upon their return they can help us understand it. Those Chinese who come here to teach us must speak English and have some understanding of our tradition as we struggle to understand concepts that are so foreign to us and that have no analogies within our own tradition. We no longer even have villages; we have many different religions; it will not be easy for us, even if we try, and most people will probably not try very hard.

How long will it take for America to become Confucian? A hundred years? Several hundred? One thousand? How long did it take for Confucianism to pervade China? We have decided disputes in courts under our Common Law for at least 400 years. If we go back to the Roman courts our legal tradition is even longer.

Is such an analogy fair? Does it carry any meaning for the CCTP? I have no crystal ball, but the Confucian analogy should not be readily dismissed; but nor should the genuine interest in learning about Western legal concepts and tradition shown by the Cambodian judges and clerks. USAID talks about "democracy projects" and "rule of law projects". I am inclined to find them both worthwhile, but the time scale on which "progress" should be weighed, if not galactic, is greater than that normally tolerated by the political process in Western democracies.

Ronald P. Sokol
March 2, 1996
Phnom Penh, Cambodia