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Interview Transcript of Nicholas Koumjian Position: International Prosecutor of Office of the Co-Prosecutors Extraordinary Chambers in the Courts of Cambodia

Interviewed by Nicole Feldman

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Nicole: I'd like to start by talking a little bit about you and your background. You have over 35 year of experience, much of which is in international criminal justice. Can you tell us a little bit about what brought you to the ECCC?

Koumjian: Well, I was appointed by the Secretary-General. I got a call one day asking me to interview for the position, and I think that was in about 2007 or 2008 when I was working on the Charles Taylor case at the Special Court for Sierra Leone. So after being nominated by the UN, I became the reserve international co-prosecutor, but in 2013, just at the time the Case 002/01 was finishing, the first trial of Nuon Chea and Khieu Samphan, I was asked to come to replace the departing international co-prosecutor, so I actually joined the court the first of October in 2013. Just as we were preparing for the closing arguments in that case, which took place on the last week of that month.

Nicole: All right. And can you tell us some of the positive and negative aspects of the hybrid court? What restrictions or freedoms that brought out in the ECCC?

Koumjian: Well, first of all, it should be recognized that all national courts have an obligation to prosecute the most serious cases. Under the genocide treaty, to prosecute genocide, but also it's generally recognized by most scholars that there is an obligation to prosecute those guilty of crimes against humanity under the Geneva Conventions. There's an obligation to punish your own nationals who are involved in war crimes or those who are on your territory and were involved in war crimes. But of course not every country, especially countries emerging from conflict, will have the capacity to do those kinds of cases. In some countries there is still great splits in the society and animosities and mistrust, where it's hard for a national judiciary to be seen as legitimate by all parties, all citizens of the country. And there are certain, though, advantages of having international involvement in a case. One of those is also many times countries emerging from conflict just don't have the capacity, the training of judges. In East Timor, for example, when they gained independence, no one in the country had been a prosecutor or a judge. In Bosnia and Herzegovina, they set up national war crimes chambers in their national system, but in the beginning years, they invited international prosecutors and international judges to work alongside the nationals. And part of that was because the country was still split. So if you had a case against a Bosnian Croat, they may say that any Bosnian Muslim or Bosnian Serb, particularly if the alleged victims of the crimes came from those ethnicities, were not fair, were not impartial, and object to the partiality or impartiality of the judges. So having internationals on the chamber, I think, added to the public confidence also that the judgements were fair and weren't simply partisan for one side of the conflict or another. And compared to pure international courts, especially when they take place outside of the location, there's great advantages of having a tribunal court inside the country. So for example the ECCC, I believe of all the international courts, it is the one that has had the most people come to the court and actually view proceedings. I believe there's been about a half-a-million Cambodians have visited the courts. Hundreds of thousands, I believe at least 200,000 I think, have seen at least part of the actual court trial proceedings. This is very important to make what the work we're doing known to the citizens that are affected by it and who have a stake in it.

Nicole: Yeah, absolutely, that makes a lot of sense. So then let's talk a little bit about the challenges. As an international prosecutor, what were some of the challenges you faced at the court.

Koumjian: Well, anytime you're doing massive cases involving top leaders, the biggest challenge is trying to put on a case that's representative of all that happened and that also shows why leaders would be responsible for crimes that often have taken place in a village where the leader's never been, against victims that leader never met, committed by direct perpetrators who again the leader has never communicated with directly. So that's a great challenge, and in this case, I would say the Cambodian tribunal--the Khmer Rouge tribunal, the ECCC--has been the court dealing with the crime of the

greatest numbers--magnitude is not necessarily that useful. It's difficult to rank atrocities, all atrocities are absolutely intolerable--but in the numbers of victims of the Khmer Rouge, it really was the entire country, bar several thousand cadres who benefited from the regime. The rest of the 8 million people suffered in various ways from almost all of them being treated with the indices of ownership, which is the international crime of enslavement, losing their freedoms, having all of their lives controlled by the regime. To those killed, which under the best...it's always difficult to give any precise figure, but some of the best recent demographic studies put the figure close to 2 million people on average that lost their lives during a regime of less than 4 years, about pretty close to 25% of the population. So picking how you put on...you can't put on witnesses that show what happened to everybody, and you still have to put on evidence not just of the crimes that happened, but why these crimes are linked to the leader. So that's a great challenge. I think we certainly did our best efforts, and I think we got a good result. I think we showed through the trials that have taken place so far a representative example of what happened in all these worksites and cooperatives, how people were treated, how people were forced to marry by the regime and forced to consummate those marriages without the free consent of either partner. We showed the torture centers, the security centers, and how the paranoia of the regime led to such horrible tortures and killings and the great numbers of deaths of all those that the regime considered in any way suspect. The case overall in my view is about what happens when a regime...when there is no rule of law at all. The regime simply decides it can do whatever it wants to everyone, and including killing with no process anyone it suspected of not being politically loyal to the top leaders.

Nicole: So how do you actually make that connection between all of those things happening and the leaders. What's the process for that?

Koumjian: Well that's a complicated process, and it depends of course, the evidence depends on each case and each individual, but in general what on these massive cases we have to prove, what we have to show is that this was systematic. These were not decisions made simply by a local commander at a district level for example. That what was happening--forced marriages--it didn't happen in one location, it happened all over the country. It didn't happen like that before where the state chose people's partners. It hasn't happened since that the state chose...ordered people to get married, but it was happening around the country at that time. We also look very carefully at all of the statements of the accused persons that show that they were contributing to that policy and encouraging that policy. We look at any surviving documents. In that regard, we have been very very fortunate at the ECCC that we inherited a great number of documents from DC-Cam that have been collected over the years by the DC-Cam organization. These were limited, many many documents were destroyed by the regime, but critical key documents were present including some minutes of meetings of the standing committee of the very top leaders.

Nicole: That's great. How are we doing? Do you want any water before we continue?

Koumjian: About how long do you want to do it, just so I have an idea?

Nicole: I think we're aiming for maybe 20 minutes, maybe 30 minutes if we go farther.

Koumjian: Are the answers about the right length that you're looking for? Do you want it shorter or longer?

Nicole: So, if you can do it shorter, I'd say go for it. If you feel like it needs more explanation though, it's definitely okay for us to keep going.

Nicole: All righty, so I'd like to talk a little bit about some of your former work. So you've worked for a number of other international courts: the International Criminal Court for former Yugoslavia as well as the Special Court for Sierra Leone. How do you feel like your experiences in those courts compare to the experience at the ECCC?

Koumjian: Well each of the courts I've worked in are a little different, although even when I was a domestic prosecutor for almost 20 years, there always was a little difference even from one courtroom next door to another because each judge had their own particularities about how they wanted to do a trial. This is actually the sixth tribunal that I've worked with. So I worked at the Yugoslav tribunal, I worked as a prosecutor in East Timor, the serious crimes unit, the special panels for serious crimes. I worked in the state court of Bosnia and Herzegovina, and then the Special Court for Sierra Leone and a little bit at the

ICC before coming here. Each of them was a little different. One of the things that stands out about the ECCC is that it took place in the country, so when I was doing the case, it also is the first and only tribunal charging where the victims participate as actual parties in the proceedings. So it's very different for me to be standing in court, making a speech or talking to a witness, and knowing that behind me were 10 victims who had actually experienced what happened.

Nicole: I imagine that was....

Koumjian: The other thing about the ECCC is that of course it's the tribunal where the time between the crimes and the trials was the greatest of those that I worked with. And many people, and perhaps before I came, I myself imagined, what's it like when people are trying to remember and talk about something that happened 30 years before. Where we're at today now it's 40 years after the events. What I tell them is that when you have a woman in court talking about how she still berates herself for not giving her food to her mother who died of starvation that...that does not seem like it was 40 years ago. At the time people were testifying, their memories...you don't forget that, so it is...the time doesn't seem that important when you're doing the cases.

Nicole: Yeah, wow. That must have been hard. So kind of thinking forward a little bit, this probably won't be the last court to handle a mass atrocity. What do you see as the challenges for future courts doing similar kinds of work based on your work at the ECCC?

Koumjian: You know really, international criminal law still in its infancy, and it certainly has many weaknesses and faults. And you know, one of the weaknesses that many people have pointed out is it depends upon the cooperation of governments. The courts don't have police, the courts can't arrest. In order to obtain information, we generally need the cooperation of police judicial authorities. So whether it's the International Criminal Court or the court in Yugoslavia or the court here, all of them depend on the will of political leaders to see that there is no impunity and that these cases are followed through. And I think we still have to work on that, I think partly those of us doing the work, the more we show that we do it reasonably, that we don't have political agendas, but it's seeking justice for what actually happened, I think hopefully over time there will be more acceptance, and it also depends upon citizens putting pressure on governments and recognizing that you can't just supply the criminal laws or international criminal laws against the other side. If your soldiers commit the crime, they should be held to account also.

Nicole: Absolutely. Were there any moments while you were at the ECCC that maybe changed your perspective or opinion or changed the way you thought about things in some way.

Koumjian: Um....

Nicole: No is an acceptable answer.

Koumjian: Nothing comes to mind that really changed.

Nicole: No worries. So, you may have kind of touched on this already, but are there any accused or survivors stories that particularly resonated with you that you'd like to share with us?

Koumjian: There's so many. In the system that we have here in Cambodia, we're not allowed to speak to the witnesses beforehand, which means we have less chance--or even afterwards--so we have less chance to actually interact with them, but unforgettable moments in the trial, whether it's someone talking about the shock of the evacuation of Phnom Penh, seeing dead bodies on the road, realizing that this was real what was happening. That they didn't have enough to eat, trying to survive in the heat, seeing infants killed during that. You had so many people from the work sites talk about what it's like to live when you didn't have enough to eat and when you had no choices. And many have said...you know, they say that in court, and they clearly haven't told their children that, and some say when they tell the children, they said they don't believe it because it sounds like this must be some kind of government propaganda or something. Why didn't you pick up the fruit? Why didn't you go to the river? They don't understand that in that regime this was impossible. Why didn't you get on your motorbike? We didn't have motorbikes, and only those few cadres were allowed to drive motorbikes. There was one man who talked about being forced to marry, and often in these forced marriages, of course, many of us concentrated on the horrendous effect that had on women, particularly in a society where a woman

who's been married or had sexual relations is somehow considered to be damaged forever. But it also affected men, and there was one man who talked about how he had been engaged before the regime, but separated from his fiancé and forced to marry. But years and years later, they ran across each other on the streets of Phnom Penh. And he said they talked, and they were both Buddhists, and they both said in the next life we'll be together.

Nicole: That's a pretty powerful story. Thank you for sharing. So, kind of looking at the big picture, are there...what do you think the major impacts of the ECCC will be on Cambodian society, either now or kind of looking more in the future?

Koumjian: I think probably the most important is related to what I just said. Young people didn't experience the regime. Anyone here who's over 50 remembers it, and you don't have to explain to them really how horrible it was. But for young people, they're not sure what's true and what isn't true, and they find this hard to believe for good reasons. I mean, this doesn't normally happen. How can a regime like that exist? How could it be that people...every aspect of their lives was controlled? Why when they told you to marry someone you didn't know, didn't you say no? You didn't say no because of that regime, that would put your life in danger, and maybe the rest of your family's life in danger. So it's very hard to explain that to young people. And I think...I, actually, my family background is my father was Armenian. He was born in the middle of the genocide in the Ottoman Empire at the time. And you know 100 plus years later, the Armenian people are still very much trying to bring attention and bring greater understanding and acceptance about what actually happened in this important part of our history. And for the Cambodian people, what happened in this trial will be, I think, just as important to the grandchildren of those who are just kids right now. It'll be important in 50 years, it'll be important in 100 years, to understand the history of Cambodia. And also it's a huge example to Cambodia and to the rest of the world, to authoritarian leaders and those who commit the worst crimes anywhere, that there is something called international law. And it may not be perfect, and it may be slow, but those who commit these kinds of atrocities or those who simply believe that because they're powerful, they can get away with anything forever may one day find...face a reckoning and recognize that the law can hold them to account.

Nicole: Yeah, I think that makes a lot of sense. So, again kind of looking forward a bit, I hear that you're heading off to work with the Rohingya next. How do you think your experiences here will help to inform that work?

Koumjian: Well actually, my next position is, I've been nominated to be the chief of the new independent investigative mechanism for Myanmar, and the mandate of that is to prepare criminal cases involving serious violations of international criminal law or other international law, but it's the whole country. It is not limited to Rohingya or any particular ethnic group. If human beings in Myanmar are the victims of crimes, it's my responsibility and that of my unit to investigate that, if that's an international crime, and to prepare evidence to assist any court that in the present or future will be willing to prosecute those cases. So I think it's kind of a new challenge for me. It's a little different, I won't be standing up in court. But what's different about it from some of the other work, or all of the other work, I've done is that really this conflict is ongoing. The jurisdiction doesn't end in 2017, it's up from 2012 to today and into the future. And what is happening is clearly affecting people today. Every week there are more reports of killings and violence, and we know that there's about a million people outside the country and many hundreds of thousands displaced from the country suffering now, so it does have a bit of an urgency and immediacy that some of the other work I didn't have. Other work, I didn't have the same immediacy, so that will be different.

Nicole: Yeah, thanks. Well, thank you. Before we turn the cameras off, is there anything that we haven't talked about that you think is important or that you'd like to say?

Koumjian: I can't think of anything.