

RESPONSE TO EXPLICIT THREAT BY CAMBODIAN GOVERNMENT TO ARREST JARED GENSER, INTERNATIONAL COUNSEL TO THEARY SENG

“COMMUNIQUE OF THE KINGDOM OF CAMBODIA ROYAL GOVERNMENT ATTORNEY GROUP OF DECEMBER 8, 2021”

By Jared Genser

Yesterday, in an [unsigned statement](#) (and below) put out by state-run media with no address or contact information of any kind, the Royal Government Attorney Group of the Kingdom of Cambodia, a well-known proxy for Prime Minister Hun Sen, issued a [threatening communique](#) leveling a libelous series of fabricated allegations against me and accusing me of violating provisions of Article 522 of the Cambodian Criminal Code for “publication of commentaries intended to unlawfully coerce judicial authorities.”

I have been in Cambodia this week to offer support to my friend [Theary Seng](#), for whom I serve as pro bono international counsel. She had a [hearing](#) relating to bogus allegations brought against her of treason and conspiracy to incite social unrest and this was my [analysis](#) of what took place. She is part of a mass trial of Cambodian opposition leaders and civil society activists.

Having departed Cambodia, I am now free to respond without immediate fear of being arrested. If the Government thinks that I can be threatened, intimidated, or harassed into silence by such an attack, it is wrong. Indeed, the only interpretation of such a cowardly and anonymous attack is that the Government is afraid of me and my ability to defend Theary Seng effectively in the United States and around the world. This attack has only strengthened my resolve.

It is still nonetheless very important that I respond to each allegation, point by point, to clarify any confusion that may have arisen, to educate fair-minded people about why the Group’s allegations lack merit, and to demonstrate that its arguments are also logically inconsistent.

In sum, I fully agree with the Group that the Kingdom of Cambodia is a sovereign country, that I am not qualified to practice law in Cambodia (in addition I have never done so), and I have never and would never intend to coerce, let alone unlawfully coerce the judiciary in any country including Cambodia. Now to respond to each allegation:

The Royal Government Attorney Group wishes to emphasize that, as with other State-members of the United Nations, the Kingdom of Cambodia is a sovereign country, operating under its Constitution and national laws enforceable within the boundaries of its territorial integrity and sovereignty.

I have never suggested in any way, directly or indirectly, that the Kingdom of Cambodia is not sovereign. On this point, I am full agreement with the Royal Government Attorney Group. Of course, the Kingdom of Cambodia is a sovereign country. So I want to clarify exactly what I meant. Specifically, I read online in a translation of the Constitution:

Article 90

The National Assembly shall adopt or repeal treaties and International Convention[s].

Article 8

The King shall be . . . the protector of rights and freedom for all citizens and the guarantor of international treaties.

As such, in my remarks, I was referring to the fact that as a sovereign country, the Kingdom of Cambodia has voluntarily on October 17, 1980 signed and on May 26, 1992 ratified the International Covenant on Civil and Political Rights (ICCPR). Under Article 2(2) of the ICCPR:

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with the constitutional processes and with the provisions of the

present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Nobody may declare himself/herself an international jurist qualified to perform acts within the Cambodian jurisdiction unless he/she has satisfied the requirements specified under the laws of Cambodia.

Again, I am in full agreement with the Royal Government Attorney Group on this critical point. It appears the group did not actually directly hear the actual comments that I made. Literally, the first thing that I explained in my remarks was:

"I am here in Cambodia as a former law school classmate and friend of Theary Seng's. I am not licensed to practice law in Cambodia and I cannot and will not offer her legal advice under Cambodian law."

In fact, I have never, would never, and will never offer Theary advice under Cambodian law as I am neither licensed nor qualified to do so. In addition, if I were to violate Cambodian law and illegally offer her advice, then this could subject me to losing my law license in all the jurisdictions where I am licensed to practice law. At no point during my trip to Cambodia did I offer her any advice under Cambodian law and I have never done so from abroad either.

That said, I am an expert on international law and am both an adjunct professor of law at Georgetown University Law Center and I have published three books on international law topics including:

- Jared Genser and Irwin Cotler, *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Times* (Oxford University Press, 2011)
- Jared Genser and Bruno Stagno Ugarte, *The UN Security Council in the Age of Human Rights* (Cambridge University Press, 2014).
- Jared Genser, *The UN Working Group on Arbitrary Detention: Commentary and Guide to Practice* (Cambridge University Press, 2019).

But I never suggested nor would I that this would qualify me to practice law in Cambodia. It does not, it would not, and I would never risk my licenses to practice law outside Cambodia.

An individual named Jared Genser, who has tacitly acquiesced to his cadre calling him an “international lawyer,” has acted in an abusive way in the Cambodian jurisdiction and made statements of a political nature, blatantly disregarding a country’s sovereignty, intending to threaten the independence of the Cambodian judiciary.

Again, I want to clarify some clear confusion and misunderstanding.

First, I do not understand why it is a problem that I have been referred to as an international lawyer. This label is simply a descriptor that one attaches to explain one’s area of legal practice within the jurisdictions that I am licensed to practice law. It is similar to one describing oneself as a criminal defense lawyer or contracts lawyer or telecommunications lawyer or project finance lawyer. In short, if a lawyer does not explain to the public what kind of law they practice then it would be impossible for the public to find an appropriate lawyer with the expertise that a person might require. As noted above, I am not licensed to practice law in Cambodia and I have never and would never advertise myself as such.

Second, the Royal Government Attorney Group cited to the title of an article written by a third-party Khmer news organization, Radio Free Asia (RFA). I had nothing to do with writing that article or its title, I don’t speak Khmer, I have no idea if what has been attributed to me is an accurate translation of my remarks in English, and given its communique described RFA as being “widely known for its constant deceitful and mischievous way of behaving against truth in Cambodia,” I don’t understand how it is even considering this article a credible source of information.

Third, to the extent that I mentioned “consequences,” there again has been another misunderstanding. As noted earlier, Cambodia, as an exercise of its sovereignty, voluntarily signed and ratified the ICCPR. Under Article 40(1), it

says:

The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and the progress made in the enjoyment of those rights.

Under Article 28 of the ICCPR, the treaty establishes a body called the Human Rights Committee. This Committee is assigned the responsibility to receive these reports, to ask questions of a State Party, to hold an interactive dialogue with representatives of a State Party, and to issue a report presenting its analysis and recommendations in response to the State Party's report and the dialogue that took place.

On three prior occasions – April 2, 2019; December 28, 2012; and November 24, 1997 – the Kingdom of Cambodia, as an exercise of its sovereignty and in accordance with the requirements of the treaty, voluntarily submitted detailed state reports and then engaged in these very interactive processes. In the two earlier cases, the processes were completed, and the Human Rights Committee issued detailed reports with analyses and recommendations. The process for the third report is ongoing.

Fourth, it is important to emphasize I did not in any way state, suggest, or imply that there would be any consequence for the judiciary or the judges in Theary Seng's case. I very carefully said there might be consequences for Hun Sen's government. Why did I say that and what exactly did I mean? Reports to the Human Rights Committee are typically prepared and submitted by Foreign Ministries around the world, which are Executive Branch agencies. It is also the Executive Branch of State Parties which typically appoint a delegation from different Executive Branch agencies to come engage in a dialogue with the Human Rights Committee in Geneva. Thus, by consequences, what I meant is that the Kingdom of Cambodia, with a delegation appointed by Prime Minister Hun Sen, could be asked questions about whether or not its domestic courts comply with the Government's obligations under the ICCPR in criminal proceedings and the Human Rights Committee could then present its analysis and recommendations relating to this issue. In short, all I was doing was simply

describing the universally-known requirements of the ICCPR, a treaty voluntarily signed and ratified by the Kingdom of Cambodia, referencing how the Human Rights Committee runs its reporting process for Cambodia and every other State Party in the world.

Finally, I absolutely had no intention, whatsoever, to threaten the independence of Cambodia's judiciary and I am very confused as to how my remarks could be interpreted that way. The Kingdom of Cambodia, in its State Party reporting to the Human Rights Committee under the ICCPR has emphasized repeatedly that under its Constitution, the judiciary is independent. Unless it is the position of the Royal Government Attorney Group that this is not accurate, then understanding this fact, no one could intend to unlawfully coerce judicial authorities when they knew it was impossible to do.

[Jared Genser] violat[ed] the provisions of Article 522 of the Cambodian Criminal Code for "publication of commentaries intended to unlawfully coerce judicial authorities."

Again, there has been a clear misunderstanding.

First, I have never and would never travel to a foreign country and intentionally violate any of its laws. Only someone who sought to be arrested would do that. I traveled to Cambodia to offer moral support to my friend Theory Seng, as I said clearly, and that is all. I am fully aware and want to reaffirm again that the Kingdom of Cambodia is a sovereign power that operates under the Constitution, its laws, and its obligations under international treaties that it has signed and ratified.

Second, not only were my remarks only addressed to the Executive Branch outside the courtroom, but in the courtroom, I was not Theory's counsel and the court record will reflect I was never even acknowledged by the court to be present, let alone given an opportunity to address the court. There is no reason whatsoever for it to have done so. As far as I know, none of judges even knew I was present. I sat silently in the audience as a friend of Theory's offering her moral support. Thus, I cannot imagine how the judges could even been

influenced, let alone coerced, by a person they didn't even know was in the courtroom.

Third, for a person to feel coerced, surely they need to have a reasonable fear of a specific set of threatened or potential actions that could result in an outcome they want to avoid and might compel them to abandon their legal responsibilities. Yet if judges in Cambodia, who the Kingdom explains are independent, simply follow all the requirements of the Constitution, laws, and its obligations under international law, then why would they have any reason to believe there could be any negative consequence for simply doing their job in accordance with their legal obligations? Beyond that I never directly or indirectly threatened any consequence of any kind for the judiciary or the judges in this case, nor would I ever do so and that would be both illegal and unethical.

Finally, the Royal Government Attorney Group referred exclusively to comments of mine allegedly reported on RFA, which it said is “widely known for its constant deceitful and mischievous way of behaving against truth in Cambodia.” I never could have imagined that Cambodian judges would ever listen to RFA. And I can't believe that the Royal Government Attorney Group suggested they might. That is a huge surprise to me. Thus, the only way I could intend to unlawfully coerce any judges in Cambodia would be for me to have written or tried to communicate with them directly or spoken to news organizations that I believed they might listen to. I never did, Beyond that, I am not a qualified Cambodian lawyer, I don't speak Khmer, this was my first trip to Cambodia, and I literally have no knowledge of the media landscape in Cambodia, I have no idea how to reach them, and I never reached out to any news organizations based in Cambodia.

Thus, to conclude, I never intended to coerce, let alone unlawfully coerce, judicial authorities in Cambodia.

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KINGDOM OF CAMBODIA
NATION RELIGION KING

COMMUNIQUE
OF THE ROYAL GOVERNMENT ATTORNEY GROUP

Recently, a foreign-based Khmer language news service, which is widely known for its constant deceitful and mischievous way of behaving against the truth in Cambodia, has written an article titled "An international lawyer warns that Hun Sen's government will face consequences if Seng Theory is convicted."

The Royal Government Attorney Group wishes to emphasize that, as with the other State-members of the United Nations, the Kingdom of Cambodia is a sovereign country, operating under its Constitution and national laws enforceable within the boundaries of its territorial integrity and sovereignty. Nobody may declare himself/herself an international jurist qualified to perform acts within the Cambodian jurisdiction unless he/she has satisfied the requirements specified under the laws of Cambodia.

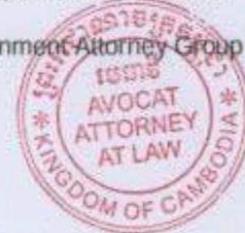
The Constitution of the Kingdom of Cambodia separates three powers from each other, of which the judiciary is an independent power. Every judiciary-made decision is not involved with the executive branch or the legislative one.

An individual named Jared Genser, who has tacitly acquiesced to his cadre calling him an "international lawyer", has acted in an abusive way in the Cambodian jurisdiction and made statements of political nature, blatantly disregarding a country's sovereignty, intending to threaten the independence of the Cambodian judiciary, which is protected by the Constitution of the Kingdom of Cambodia, and violating the provisions of Article 522 of the Cambodian Criminal Code for "publication of commentaries intended to unlawfully coerce judicial authorities."

Cambodia's Royal Government Attorney Group presents its utmost regret that, while such individual is trying to declare himself as a legal expert and even an international lawyer, this person has, surprisingly, actually acted against the laws of Cambodia.

Phnom Penh, 08 December 2021

Royal Government Attorney Group



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

សេចក្តីប្រកាស
របស់ក្រុមមេធាវីរាជរដ្ឋាភិបាល

ថ្មីៗនេះ សារព័ត៌មានបរទេសមួយ ដែលផ្សព្វផ្សាយជាភាសាខ្មែរ និងតែងមានចរិតបំភ្លៃ បំផ្លើស ផ្ទុយពីការពិតនៅកម្ពុជា បានសរសេរអត្ថបទជាមេរមាសា ដោយដាក់ចំណងជើងថា "មេធាវីអន្តរជាតិ ព្រមានថារដ្ឋាភិបាល លោក ហ៊ិន សែន នឹងមានបញ្ហាបើហ៊ានឱ្យកញ្ញា សេង ធាវី ជាប់ទោស" ។

ក្រុមមេធាវីរាជរដ្ឋាភិបាលសូមបញ្ជាក់ថា ព្រះរាជាណាចក្រកម្ពុជា ជារដ្ឋអធិបតេយ្យមួយ ដូចរដ្ឋ ជាសមាជិកនានារបស់អង្គការសហប្រជាជាតិ ដែលមានរដ្ឋធម្មនុញ្ញ និងច្បាប់របស់ជាតិ សម្រាប់អនុវត្តនៅ ក្នុងដែនបូរណភាពទឹកដី និងអធិបតេយ្យភាពរបស់ខ្លួន ។ ពុំអាចមានបុគ្គលណាម្នាក់ តាំងខ្លួនជាអ្នកច្បាប់ អន្តរជាតិ និងអាចធ្វើសកម្មភាពក្នុងដែនយុត្តាធិការកម្ពុជាបានឡើយ ប្រសិនបើបុគ្គលម្នាក់នោះ ពុំទាន់បាន បំពេញលក្ខខណ្ឌដែលតម្រូវដោយច្បាប់នៅកម្ពុជា ។

រដ្ឋធម្មនុញ្ញនៃព្រះរាជាណាចក្រកម្ពុជា បានបែងចែកអំណាចបីដាច់ដោយឡែកពីគ្នា ក្នុងនោះអំណាច តុលាការ ជាអំណាចឯករាជ្យ ។ រាល់សេចក្តីសម្រេចរបស់តុលាការ មិនពាក់ព័ន្ធជាមួយនឹងអំណាចនីតិ ប្រតិបត្តិ ឬអំណាចនីតិប្បញ្ញត្តិ ឡើយ ។

បុគ្គលឈ្មោះ ចារីត គីនស៊ែរ (Jared Genser) ដែលសំដីតាំងខ្លួនឱ្យក្រុមខ្លួនហៅថាជា "មេធាវីអន្តរជាតិ" នោះ បានធ្វើសកម្មភាពទាំងបំពានក្នុងដែនយុត្តាធិការកម្ពុជា និងបានធ្វើសេចក្តីអត្ថាធិប្បាយ ដែលមានចរិត ឧបាយបាយ បំពានលើរដ្ឋអធិបតេយ្យមួយ និងមានគោលដៅគំរាមគំហែងដល់ឯករាជភាពតុលាការកម្ពុជា ដែលត្រូវបានការពារដោយរដ្ឋធម្មនុញ្ញនៃព្រះរាជាណាចក្រកម្ពុជា ព្រមទាំងបំពានបញ្ញត្តិនៃមាត្រា ៥២២ នៃ ក្រមព្រហ្មទណ្ឌកម្ពុជា ពី "បទផ្សព្វផ្សាយនូវការអត្ថាធិប្បាយ ដើម្បីធ្វើសម្ពាធលើយុត្តាធិការ" ។

ក្រុមមេធាវីរាជរដ្ឋាភិបាលកម្ពុជាមានការសោកស្តាយបំផុត ក្នុងនោះដែលមានបុគ្គលបែបនេះបាន និងកំពុងប្រឹងអួតអាងតាំងខ្លួនជាអ្នកចេះដឹងផ្នែកច្បាប់កម្រិតជាមេធាវីអន្តរជាតិ តែបែរជាបានប្រព្រឹត្តអំពើ បំពានច្បាប់នៅកម្ពុជាទៅវិញ ។

ថ្ងៃពុធ ៤កើត ខែមិគសិរ ឆ្នាំឆ្លូវ ត្រីស័ក ពុទ្ធសករាជ ២៥៦៥
រាជធានីភ្នំពេញ, ថ្ងៃទី០៨ ខែធ្នូ ឆ្នាំ ២០២១

ក្រុមមេធាវីរាជរដ្ឋាភិបាល

