

---

Volume 8

Issue 2 *Post-Genocide Cambodia: The Politics  
of Justice and Truth Recovery*

Article 9

---

5-1-2014

## **The Quest for Justice in Cambodia: Power, Politics, and the Khmer Rouge Tribunal**

Donald W. Beachler

*Professor, Politics Department, Ithaca College, USA*

Follow this and additional works at: <https://scholarcommons.usf.edu/gsp>

---

### **Recommended Citation**

Beachler, Donald W. (2014) "The Quest for Justice in Cambodia: Power, Politics, and the Khmer Rouge Tribunal," *Genocide Studies and Prevention: An International Journal*: Vol. 8: Iss. 2: 67-80.

DOI:

<http://dx.doi.org/10.5038/1911-9933.8.2.7>

Available at: <https://scholarcommons.usf.edu/gsp/vol8/iss2/9>

This Article is brought to you for free and open access by the Open Access Journals at Scholar Commons. It has been accepted for inclusion in *Genocide Studies and Prevention: An International Journal* by an authorized editor of Scholar Commons. For more information, please contact [scholarcommons@usf.edu](mailto:scholarcommons@usf.edu).

# The Quest for Justice in Cambodia: Power, Politics, and the Khmer Rouge Tribunal

Donald W. Beachler

Professor, Politics Department, Ithaca College, USA

**Abstract:** *The trial of the four surviving senior members of the Khmer Rouge leadership was a difficult undertaking from the start. The elderly defendants were in frail health. Illness and death reduced the number of the accused to just two. The Cambodian government, led by Hun Sen, was not eager to have any trials at all, and was determined that the trial not implicate officials who were now allied with the ruling regime. The conflicting agendas of the international judges on the hybrid court and the Cambodian government often left the court mired in disputes. The Cambodian genocide tribunal illustrates the political complexities and challenges involved in pursuing charges against perpetrators, especially when the trial is held decades after the genocide occurred.*

**Keywords:** *Khmer Rouge, Cambodia Genocide Trial, Nuon Chea, Ieng Sary, Khieu Samphan, Hun Sen*

## The Cambodian Genocide Tribunal and the Very Slow Road to Justice

In June 2011 genocide trial opened in Phnom Penh, Cambodia that featured what were likely some of the most notorious defendants in a crimes against humanity or genocide tribunal since the Nuremberg Trials that followed World War II. The four highest-ranking living leaders of the Khmer Rouge regime were the defendants in the trial. Cambodia, also known as Democratic Kampuchea (DK) under the Khmer Rouge (KR), was the scene of one of the twentieth century's worst genocides. The KR pursued policies that resulted in the deaths of an estimated 1,700,000 Cambodians during their reign from April 1975 to January 1979.<sup>1</sup> The defendants were among the key decision makers of the regime, although the leader of the Khmer Rouge and General Secretary of the Communist Party of Kampuchea (CPK), Pol Pot, aka Brother Number One, had died in 1998. Nuon Chea, Brother Number Two, had held the position of Deputy Secretary of the CPK and was regarded as the chief ideologue of the regime. He had also served as president of the People's Representative Assembly. Ieng was the Foreign Minister of Democratic Kampuchea throughout its existence and remained a leading figure in the KR until he surrendered to the government of Cambodia in 1996. Ieng Thirith was married to Ieng Sary and served as Minister of Social Affairs in the DK government. At a meeting of the CPK Center in October 1975 that designated the responsibilities of the governing elite, Ieng Thirith was placed... "in charge of culture, social welfare, and foreign affairs, sharing the last field with her husband Ieng Sary."<sup>2</sup> The fourth defendant was Khieu Samphan, who served as head of state in Democratic Kampuchea and also was, according to the October 1975 meeting, in charge of the "accountancy and pricing aspects of commerce."<sup>3</sup> Not since Nuremberg have leading officials of a regime responsible for so many deaths been subjected to a judicial proceeding.

Despite the satisfaction that some observers, foreign and domestic, derived from seeing some of the major perpetrators of the Cambodian genocide brought before a tribunal, many aspects of the trial before the court, formally known as the Extraordinary Chambers in the Courts of Cambodia (ECCC, and often called the Khmer Rouge Tribunal,) left various concerned parties immensely displeased. The trial commenced 32 years after the Khmer Rouge had been driven from power by the Vietnamese invasion of Cambodia in January 1979. Even after the principle of genocide trials for leading Khmer Rouge cadres had been agreed to in 1997, seemingly interminable haggling between the United Nations and the Cambodian government over the composition of the court and the scope of its jurisdiction, delayed the start of judicial proceedings for a dozen years. (Only a single defendant had been tried before the start of the trial of the major perpetrators in 2011.) Many human rights activists argued that there were numerous other perpetrators of genocide who should be brought before the tribunal in future proceedings. In the summer of 2012, the Cambodian government led by Prime Minister Hun Sen remained adamant in its opposition to holding more than two trials and there was little evidence that the United Nations or major donor nations to Cambodia could, or would, exert sufficient pressure to force a concession from Hun Sen that would permit more trials. Critics of the ECCC argued that it was, in essence, too little and too late.

This article explores the political circumstances that led to the two trials of Khmer Rouge genocide perpetrators that were undertaken decades after the regime's demise and the reasons why there would most likely be just five persons tried for the crimes committed during the 44 month existence of the dystopia that was Democratic Kampuchea. It will be argued that given the history of genocide trials and the national and international political imperatives at play in establishing and sustaining the ECCC, the very slow and limited judicial process was, if not inevitable, highly likely.

### **The Long Journey to Two Trials**

The negotiations and political maneuvering that would eventually lead to the establishment of the ECCC occurred as the government of Cambodia was integrating some elements of the Khmer Rouge back into Cambodian society and politics. Because Vietnam was an ally of the Soviet Union and the Khmer Rouge had been close to the Chinese government, the West and China offered direct and indirect support to the KR until the Soviet Union collapsed in 1991. The Khmer Rouge remained a significant factor in Cambodian politics for several years after the end of the Cold War. Not least among the KR's assets in the 1990s was an armed force of roughly 10,000 troops that were part of its broader infrastructure along Cambodia's border with Thailand. When Ieng Sary defected to the government in 1996 with about 3,000 troops, he significantly weakened the Khmer Rouge. When Pol Pot sent armed soldiers to suppress the disloyal Ieng Sary and his troops, the expeditionary forces collapsed due to mass defections.<sup>4</sup> The Khmer Rouge was further weakened by internal divisions, but still contained assets useful to other politicians in Cambodia. Because he controlled an armed militia, Ieng Sary was able to gain leverage as both main contenders for national power, co-Prime Ministers Prince Ranariddh Sihanouk and Hun Sen, sought Ieng Sary's support and both supported an amnesty for him.<sup>5</sup>

In 1997, desperate for support in his struggle for power with Hun Sen, Ranariddh agreed to an alliance with Khieu Samphan, who wished to break away from the Khmer Rouge remnants located along the Thai border.<sup>6</sup> (Ranariddh and his royalist party lost their power struggle with Hun Sen and his Cambodian People's Party (CPP).) The Khmer Rouge insurgency collapsed in 1998 when only Ta Mok, once known as Brother Number Five in the KR hierarchy, and less fraternally as "the butcher" in circles not sympathetic to the Khmer Rouge, declined to reconcile with the regnant political order. Sorpong Peu observes that when Khem Ngoun, Ta Mok's chief of staff, defected from the last major KR holdout, the Khmer Rouge's insurgency was over.<sup>7</sup> (Ta Mok died in prison in 2006 as he awaited trial for genocide and crimes against humanity). An important element of the truces and amnesties that occurred as the Khmer Rouge insurgency finally collapsed was the integration of many KR officials into the government and military.<sup>8</sup>

After accepting amnesty in 1996, Ieng Sary remained in his base area of Pailin province, and later took up residence in a prosperous neighborhood in Phnom Penh. In 1998, Nuon Chea, who was known as Brother Number Two in the CPK, and Khieu Samphan, who had served as head of state during the Khmer Rouge years in power, surrendered to the national government. Both were welcomed at Prime Minister Hun Sen's country estate. The prime minister indicated that he believed that it was time to "dig a hole and bury the past."<sup>9</sup> After international and domestic criticism of his greeting the two defectors and his suggestion that perhaps the two should not be tried, Hun Sen issued an unclear "clarification" of his position, "My stance is this: the trial of the Khmer Rouge is over, but the issue still continues to exist. It is over based on the verdict of the people's court in 1979, which is still valid and acknowledged by the royal decree granting amnesty to Ieng Sary in 1996. The issue that still exists is that of the establishment of a tribunal based on the views of international and national jurists who are now doing their work."<sup>10</sup> These comments were not Hun Sen's last ambiguous remarks on the question of trials for crimes committed by the Khmer Rouge during their years in power. In early 1999, Nuon Chea and Khieu Samphan took a government sponsored tour of Cambodia that included visits to the seaside resort at Sihanoukville and the temples of Angkor Wat.<sup>11</sup> In March 1999, Ta Mok and Kaing Guek Eav, commandant of the S-21 interrogation center, were arrested and later charged with genocide.<sup>12</sup> The pattern of solicitude for Khmer Rouge leaders combined with governmental agreements to some prosecutions continued from the late 1990s through 2012. The various domestic and, more significantly, international pressures for trials of Khmer Rouge leaders and the presence of many former Khmer Rouge cadre in the government, including Hun Sen himself, rendered a twisted policy path inevitable.<sup>13</sup>

In 1997, Hun Sen had agreed to a trial for those Khmer Rouge leaders who were deemed "most senior" and "most responsible" for the crimes that occurred between 1975 and 1979.<sup>14</sup> Of course the concepts most senior and most responsible were left undefined. In 1998 Hun Sen asserted that the international community

should examine some additional matters. He requested that prosecutors investigate the American bombing of Cambodia that had decimated the country in the years before 1975.<sup>15</sup> He also stated that he thought an inquiry should be made into Chinese government support for the Khmer Rouge. While both topics are surely worth examining, such investigations would most certainly have been opposed by the United States and China, respectively.<sup>16</sup> While motive is almost always difficult to discern, these demands for an investigation of the relationships of major world powers to the Khmer Rouge were likely made to further delay and complicate arrangements for a tribunal. Still, Hun Sen was correct when he argued that some of the countries arguing for a series trial had supported the Khmer Rouge either directly or indirectly in the 1970s and 1980s.

Hun Sen first agreed to the principle trials of perpetrators of the Cambodian genocide in 1997, but negotiations about the terms of the trial dragged on for several years. In an inconsistent manner, the United Nations placed pressure on the CPP government to work out terms and conditions for establishing an international tribunal. The U.N. and members of the international community who took an interest in the matter preferred that as much control as possible be in international hands. Outside Cambodia, it was widely believed that the Cambodian judicial system lacked the resources, competence and integrity to carry out a series of trials in a manner that would be acceptable to the international community. Invoking the principles of Cambodian national sovereignty and respect for his country, Hun Sen sought as much Cambodian control over the process as possible. He also argued that permitting an unlimited number of defendants could destabilize the country. The Prime Minister resisted an international tribunal with wide-ranging jurisdiction. His major political rival, Norodom Ranariddh, joined him.<sup>17</sup>

Six years of difficult and contentious negotiations between United Nations officials and the Cambodian government passed before some basic guidelines for the Extraordinary Chambers in the Courts of Cambodia (ECCC) were established. In 2003, under an arrangement worked out by David Scheffer, the United States Ambassador at Large for War Crimes, the majority of judges in the court would be Cambodian, however, no decision would be ratified without the assent of at least one international judge. Scheffer believed that this arrangement provided for an international veto over the actions of jurists from a judicial system that was widely distrusted while preserving a measure of Cambodian sovereignty. In fact, the term Extraordinary Chambers was chosen to distinguish this tribunal from the suspect Cambodian judicial system. The Courts of Cambodia portion of the formal name of the tribunal was a nod to Cambodian sensitivities about sovereignty and acknowledgment of the role Cambodian jurists would play in the trials.

In the three years that followed the establishment of the ECCC very little progress was made in establishing a basic administrative structure for the court. In 2006, David Tolbert, an American attorney who worked at the International Criminal Tribunal for the former Yugoslavia, examined the court in Cambodia and determined that, "it had no administrative leadership, particularly with respect to court management, including translation and interpretation, and the witness-protection program. The international side had had essentially given over judicial management to the Cambodian. The Cambodian staff in charge had virtually no knowledge or experience, and most had no judicial background. And yet there were a large number of them, hundreds in fact."<sup>18</sup> Tolbert concluded that the court was in no position to conduct a trial. Two years after Tolbert's initial visit to Cambodia, there had been little progress in establishing a functioning court. In an effort to break a decade long stalemate, U.N. Secretary-General Ban Ki-moon appointed Tolbert as an assistant secretary general with the primary task of assisting in the establishment of a viable tribunal.

While the terms that eventually permitted the ECCC to convene and eventually to begin trials were worked out, the ten-year struggle between the U.N. and the Cambodian government over the terms and conditions of the tribunal was indicative of the widely divergent agendas each party held. Hun Sen and his government were determined to keep control of the tribunal in Cambodian hands. The determination of the Cambodian Prime Minister to retain control of the tribunal, can of course, be read in more than one way. The assertion that such an international tribunal would abridge Cambodian sovereignty is undoubtedly true. The U.N. and human rights advocacy groups did not believe that the Cambodian government had the competence or the integrity to conduct a series of trials. Also because of Cambodia's widespread and deserved reputation as one of the most corrupt countries in the world. International actors were convinced that they could only achieve their means by abrogating Cambodian sovereignty, though few people would make such a bold and direct assertion in public.

The scope of the ECCC was to become the major point of contention between the Cambodian government that wanted to limit the number of cases brought before the court and the U.N. human rights groups who favored an extensive series of trials. These controversies slowed the judicial process. A dozen years elapsed

from the conception of the tribunal to the beginning of the trial of S-21 commandant Duch in 2009. The main trial of the surviving members of the Khmer Rouge elite began in the summer of 2011.

### **Case 001: The Trial of Comrade Duch**

The first trial held by the ECCC was that of Kaing Guek Eav, better known as Duch. As commandant of S-21, or the Tuol Sleng Prison, Duch presided over the torture and murder of at least 14,000 people.<sup>19</sup> Most of those killed there were party and government officials who were victims of the Khmer Rouge's constant search for counterrevolutionaries, many of whom consistent with Maoist doctrine, were thought to reside within the ranks of the Communist Party of Kampuchea. Duch might seem an odd figure to be prosecuted first for no other reason than that he was born a least a decade later (1942) than the four defendants in the second and possibly last of the ECCC trials. Duch was also the least politically powerful person tried by the court. While the most horrific tortures preceded the murders committed at S-21, Duch was not a policy maker and held no national office in Democratic Kampuchea. Duch was the most hands-on killer among the defendants, but was not accused of formulating the policies perpetrated. While he was not a high-ranking official of the Khmer Rouge regime, it is important to note that Duch had been a committed member of the CPK for decades. He might have made the ideal first defendant because he was willing to confess to guilt on all the counts of the indictment against him. Also because of his role as commandant at S-21, it was much easier to attribute direct responsibility for crimes to Duch than to other officials who held diversified portfolios within the government and party during the reign of the Khmer Rouge.

Duch's trial began in March 2009 (the defendant had been incarcerated for a decade) and concluded when the tribunal rendered its guilty verdict and 35-year prison sentence in July 2010. (The sentence was later reduced to 19 years because Duch has spent 11 years in pre-trial detention and because this time in pre-trial detention exceeded the maximum time permitted by Cambodian law. After an appeal by the prosecutor Duch's sentence was changed to imprisonment for life.<sup>20</sup> Duch was charged with "crimes against humanity, enslavement, torture, sexual abuses, and other inhumane acts."<sup>21</sup> At the outset of his trial, Duch accepted all 260 counts of his indictment. During the course of his trial Duch would often accept responsibility for various horrific actions that occurred at S-21. His two main objections to the charges against him were that, as someone not part of the governing cabal, he was only following orders; orders he was forced to obey to protect himself and his family. While attributing the main responsibility for the atrocities at S-21 to Pol Pot, Duch also was capable of admitting his own guilt, albeit as a subordinate of the regime "...Pol Pot was a murderer and more than a million people were killed under the hand of Pol Pot. At S-21, my hand is stained with the blood of the people killed there."<sup>22</sup> Duch's testimony was, of course, offered as part of a defense strategy to present Duch as the exemplar of contrition in the hope of obtaining a measure of leniency. Given the evidence against him and the vile nature of his crimes, such a strategy was probably the only possible legal strategy that Duch could pursue.

Duch's trial included far more evidence about S-21 than was necessary to demonstrate his guilt. The adjudication of the charges against the defendant is, however, not always the sole or even the main purpose of genocide or crimes against humanity trial. Of greater importance may be the establishment of the record of crimes committed by the genocide perpetrators and the dissemination of these findings through the media coverage that a trial often attracts. For example, the trial of Adolf Eichmann in Israel in 1961 included extensive testimony about the Nazis' genocidal Final Solution even though Eichmann stated that he did not dispute the testimony presented about the crimes committed against European Jews by the regime he served. (Eichmann, as is well known offered the defense that he was following orders, the quintessential duty of a law abiding citizen.) One purpose of the Eichmann trial was to educate the world about the Holocaust, an event about which far less was known in 1961 when the Holocaust was not a widely discussed topic in academic circles or popular literature and media.<sup>23</sup>

Duch's trial took an unexpected turn in November 2009 when Kar Savuth, his Cambodian attorney, asked that Duch be freed because he was not among those most responsible for the crimes committed during the KR era. Because no other mid-level officials would be tried, Duch's attorney argued that his client should be released rather than serve as a scapegoat for the crimes of the Khmer Rouge. This change of strategy led to the resignation of Francios Roux, his French attorney, who felt that the contrition strategy of the defense had been undermined by a point of law that should have been raised at the outset of the trial.<sup>24</sup> Because Kar Savuth had also served as legal adviser to Hun Sen there was speculation of government collusion with the defense team that led to the change in legal strategy by the previously submissive defendant. Kar Savuth's

assertion that Duch was the only non-elite KR cadre to be charged before the tribunal was, in an odd sort of way, consistent with the views expressed by Hun Sen and the court's Cambodian co-prosecutor both of whom opposed a large number of prosecutions. The only difference between the positions of Duch and Hun Sen was that Duch did not believe that any KR officials other than the elite should be prosecuted. Hun Sen was willing to accept that one mid-level cadre (Duch) should serve a prison sentence for crimes against humanity committed by the Khmer Rouge. Stephanie Giry claims that; by the end of Duch's trial; the Cambodian government, the Cambodian co-prosecutor, and Duch's Cambodian attorney were all in agreement as to the scope of the ECCC. All of these parties took positions that implied that there should be one additional trial, that of the four leading major figures from the KR regime, and that this proceeding should conclude the work of the Khmer Rouge Tribunal.

### **Case 002: The Trial of the Khmer Rouge Leadership**

While there were turns and twists in the trial of Comrade Duch, the trial that followed it was bound to be immensely more complex. The leadership trial promised to be a lengthy one as it involved issues of responsibility for the genocide, atrocities, and other crimes committed by the KR government. The advanced age of the defendants raised concerns that one or more of them might not survive along trial. (As of August 2011 Nuon Chea and Ieng Sary were both 85 years old, while Ieng Thirith was 79 and Khieu Samphan was 80 years old). Some also noted that because of their advanced ages, that if convicted, the defendants were unlikely to serve a significant portion of the lengthy prison sentences they would probably receive (life imprisonment was the maximum sentence that the ECCC could impose on a convicted defendant). The case against the four defendants was further complicated in late August of 2011 when, Dr John Campbell of New Zealand, a medical examiner appointed by the Tribunal, testified that Ieng Thirith suffered "significant cognitive impairment" that was most likely due to Alzheimer's disease.<sup>25</sup> Dr. Campbell indicated that he thought it would be difficult for Ieng Thirith to participate fully in her defense and also recommended that she given a more extensive medical evaluation. In September the court announced that four additional physicians would examine Ieng Thirith in an effort to reach a more conclusive assessment of her mental state.<sup>26</sup> The case against Ieng Thirith was dropped in November, 2011 on the grounds that her dementia rendered her unfit to stand trial. The ECCC recommended that she be released from custody.<sup>27</sup> The number of defendants in the second trial was reduced to two when Ieng Sary died at age 87 in March 2014.<sup>28</sup>

The indictments against Nuon Chea, Ieng Sary, and Khieu Samphan were identical and were excerpted on the ECCC website:<sup>29</sup>

[...] is alleged to be responsible, through his acts or omissions (committed via a joint criminal enterprise), for having planned, instigated, ordered, or aided and abetted, or being responsible by virtue of superior responsibility, for the following crimes committed between 17 April 1975 and 6 January 1979:

- Crimes against humanity (murder, extermination, enslavement, deportation imprisonment, torture, persecution on political, racial, and religious grounds and other inhumane acts)
- Genocide, by killing members of the groups of Vietnamese and Cham
- Grave breaches of the Geneva Conventions of 1949 (willful killing, torture or inhumane treatment, willfully causing great suffering or serious injury to body or health, willfully depriving a prisoner of war or civilian the rights of fair and regular trial, unlawful deportation or unlawful confinement of a civilian)
- Homicide, torture and religious persecution, as defined by the Cambodian Penal Code from 1956

Ieng Thirith was subject to a similar indictment though with respect to the charge of crimes against humanity, she was alleged to have been guilty by having ordered such acts or having been guilty by "virtue of superior responsibility."<sup>30</sup> The text of the indictments and the powerful government and party positions once held by the four defendants would seem to dictate that this was the major trial of the ECCC for historical and legal purposes. Those concerned with the resolution of these matters for either purpose likely regretted that it took so long for the trial to arrive and that the defendants were at such advanced ages when the trial commenced.

The defendants raised objections to the proceedings and argued that they were not guilty of crimes against humanity, war crimes, or genocide. Three of the four defendants claimed that they were protected from prosecution by the ten-year statute of limitations of the prior Cambodian legal code. Ieng Sary claimed

that his trial by the ECCC was a case of double jeopardy because he had been tried in absentia and sentenced to death by the Vietnamese installed government of Cambodia. King Norodom Sihanouk pardoned him in 1996. On the basis of these prior legal developments, Ieng Sary claimed immunity from prosecution. As a practical matter, the procedural claims about jurisdiction, double jeopardy, and prior pardons were very likely to be overruled by the court which was constituted for the very purpose of trying defendants such as those that appeared before it in Case 002. Still, the various legal arguments about the legitimacy of the charges delayed the already very long judicial process in Case 002.

The political complexity of the ECCC proceeding was demonstrated again when Nuon Chea's three attorneys resigned saying that Cambodian government interference prevented them from presenting a vigorous defense of their client. The lawyers cited the refusal of sitting government ministers to respond to court summonses as a major impediment to their efforts to defend Nuon Chea. The lawyers' complaint was described as having a degree of merit according to an observer from the Open Society Justice Initiative. While the testimony of government ministers would not likely lead to an acquittal of Nuon Chea, the Hun Sen Regime had nothing to gain from testimony that would call attention to the roles that current government officials played in the Khmer Rouge government.<sup>31</sup>

### **Are Two Trials Sufficient?**

One of the most contentious issues between the Cambodian government and international human rights groups, as well as many international prosecutors and judges, was the question of whether there should be additional cases pursued beyond Cases 001 and 002. Many transnational human rights organizations as well as international prosecutors and consultants serving at the ECCC wished to proceed with Case 003 which was widely believed to concern the actions of Meas Mut and Sou Met, who were respectively the heads of the Khmer Rouge Navy and Air Force. Both Meas Mut and Sou Met have been accused of being responsible for the deaths of thousands of purged KR cadres. Hun Sen consistently opposed any efforts to expand the scope of the ECCC beyond the five defendants in the first two cases. His statements on this matter were consistently unequivocal. In October 2010, Hun Sen told Ban Ki-moon that Case 002 would be the final ECCC trial and that further cases were "not allowed."<sup>32</sup> Khieu Kanharith, a spokesman for the government, warned the ECCC foreign staff against pursuing further cases and said of these staff, "If they want to go into Case 003 or 004, they should just pack their bags and return home."<sup>33</sup> On the issue of whether there should be any trials after Case 002, there was no obfuscation by the Cambodian government.

The Cambodian Prime Minister argued that further trials would cause civil unrest and possibly civil war in the country. Hun Sen claimed that he would prefer that the ECCC fail in its mission rather than permit additional trials that would produce civil war.<sup>34</sup> His opposition to expanded proceedings by the tribunal was supported by Cambodian judges on the tribunal as well as Cambodian co-prosecutor Chea Leang, who had long been clear about her opposition to further trials. When international co-prosecutor Andrew Cayley said the alleged crimes in Case 003 had not been fully investigated and deserved further examination; his Cambodian counterpart did not support him. Disputing Cayley's assertion, Chea Leang argued that the suspects in Case 003 were not within the court's jurisdiction because they were not senior officials of the Khmer Rouge government and were not "most responsible" for the crimes committed from 1975 to 1979.<sup>35</sup>

There was considerable speculation that a series of cases would result in many current Cambodian government officials being summoned as witnesses. It is worth recalling that Hun Sen himself was once Khmer Rouge official, albeit of low rank, before he defected to Vietnam.<sup>36</sup> The revelation that significant numbers of former KR cadres held positions in the government, while well known in Cambodia and among those who closely follow events in the country, would have been a source of some international embarrassment for Hun Sen's government. Since it is likely that a considerable number of Cambodians had served in the government in some capacity under the KR, there was probably some popular support in Cambodia for limiting the scope of the ECCC tribunals.<sup>37</sup> To the extent that Hun Sen secured the surrender of recalcitrant Khmer Rouge soldiers and leaders by informal pardons and classic political patronage, trials that exposed these dealings had the potential to destabilize the regime and perhaps, Cambodian society as a whole. For those benefiting from the status quo, there was nothing to be gained by extensive probing into the past actions of government officials on the part of the ECCC or anyone else for that matter.

Human rights advocates were adamant that Case 003 had to proceed if justice was to be done in Cambodia. Anne Heindel, legal advisor for the research organization Documentation Center of Cambodia,<sup>38</sup> argued that if the ECCC were perceived as capitulating to Cambodian government pressure by blocking

further investigation of Case 003, its credibility on Cases 001 and 002 would be suspect as well. In Heindel's words, "There's no way you can separate Case 003 out from what's come before."<sup>39</sup> In April 2011, the co-investigating judges of the ECCC, Sigfried Blunk of Germany and You Bunleng of Cambodia, announced they were closing their investigation with regard to Case 003. Citing political interference by the Cambodian government in the proceedings of the ECCC, Blunk resigned his position in October 2011.<sup>40</sup> Laurent Kasper-Ansermet of Switzerland, another international judge, resigned from the ECCC in March 2012. He asserted that his Cambodian colleague You Bunleng was blocking the court from investigating additional suspects.<sup>41</sup>

The decision not to proceed with further investigation of Case 003 was widely seen as a step towards the eventual closure of the case without any indictments of the suspects. Critics claimed that the judges conducted only a cursory investigation in the case and further alleged that political influence may have been brought to bear in a successful effort to forestall any action on the case. The Open Society Justice Initiative (OSJI), a U.S. based organization founded by George Soros, called for a U.N. investigation of the ECCC alleging that Case 003 raised issues of "judicial independence, misconduct, and competency."<sup>42</sup> The OSJI statement also contained the stinging allegation that, "the court itself is on the verge of embracing impunity" for the various crimes of the Khmer Rouge.<sup>43</sup> Several members of the legal staff resigned from the ECCC to protest the decision to discontinue the investigation of Case 003. Among those resigning their positions at the tribunal was Stephen Heder, a prominent historian of the Khmer Rouge era based at the School of Oriental and African Studies at the University of London, who had served as a consultant to the investigating judges. In his resignation letter, Heder claimed that the ECCC judges' office was "professionally dysfunctional."<sup>44</sup> The judges were equally strident in a response to the resignations of court personnel, issuing a statement that welcomed the departure of those staff, "who ignore the sole responsibility of the co-investigating judges" with regard to Case 003.<sup>45</sup>

It is also important to note that representatives of several western governments were non-committal on the issue of whether Case 003 should be pursued. Some responded by emphasizing the importance of Case 002. The United States Ambassador at Large for War Crimes Issues, Stephen Rapp, asserted his belief that the ECCC must be free of interference from the Cambodian government. Rapp also offered statements that, however, showed a degree of understanding for those who wished to limit the number of investigations and prosecutions. According to Rapp, "it's a question of the mandate, but it's also a question of resources as well. We expect people to be making decisions that you can't pursue every case. We want them to make them on a proper basis, with an understanding that resources are limited and they need to prioritize."<sup>46</sup> While such a statement is neutral on its face, it had to be disappointing to those who wished for more than two trials and viewed international pressure as the only means of achieving their objective. Hun Sen and others opposed to additional trials must have been pleased by the views of Rapp and others who took similar positions.

### **The ECCC and the Politics of Graft**

In addition to other problems and controversies plaguing the tribunal, the ECCC was also the subject of allegations of corruption by Cambodian administrators in charge of the large court staff. In 2008, several employees alleged to U.N. staff members that they were forced to pay 30 percent of their salaries to their superiors to obtain and retain their positions. While the results of a subsequent U.N. investigation were not released to the public, a report for *Cambodia Tribunal Monitor* indicated that there was considerable evidence in support of the corruption allegations.<sup>47</sup> Moreover, the cost of the trial has consistently exceeded projections and the tribunal has seemed on many occasions to be on the verge of insolvency. Corruption and cost are not the main concern of a court conducting genocide trials, but in the case of the ECCC they contributed to an already growing perception of a court in disarray.

The allegations of cost overruns and outright corruption that have plagued the ECCC should come as no surprise to those who have followed Cambodia's pattern and practice in this regard. Stanford Journalism professor Joel Brinkley has argued that virtually every institution in Cambodian society is a site of bribery, blackmail, or embezzlement. Brinkley includes education, health care, natural resource extraction, the police, and judicial system as among the Cambodian institutions where kleptomania seems to be the reigning ethos. For good measure, Brinkley informs us that babies available for foreign adoption from Cambodia were often separated from their mothers by deceit, force, and in some cases, outright theft.<sup>48</sup> French journalist Francois Hauter vividly offers his view of Cambodia under Hun Sen, "The country has become a regime of organized pillage, a vast bazaar of plundered goods, a regional center for shady business of every kind: drugs, gambling, sex. The head of the national police, one of Hun Sen's closest associates, owns the largest brothel in the country. Many officials enrich themselves at the peasants' expense."<sup>49</sup>

Transparency International (TI), an NGO that monitors private and public sector corruption, has long cited Cambodia as a society and a government replete with various forms of corruption. For example, in 2006 TI completed a national study that included some trenchant remarks about Cambodia. The report concluded, "The NIS Study of Cambodia found that corruption has pervaded almost every sector of the country. The payment of unofficial fees is necessary to secure any range of services, including medical care, education credentials and even birth certificates. A degree of political will for reform exists within the government, but the reality is that those in power have little reason to change a system that has secured them much power and personal wealth."<sup>50</sup> It should be no surprise that in a poor country with a corrupt government, a tribunal that dispenses large sums of money would find itself enmeshed in allegations of corruption. In fact one value of the ECCC to the government might well have been as a source of patronage and graft. In any event, the frequent allegations of bribery and waste further sullied the ECCC's reputation and could not have been helpful as it pursued its core mission.

### **Strategic Interests and International Influence in the Tribunal**

If justice delayed is really justice denied then the Cambodian case is best viewed as justice largely denied. The Khmer Rouge regime, as has been mentioned previously, was deposed from power by the Vietnamese invasion of Cambodia in January 1979. By the time Case 002 against the four elderly Khmer Rouge officials began in the summer of 2011, the Khmer Rouge had been out of power for more than 32 years. Of course the strategic calculations of the Cold War kept the Khmer Rouge in the Cambodian seat at the United Nations until 1991. Because Vietnam was allied with the Soviet Union during the latter decades of the Cold War, China and the United States condemned the 1979 invasion and had no interest in pursuing judicial action against the perpetrators of the genocide in Cambodia.<sup>51</sup> In fact, the official position of the United States was that the genocidal Khmer Rouge were the rightful rulers of Cambodia. The Vietnamese installed regime, while not democratic, ended the mass killings in Cambodia. The fact that the government that assumed power as a result of the Vietnamese invasion ended the genocide was not a major concern for those who believed that geopolitical considerations outweighed any human rights issues.<sup>52</sup> Zbigniew Brzezinski, President Jimmy Carter's National Security Advisor, told journalist Elizabeth Becker that while the United States could not openly cooperate with someone as morally reprehensible as Pol Pot, the U.S. did encourage the Chinese and Thai governments to support the Khmer Rouge because it continued to resist the Vietnamese proxy government in Phnom Penh.<sup>53</sup> The very notion of bringing the Khmer Rouge leaders to trial was only possible with the collapse of the Soviet Union in 1991 and the subsequent reordering of global politics.

A number of political circumstances may lead to a rapid and seemingly comprehensive trial of defendants charged with genocide or other crimes against humanity. The most obvious case is that of the Nuremberg trials that followed World War II. Nazi Germany had been completely defeated militarily and was occupied by the four powers that conducted the first and, most famous of the tribunals. The vanquished Germans had absolutely no say in what would happen to leading Nazis in the immediate aftermath of the war. In 1945-1946, France, the Soviet Union, the United Kingdom, and the United States had a common interest in further vindicating their positions in the war by prosecuting leading officials from various institutions of the Nazi regime.<sup>54</sup> The International Military Tribunal (IMT) conducted the first trial of those labeled major war criminals. While not above criticism as victor's justice, the IMT was able to function quite smoothly because there was a general consensus among the occupying powers on trying those regarded as major figures in the various organs of the Nazi government.

An interesting contrast to the IMT is provided by the trial and ultimate fate of the defendants in the Einsatzgruppen trial conducted by the United States in 1947-48. The Einsatzgruppen were the mobile killing squads that murdered at least one million Jews by mass shootings, primarily in the Soviet Union (as it was constituted in 1941).<sup>55</sup> Twenty-four officers of the Einsatzgruppen were charged with mass murder and 22 of the defendants were found guilty of crimes against humanity. Fourteen of the convicted officers were sentenced to death by hanging and two others to life imprisonment. In the end, only four of the convicted leaders of the mass murder squads were executed (all in 1951), and as a result of commutations and pardons, all of the surviving convicted Einsatzgruppen leaders had been released from incarceration by 1958. Given the vast number of murders that these men had committed and the indisputable evidence of their personal guilt, all but four of them might be regarded as having in the end been treated with extreme lenience. The change in the treatment of Nazi officials convicted of even the most serious crimes is likely rooted in the imperatives of the Cold War. The Federal Republic of Germany (West Germany) had been established in 1949 and contained

about 75 percent of the German population. West German was an ally of the Western powers in their struggle against the Soviet Union and it was thought that too many executions and other harsh punishments of Nazi criminals would demoralize the German population that the United States wished to rally to its side as it confronted its former ally, the Soviet Union. International politics played a major role in determining the fate of the genocidal killers who commanded units of the *Einsatzgruppen*.<sup>56</sup>

For human rights advocates to obtain the broader prosecution of genocide perpetrators in Cambodia they desired, there would have had to be a concerted effort by major powers to overcome the corruption and the strong resistance of the Cambodian government. It is not always necessary to have a deeply vested interest on the part of a powerful country or group of countries to operate a genocide tribunal, as the case of the International Criminal Tribunal for Rwanda (ICTR) demonstrates. In Rwanda, the exile Tutsi led Rwandan Patriotic Front (RPF) won the four year war against the Hutu government in 1994 and ended the three month long genocide perpetrated against Tutsis residing in Rwanda. After the war, the RPF had both the motive and the power to assist in a trial of Hutu perpetrators of the Rwandan genocide.

Another aspect of the terrible events of 1994 in Rwanda has not been placed before the ICTR. Credible research indicates that the RPF may have killed tens of thousands of Hutu civilians in the course of its struggle for power in Rwanda.<sup>57</sup> Still prosecutors, most notably Carla Del Ponte, failed in their efforts to gain cooperation from Rwandan President Paul Kagame (a Tutsi and former RPF military commander) and his RPF regime to pursue judicial actions against RPF officials who may have committed massacres of Hutus. Little international pressure was brought to bear on the recalcitrant Rwandan government. The United States and Britain were the two external powers with the greatest capacity to influence the Kagame government. While he argues that sympathy for the plight of the Rwandans and guilt about the West's indifference during the 1994 genocide generated support for the RPF, Victor Peskin claims that strategic calculations were a major factor in determining British and American policy with respect to the ICTR. In Peskin's words, "In light of their strategic goals in Rwanda, Washington and London had little interest in pressing the Kigali regime to cooperate with investigations of RPF atrocities. Nor did the United States have an interest in shining a spotlight on the wave of post-1994 RPF atrocities against Hutu genocidaires and innocent civilians who had fled to Congo."<sup>58</sup> Peskin argues that the RPF led Rwandan government was a major source of Anglo-American influence in the resource rich and strife ridden Congo.<sup>59</sup> The slaughter of Tutsis at the behest of Hutu Power advocates was indubitably the major component of the Rwandan genocide of 1994. ICTR prosecuted many of those directly responsible for the genocide of the Tutsis, but the political interests of various governments dictated the parameters of the trial.

Because roughly half of its national budget is derived from grants provided by foreign governments and international agencies, Cambodia is obviously vulnerable to a considerable measure of international pressure. Should donors care to exert influence on a matter such as genocide trials?<sup>60</sup> In the absence of any concerted and vigorous external pressure by major powers, the United Nations was unlikely to intervene in a forceful way. After the June 2011, resignation of Stephen Heder, a spokesperson for U.N Secretary General Ban Ki-moon issued a statement affirming the work of the ECCC and asserting its impartiality.<sup>61</sup> Ban also denied that the U.N. had any role in instructing tribunal judges to not pursue additional cases.<sup>62</sup> On the issue of whether there should be additional cases brought against anyone other than the five original defendants, Anne Heindel, legal advisor to the DC-CAM blamed the U.N. for not pressing for an expanded series of trials. According to Heindel, "The Cambodian government has been forthright all along that there would be no new trials...it's the failure of the United Nations to act that's been surprising."<sup>63</sup> Had she considered the motives and interests of nations such as the United States, China and Japan in Southeast Asia, Heindel might have been less surprised by the lack of U.N. support of a more expansive tribunal.

In a survey of Cambodia in 2010 written for an academic journal, Professor Heder noted that while relations with the U.N. remained fraught in 2010, Cambodia improved its standing with two of the world's major powers. The United States and Cambodia agreed on a plan to use Cambodian territory to train Asian troops for peacekeeping operations.<sup>64</sup> Margo Picken claims that counterterrorism training for Cambodian troops has been an increased focus of the U.S. government in recent years. In early 2012, Political scientist Kheang Un offered a similar view with regard to American interests in Cambodia "...the U.S. has shifted its Cambodian engagement from demanding respect for human rights and democracy to focusing on anti-terrorism, anti-drug trafficking, and countering China's influence."<sup>65</sup> While the United States might, in principle, be in favor of bringing justice to more perpetrators of the Cambodian genocide, such a matter ranked very low on the list of foreign policy concerns confronting the United States in the first eleven years of the 21<sup>st</sup> century.<sup>66</sup>

China had a much more sustained and extensive relationship with the Cambodian regime than did the United States. Heder notes that between 2006 and 2010 China received approval for \$6 billion of investment in Cambodia. Among the most important of these Chinese investments was the development of hydroelectric power projects designed to increase Cambodia's capacity to export agricultural projects. There are, of course, benefits to both China and Cambodia in these deals.<sup>67</sup> In 2007, journalist Francois Hauter argued that the Chinese government supported and protected Hun Sen's corrupt regime in return for the right to develop Cambodian natural resources.<sup>68</sup>

China also had a strategic interest in maintaining a cordial relationship with the Hun Sen government. China is involved in disputes with several other Asian nations about sovereignty over areas of the South China Sea, which is thought to contain large reserves of oil and natural gas. China and several other Asian nations claim sovereignty over the uninhabited Spratly Islands and their possible oil and gas deposits. Half the world's merchant shipping tonnage passes through the South China Sea. Perhaps hoping to check Chinese power in East Asia, U.S. Secretary of State Hilary Clinton stated that the resolution of territorial disputes in the South China Sea was in America's national interest.<sup>69</sup> China's commitment to modernize and expand the Cambodian port at Sihanoukville on the Gulf of Thailand should enhance China's capacity to project naval power into disputed regions and to assert this power in the event of a conflict that threatened vital shipping lanes including the extremely important Strait of Malacca.<sup>70</sup> Given its commercial and geo-political interests, there was no political imperative for the Chinese government to exhibit anything other than indifference to the ongoing battles over the scope of the ECCC trials. It is difficult to think of a country that has ever sacrificed what it perceived as vital national interests to promote something as insignificant to it as the ECCC trials were to China. (China's long history of support for the Khmer Rouge probably also helped make it a less than enthusiastic advocate of a comprehensive judicial airing of the crimes of Democratic Kampuchea.)

Picken describes Japan, a major donor to the ECCC, as generally supportive of Hun Sen and the CPP.<sup>71</sup> As a nation competing with China for influence in the region, there is no real political or economic incentive for the Japanese government to pressure or antagonize the government of Cambodia by engaging in disputes about the number of trials that should be held for former Khmer Rouge officials.

With Cold War tensions long gone and Vietnam far more concerned about its much larger regional rival, China, the relationship between Cambodia and Vietnam has grown stronger as commercial ties deepened. In 2009, Vietnam reached an agreement with Cambodia, which would permit the Vietnamese to grow about a quarter million acres of rubber in Cambodia.<sup>72</sup> By 2010, trade between Cambodia and Vietnam totaled \$1.2 billion.<sup>73</sup> Given the prospect of further commercial agreements between the two nations, there was little reason for the Vietnamese to pressure Hun Sen into proceeding with a trial in any direction that he did not wish to permit as he maneuvered through and around the long enduring ECCC negotiations and trials.

Vietnam's main geo-political interest was defending its claims to portions of the South China Sea. There was little political or economic incentive for the Vietnamese government to disrupt its relationship with Cambodia by concerning itself with the trial of the elderly leaders and other functionaries of a regime it had driven from power more than three decades ago, especially when the Hun Sen government was seen as a close partner of Vietnam.

### **Beyond Guilt and Innocence: The ECCC and Regime Change**

To some human rights organizations the trial of fact and law with regard to Khmer Rouge defendants was a secondary purpose of the Cambodia Tribunal. Duncan McCargo argues that retributive justice is one of only several goals that some external NGOs have for the ECCC.<sup>74</sup> (Retributive justice in the Cambodian context is simply punishment for those guilty of atrocities and genocide during the reign of the Khmer Rouge). McCargo suggests that international organizations and advocacy groups had a number of objectives including the far reaching objective of incremental regime change.

One of these goals was to provide an example of a well-run trial in a nation where according to a study by the Nordic Institute for Asian Studies, many criminal trials lasted less than 20 minutes. It was hoped that the ECCC would have a contagion effect that would improve the Cambodian criminal justice system. Closely related to the goal of transforming the judicial processes of Cambodia was the aim of altering the culture of impunity that allowed powerful people to plunder, steal and literally get away with murder in Cambodia. Some analysts and advocates argued that the source of this lawlessness by the rich and powerful was rooted in the fact that the Khmer Rouge leaders had never been punished for their crimes. The hope was that the imposition of legal processes and punishment against key Khmer Rouge cadre would undermine the culture of impunity in Cambodia.<sup>75</sup>

The ultimate objective of some human rights advocates was indeed gradual regime change. The obstacles to achieving this very ambitious objective were at once enormous and should have been obvious from the outset of the process of establishing a tribunal. The Hun Sen CPP government was, as evidenced by its conduct over more than a decade, interested in a far less expansive outcome. (In any nation the incumbent regime is not likely to be interested in regime change). The conditions that the Cambodian government was able to place on the various aspects of the ECCC meant that from the outset of the proceedings broad transformative goals were unlikely to be achieved. The lack of a sustained commitment to goals as far reaching as judicial process contagion or transforming the entire Cambodian political system by any nations possessing global or regional power, made achieving such ambitious aims a virtual impossibility from the outset. (Regime change is, of course, by no means guaranteed even when there is much greater international commitment than was evident in Cambodia.)

### Politics, Justice, and Genocide Tribunals

The question of legal, political, and moral responsibility for genocide is always enmeshed in various political and strategic calculations. The case of Turkish government denial of the Armenian genocide is quite well known and a good example of the politics of genocide recognition. While there is, of course, no possibility of holding a trial, in the traditional sense, for perpetrators of a genocide that occurred in 1915, the government of Turkey has not been willing to admit that there was a genocide of the Armenians residing in Anatolia<sup>76</sup>. Some foreign governments have geopolitical motives that inhibit criticism of official Turkish unwillingness to acknowledge what is now a well-documented genocide. For example, the United States has been allied with Turkey; a member of NATO since 1952, for several decades and the U.S. government has been unwilling to officially use the word genocide when referring to the fate of the Ottoman Armenians. The State of Israel has long refused to use the term genocide in reference to the fate of the Ottoman Armenians. Israel has, until quite recently, had quite close relations with Turkey.<sup>77</sup> This relationship was especially important to Israel because Turkey has a 98 percent Muslim population. Neither Israel nor the United States was prepared to place strategic interests at risk for the goal of recognizing an historical truth.

Genocide in the past or present may also be neglected out of indifference rather than strategic calculation. At most times, small countries like Cambodia do not figure all that prominently in the concerns of politicians and foreign policy elites in many countries. In the summer of 1991, the administration of President George H.W. Bush was little concerned about events in the Balkans as the region descended into communal violence. Secretary of State James Baker's view of the United States' role in attempting to resolve the deadly conflicts that erupted after the disintegration of Yugoslavia in 1991 was captured by his remark that, "we do not have a dog in this fight."<sup>78</sup> As for the president, National Security Advisor Brent Scowcroft reported that, "The President would say to me once a week: 'Tell me again what this is all about.'"<sup>79</sup> Even a president with a long resume in foreign policy and a noted preference for acting in the international rather than the domestic policy arena, was not easily engaged by the outbreak of ethnic violence in the former Yugoslavia.

In an opinion piece in *The New York Times* in 2010, Professor Ear gave his bitter assessment of the trial to that date. "Plagued by corruption, the tribunal was essentially hijacked to advance domestic and international political agendas. For domestic politicians...to reduce its scope by limiting the number of individuals it could indict (five) while currying international favor addressing, superficially at least, crimes against humanity... Cambodians have learned their lesson: Don't believe in international promises; they are not kept."<sup>80</sup> While it would be difficult to argue against Ear's moving conclusion, his findings are not so surprising. Politicians on the national and international stage acted largely in their own self and national interests with regard to the ECCC. It would have been quite shocking if much political capital had been expended on overcoming Cambodian government resistance to a series of trials of leaders of a genocidal government that had been deposed three decades ago. The Cambodian genocide trials are hardly the first time that the imperatives of realpolitik triumphed over concerns for truth and justice in matters of genocide and other mass killings.<sup>81</sup> The Khmer Rouge Tribunal is also unlikely to be the last time such hard political calculations trump the desires of victims for more comprehensive justice.

### End Notes

1. The prominent Cambodia scholar Ben Kiernan calculates that between 1.671 million and 1.871 million people perished as a result of Khmer Rouge policies. Ben Kiernan, "The Demography of Genocide in Southeast Asia: The Death in Cambodia, 1975-1979 and East Timor, 1975-1980." *Critical Asian Studies*, 35(4), 2003, 585-598.

2. Ben Kiernan, *The Pol Pot Regime: Race Power, and Genocide under the Khmer Rouge, 1975-1979*, (New Haven: Yale University Press, 1996), 100. The document refers to Ieng Thirith by her birth name Khieu Thirith.
3. Ibid.
4. The last years of the Khmer Rouge are discussed in David Chandler, *Brother Number One: A Political Biography of Pol Pot*, revised edition. (Boulder: Westview Press, 1999).
5. Pierre Lizee, "Cambodia in 1996, Of Tigers, Crocodiles and Doves," *Asian Survey*, 37 (1), 1997, 65-71. The amnesty did not apply to the proceedings of the tribunal that tried defendants accused of committing crimes against humanity while the Khmer Rouge was in power.
6. Sorpong Peu, "Cambodia in 1997: Back to Square One." *Asian Survey*, 38 (1), 1998, 69-74.
7. Sorpong Peu, "Cambodia in 1998: From Despair to Hope?" *Asian Survey*, 39 (1), 1999, 20-26. Ta Mok's life is summarized in his obituary in the Guardian. John Aglionby, "Ta Mok," *The Guardian*, July, 22, 2006. <http://www.guardian.co.uk/news/2006/jul/22/guardianobituaries.johnaglionby/print> Accessed August 1, 2011.
8. Irene V. Langran, "Cambodia in 2000: New Hopes are Challenged," *Asian Survey*, 41 (10), 2001, 156-163.
9. Joel Brinkley, *Cambodia's Curse: The Modern History of a Troubled Land*. (New York: Public Affairs, 2011), 316.
10. BBC News, 'Hun Sen: Khmer Rouge Trial Up to the Courts.' January 1, 1999. <http://news.bbc.co.uk/2/hi/asia-pacific/246266.htm> Accessed August 8, 2011.
11. Irene V. Langran, "Cambodia in 1999: Year of Hope," *Asian Survey*, 40 (1), 2000, 25-31.
12. Ibid.
13. Hun Sen defected to Vietnam in 1977. See Kiernan, *The Pol Pot Regime*.
14. Kheang Un, Cambodia in 2011: A Thin Veneer of Change, *Asian Survey*, 52 (1), 2012, 205.
15. The U.S. bombing of Cambodia is chronicled in great detail in William Shawcross, *Sideshow: Nixon, Kissinger and the Destruction of Cambodia*, Revised Edition. (New York: Cooper Square Press, 2002).
16. Brinkley, *Cambodia's Curse*.
17. Langran, "Cambodia in 1999."
18. Brinkley, *Cambodia's Curse*, 318.
19. For a comprehensive history of S-21, see David Chandler, *Voices From S-21: Terror and History in Pol Pot's Secret Prison*. (Berkeley: University of California Press, 1999).
20. Brendan Brady, "Sentence Reduced for Former Khmer Rouge Prison Chief," *Los Angeles Times*, July 27, 2010, <http://articles.latimes.com/2010/jul/27/world/la-fg-cambodia-khmer-rouge-20100727> Accessed August 17, 2011. For the life sentence for Duch see, Mark MacDonald, A Life Sentence for 14,000 Deaths," *The New York Times*, February 6, 2012. <http://rendezvous.blogs.nytimes.com/2012/02/06/a-life-sentence-for-14000-deaths/> Accessed July 19, 2012.
21. Ek Madera, "Thirty Years On , Khmer Rouge Torturer in the Dock," *CambodiaTribunal Monitor*, March 30, 2009. [http://ctm.jtpr.net/files/thirty%20years%20on%20krouge%20torturer%20in%20dock%203\\_30\\_09.pdf](http://ctm.jtpr.net/files/thirty%20years%20on%20krouge%20torturer%20in%20dock%203_30_09.pdf) Accessed July 22, 2012.
22. AFP, "KRouge leader Pol Pot Not a Patriot," May 27, 2009. <http://ankorcivilization.blogspot.com/2009/05/krouge-leader-pol-pot-not-cambodian.html> Accessed July, 20, 2012.
23. On the Eichmann trial, see Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil. Revised and Enlarged Edition*. (New York: Viking Press, 1968). Also Deborah Lipstadt, *The Eichmann Trial*, (New York: Schocken, 2011). On the lack of interest in the Holocaust in the United States during the 1950s and early 1960s , see Raul Hilberg, *The Politics of Memory: The Journey of a Holocaust Historian*. (Chicago: Ivan R. Dee, 1996) and Peter Novick, *The Holocaust in American Life*, New York: Houghton Mifflin, 1999.
24. Stephanie Giry, "Cambodia's Perfect War Criminal," *The New York Review of Books*, NYRblog, October 25, 2010. <http://www.nybooks.com/blogs/nyrblog/2010/oct/25/cambodias-perfect-war-criminal/> Accessed August, 4, 2011.
25. Thomas Miller, "Case 002 Defendant Likely Unfit," *The Phnom Penh Post*, August 31, 2011, <http://www.phnompenhpost.com/index.php/2011083151372/National-news/case-002-defendant-likely-unfit.html> Accessed September 2, 2011.
26. Mary Kozlovski and Cheang Sokha, "Psychiatric Exam Ordered for Ieng Thirith," *The Phnom Penh Post*, September 9, 2011. <http://www.phnompenhpost.com/index.php/2011090951543/National-news/psychiatric-exam-ordered-for-ieng-thirith.html> Accessed September 10, 2011.
27. Seth Mydans, "U.N. Court in Cambodia recommends Feeing Defendant Ill With Dementia," *The New York Times*, November 17, 2011, <http://www.nytimes.com/2011/11/18/world/asia/sickly-defendant-khmer-rouge-genocide-trial-in-cambodia-may-be-freed.html> Accessed June 25, 2013.
28. Seth Mydans, "Ieng Sary , Former Official of the Khmer Rouge, Dies at 87," *The New York Times*, March 14, 2013, [http://www.nytimes.com/2013/03/15/world/asia/ieng-sary-khmer-rouge-leader-tied-to-genocide-dies-at-87.html?\\_r=1&](http://www.nytimes.com/2013/03/15/world/asia/ieng-sary-khmer-rouge-leader-tied-to-genocide-dies-at-87.html?_r=1&) Accessed June 30, 2013.
29. <http://www.eccc.gov.kh/en/indicted-person/khieu-samphan> Accessed August 7, 2011.
30. <http://www.eccc.gov.kh/en/indicted-person/ieng-thirith> Accessed August 7, 2011.
31. Didi Kirsten Talow, "The Extraordinary Trial of the Khmer Rouge leaders," *The New York Times*, January 16, 2013, <http://rendezvous.blogs.nytimes.com/2013/01/16/the-extraordinary-trial-of-khmer-rouge-leaders/>

32. Sebastian Strangio, "Limited Liability for Khmer Rouge Tribunal," *Asia Times online*, [www.attimes.com](http://www.attimes.com), May 12, 2011, Accessed July 9, 2011.
33. Ibid.
34. Keang Un, 2012.
35. Strangio, May 12, 2011.
36. Sebastian Strangio, "Slow Justice in Cambodia War Crimes Tribunal," *New Matilda*, [www.newmatilda.com](http://www.newmatilda.com), June 15, 2011. Accessed July 15, 2011. In a panel discussion in 2004, Stephen Heder indicated that he knew of no evidence implicating Hun Sen in the crimes of the Khmer Rouge... "On the other hand, some years ago Craig Etcheson, who is another Khmer Rouge researcher, and I issued a statement declaring that we were aware of no evidence implicating Hun Sen in CPK crimes... I just want to take this opportunity to say that several years on, tens of thousands of pages of documents on, and several thousand interviews on, this statement is still true. "The Khmer Rouge Trials? Is It Worth It and For Whom," a public discussion held in Phnom Penh, November 17, 2004. <http://www.mekong.net/cambodia/trials.htm> Accessed August 19, 2011.
37. Sebastian Strangio, "Ghosts of the Killing Fields," *South China Morning Post*, June 27, 2011. <http://www.sebastianstrangio.com/2011/06/27/ghosts-of-the-killing-fields/> Accessed August 10, 2011. In this article, based on interviews in Ta Sanh Cheung, Cambodia, where Meas Mut lives, Strangio finds several people who oppose trying him. Some of those who defend the former navy commander as a patriot were themselves low level KR soldiers.
38. Originally founded by the Yale Cambodia Genocide Program, the Documentation Center of Cambodia is dedicated to researching and chronicling the human rights abuses committed by the Khmer Rouge. Now an independent NGO, the website of DC-Cam indicates that it is funded by several foreign governments. See <http://www.dccam.org/#/theorganization/history> Accessed August 12, 2011.
39. Ibid.
40. Sopheng Cheang, "German Judge Resigns From Cambodia Tribunal," *The Guardian*, October, 2011. <http://www.guardian.co.uk/world/feedarticle/9888881> Accessed November 19, 2012.
41. Joshua Kurlantzick, "Another Judge Quits Khmer Rouge Tribunal," *Asia Unbound*, March 22, 2012, <http://blogs.cfr.org/asia/2012/03/22/another-judge-quits-khmer-rouge-tribunal/> Accessed July 14, 2012.
42. James O'Toole, "Alarm Sounded on KRT," *Phnom Penh Post*, June 15, 2011. [www.cambodiatribunal.org/images/CTM/alarmsoundedonkrt.pdf](http://www.cambodiatribunal.org/images/CTM/alarmsoundedonkrt.pdf) Accessed Aug 2, 2011.
43. Ibid.
44. Seth Mydans, "Conflicts Imperil Future Khmer Rouge Trials," *The New York Times*, June 16, 2011. <http://www.nytimes.com/2011/06/17/world/asia/17cambodia.html> Accessed August 8, 2011.
45. O'Toole, "Alarm Sounded on KRT Trials."
46. Mike Eckel, "Cambodia's Kangaroo Court," *Foreign Policy*, July 20, 2011. [http://www.foreignpolicy.com/articles/2011/07/20/cambodias\\_kangaroo\\_court](http://www.foreignpolicy.com/articles/2011/07/20/cambodias_kangaroo_court) Accessed August 1, 2011.
47. Michael Saliba, "Allegations of Corruption at ECCC: Overview," *Cambodia Tribunal Monitor*, September 28, 2009.
48. Brinkley, Cambodia's Curse.
49. Francois Hauter, Chinese Shadows, 4.
50. Transparency International, "Corruption Pervades All Systems of Cambodia," [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2006/2006\\_12\\_19\\_nis\\_cambodia](http://www.transparency.org/news_room/latest_news/press_releases/2006/2006_12_19_nis_cambodia) Accessed August 5, 2011.
51. Donald W. Beachler, "Arguing About Cambodia: Genocide and Political Interest," *Holocaust and Genocide Studies*, (2), 2009, 214-238.
52. The role of the United States and the Chinese in maintaining the political viability of the Khmer Rouge is discussed at length in Ben Kiernan, "The Inclusion of the Khmer Rouge in the Cambodian Peace Process: Causes and Consequences," in *Genocide and Democracy in Cambodia: The Khmer Rouge, the United Nations and the International Community*, edited by Ben Kiernan (New Haven: Yale University Southeast Asia Studies, 1993), 191-272.
53. Elizabeth Becker, *When the War was Over, Cambodia and the Khmer Rouge Revolution*. (New York: Public Affairs, 1986).
54. For a thoughtful overview of the IMT trial, see Joseph E. Persico, *Nuremberg: Infamy on Trial*. (New York: Penguin, 1995).
55. See Richard Rhodes, *Masters of Death: The SS Einsatzgruppen and the Invention of the Holocaust*, (New York: Vintage Press, 2003).
56. Richard Rhodes, *Masters of Death: The SS Einsatzgruppen and the Invention of the Holocaust*, New York: New York: Vintage Press, 2003.
57. The RPF killings, of course, were not nearly as extensive as the hundreds of thousands killed by the Hutu power genocidaires, but they may well have run into the tens of thousands. See Scott Straus, *Rwanda: The Order of Genocide*. (Ithaca: Cornell University Press, 2006). Also, Gerard Prunier, *Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. (New York: Oxford University Press, 2009).
58. Victor Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation*. (Cambridge: Cambridge University Press, 2008).

59. Ibid.
60. Margo Picken, "The Beleaguered Cambodians," *The New York Review of Books*, December 15, 2010. <http://blogs.cfr.org/asia/2012/03/22/another-judge-quits-khmer-rouge-tribunal/> Accessed July 20, 2012.
61. Mike Eckel, "Cambodia's Khmer Rouge Tribunal in Crisis," *Associated Press*, June 16, 2011. <http://www.washingtontimes.com/news/2011/jun/23/cambodias-khmer-rouge-tribunal-in-crisis/> Accessed July 21, 2012.
62. Seth Mydans, "Conflicts Imperil Future Khmer Rouge Trials," *The New York Times*, June 16, 2011. <http://blogs.cfr.org/asia/2012/03/22/another-judge-quits-khmer-rouge-tribunal/> Accessed June 25, 2012.
63. Eckel, "Cambodia's Khmer Rouge Tribunal in Crisis" op. cit.
64. Steve Heder, "Cambodia in 2010: Hun Sen's Further Consolidation." *Asian Survey*, 51(10), 2011, 208-214.
65. Kheang Un, 2012, 206.
66. Picken, "The Beleaguered Cambodians," 2010.
67. Sigfrido Burgos and Sophal Ear, "China's Strategic Interests in Cambodia: Influence and Resources," *Asian Survey*, 50(3), 2010, 615-639.
68. Francois Hauter, "Chinese Shadows," *The New York Review of Books*, October 11, 2007, 4-5.
69. Kathrin Hille and Tim Johnston, "U.S. Ventures into Troubled Asian Waters," *FT.Com*. August 3, 2010. <http://cachef.ft.com/cms/s/0/ac00b990-9f24-11df-8732-00144feabdc0.html> Accessed August 31, 2011.
70. Burgos and Ear, op cit.
71. Picken, "The Beleaguered Cambodians," op. cit.
72. David Chandler, "Cambodia in 2009: Plus C'est la Meme Chose," *Asian Survey*, 50(1), 2010, 228-234.
73. Heder, "Cambodia in 2010," op. cit.
74. Duncan MacCargo, "Politics by Other Means? The Virtual Trials of the Khmer Rouge Tribunal," *International Affairs*, 87(3) 2011, 613-627.
75. Ibid.
76. Obviously a tribunal could be held, but it would be most unusual in that the perpetrators, victims and eye witnesses are deceased.
77. The once very comfortable relationship between Turkey and Israel has deteriorated as a result of the solicitude shown to the cause of the displaced Palestinians by Recep Tayyip Erdogan, who has been Prime Minister of Turkey since 2003.
78. Richard Holbrooke, *To End a War*. (New York: Random House, 1998), 27.
79. Ibid.
80. Sophal Ear, "Khmer Rouge Tribunal vs. Karmic Justice," *The New York Times*, March 17, 2010. <http://blogs.cfr.org/asia/2012/03/22/another-judge-quits-khmer-rouge-tribunal/> Accessed July, 22, 2012.
81. For an analysis of the ways that politics and the pursuit of strategic interests influences governmental and academic responses to genocide see Donald W. Beachler, *The Genocide Debate: Politicians, Academics, and Victims*. (New York: Palgrave Macmillan, 2011).