

**DOMESTIC AND INTERNATIONAL RESPONSES TO
KHMER ROUGE TRIAL**

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DECLARATION

I declare that the dissertation entitled "DOMESTIC AND INTERNATIONAL RESPONSES TO KHMER ROUGE TRIAL" submitted by me for the award of the degree of Master of Philosophy of Jawaharlal Nehru University is my own work. This dissertation has not been submitted for any other degree of this university or any other university.

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We recommend that this dissertation be placed before the examiners for evaluation.

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CHAPTER 1

INTRODUCTION

The Communist Party of Kampuchea (CPK) popularly known as Khmer Rouge under Pol Pot's leadership took control of Phnom Penh, the capital city of Cambodia on 7th April 1975. The residents, however, not aware of the impending violence and destruction cheered at the revolutionaries (Chandler, 1999). Right after their arrival the Khmer Rouge evacuated all the population of Phnom Penh to the countryside. Thousands of evacuees died during the evacuation process. The people were to follow the "revolutionary organization" (*angkarpadevat*), which would act as their "mother and father" (Chandler, 1999). Further the revolutionary organization was to transform Cambodia into an egalitarian rural society without any class distinction. To accomplish this Khmer Rouge forces removed all aspects of the previous Lon Nol regime. Private property, market, currency, religion, laws and even public spaces were either abolished or restricted (Chandler, 1999). The Khmer Rouge in their attempt to create a homogenous Khmer nationality started to forcefully "Khmerizing" the population. In Cambodia everyone was to be a "Khmer", Muslim Cham, Chinese, Vietnamese and other ethnic minorities all have to join the Khmer Nationality (Kiernan, 1988). Many Cambodian, ethnic minorities, intellectuals and suspected traitors in the party were either killed or tortured. Many of them were held as prisoners and were tortured and executed. Tuol Sleng prison was the most well known among many such prisons also known as S-21. While in operation the prison held about 14,000 prisoners among them only 12 have been reported to have survived. The regime's radical measures and reforms transformed Cambodia forever.

These horrors continued till Vietnam intervened and occupied the capital city Phnom Penh in 1979 January and installed a new regime. However, Vietnamese occupation did not brought to an end the Khmer Rouge chapter in the history of Cambodian. The Khmer cadres fled towards fled to the Cambodian forest running towards the Thailand borders. The leaders finally escaped to China. Khmer Rouge's armed attacks against the government in Phnom Penh continued till 1996. Cold War politics and interest of

major global players - US and China – outweighed the concerns for the need of providing justice to the victims and survivor of the Khmer Rouge regime. The matter was made worst for the Cambodian under the new Vietnam installed regime as no humanitarian aid could be provided to them between 1979 and 1991 because the international community and the UN did not recognise the new regime as the legitimate regime in Cambodia (Kiernan, 1993).

In 1997, the two co-prime minister of Cambodia wrote a letter to the United Nations (UN) requesting assistance for establishing a tribunal for prosecuting the Khmer Rouge leaders. Real effort to prosecuting the Khmer Rouge leaders began only after 1998, when all the Khmer Rouge leaders along with the last of the guerrilla unit laid down their arms. In that year efforts were initiated by both national government and the UN to establish a tribunal to punish the Khmer Rouge for genocidal crimes. The National Assembly of Cambodian in 2001 passed a law for creating a tribunal to prosecute the Khmer Rouge leaders for their heinous crimes committed during 1975-1979. After many rounds of negotiations an agreement was signed between the Cambodian government and the UN as a bilateral treaty on 6th June 2003 for prosecution of the leaders of Democratic Kampuchea regime under Cambodian Law of Crimes. The June 2003 agreement was the result several rounds of negotiation between the Cambodian government and the UN which was stretched for several years. However, this special new court is independent of both UN and Cambodian government. This new special court i.e. the Extraordinary Chambers in Courts of Cambodia (ECCC) was a Cambodian a court with international standards and international participation. The spatial jurisdiction of the court is limited to Cambodia only, which means the court can try crimes committed only inside Cambodia. Also the court can try crimes committed only during the regime of Democratic Kampuchea (17th April 1975 to 6th January 1979). The court will also limit the prosecutions only to the “senior leaders” who actually planned and gave orders and “most responsible” for committing serious crimes against the people. (ECCC Website 1). The court also has the authority to “decide exactly who was a ‘senior leader’ and who was ‘most responsible’ for the crimes committed by the Khmer Rouge.”(ibid).

The court has two levels: the Trial Chamber will hear the cases and deliver verdicts; and the Supreme Court Chamber, which will hear appeals on the verdicts delivered by the Trial Court (ibid). The Trial Chamber has five judges – three Cambodian judges

and two international judges; while the Supreme Court Chamber has seven judges – four Cambodian judges and three international judges (ECCC website 2). A ‘super majority’ of judges is required for any conviction requiring agreement from four of the five Trial Chamber judges, and agreement from five of the seven Supreme Court Chamber judges on an appeal decision (ECCC website 2). Life imprisonment is the maximum sentence and five years in prison is the minimum sentence which the court can deliver to those who are convicted and death penalty will not be awarded to anyone who is convicted by the court, as Cambodian justice system, under which jurisdiction the ECCC operates, does not allow awarding of death penalty to any convict (ibid). All adults above the age of 18 can attend the trial except “in special circumstances when the judges decide that the public must be excluded to protect the identity of witnesses or victims.” (ibid)

The ECCC, therefore, is a court comprising of both Cambodian and international judges established under the jurisdiction of Cambodian legal system, though independent from both Cambodian government and the authority of the UN, to prosecute the most senior and most responsible members of the Democratic Kampuchea regime for their crime against the Cambodian people. The chief purpose of the ECCC is to provide justice to the victims and survivors of the DK regime's policies during their four years reign. There were to be four trials focussing, as per the agreement, on the most senior and most responsible leaders of the DK regime for their crimes committed only during their reign of four years. Case 001 was the trial of Kang Keck Iev (Duch) who was the chief of S-21 prison for his role in torturing and execution of about 14000 people in S-21 prison. Case 002 was for the trial of four top leader of KR – Ieng Sary, Nuon Chea, Ieng Thirith and Khieu Samphan. They are charged with implementing forced evacuation, force labour, torture, enslavement, arbitrary arrest and mass killings (ECCC website 1). At present the future of Case 003 and Case 004 to try mid ranked cadres of Khmer Rouge is not very clear.

The first prosecution started in 2009 for the trial of Duch. Duch as the chief of Tuol Sleng (S-21 prison) admitted to supervising the interrogation and torture of the prisoners before executing them at the "killing fields". He was convicted of war crimes, crimes against humanity, torture and murder, and sentenced to serve 19 years in jail in July 2010. His sentence was later in extended in February 2012 to life imprisonment. The current case (Case 002) was to focuses on the four top leaders

mentioned before. However, Ieng Thirith was declared mentally unfit to stand trial (Kozlovski, 2012) and Ieng Sary died in March 2013 (BBC News Asia website).

The Khmer Rouge tribunal seems to be a positive development for the Cambodians as well as the World community. Before going into the detail a there will be a brief survey of literature.

REVIEW OF LITERATURE

Most of the literature on the Khmer Rouge which criticises the regime tends to support their conclusions using firsthand accounts of survivors and witnesses, which convey the idea that the regime was committing horrific crimes against the people of Cambodia. On the other hand, scholars who still sympathize with or support the Khmer Rouge disputes the arguments of the former scholars and argues that survivor stories are historically embellished and often untrue, and therefore this evidence is baseless and unconfirmed.

David Chandler (1977) who briefly supported the Khmer Rouge explains his previous view: “In 1976, autarky makes sense, both in terms of recent experience—American intervention, and what is seen as Western-induced corruption of previous regimes—and in terms of Cambodia’s long history of conflict with Vietnam.” Chandler changed his views after evidence began surfacing of mass evacuation, labour camps, torture, starvation and death, all of which were unnecessary. He began writing texts criticizing the Khmer Rouge and their ideology. These texts include a well-known history of Cambodia (Chandler, 2008), an analysis of Pol Pot (Chandler, 1999), and discussions of how the Khmer Rouge was able to come to power based on Cambodia’s history.

Ben Kiernan who also supported the Khmer Rouge changed his view after interviewing roughly five hundred Khmer Rouge refugees who detailed the horror they endured during the Khmer Rouge’s reign. Throughout these interviews, the destruction, violence, and crimes that occurred in Cambodia began to become a reality to Kiernan (Kiernan, 1979). He issued a public apology in the Bulletin of Concerned Asian Scholars, titled “Vietnam and the Governments and Peoples of Kampuchea.” In this apology, Kiernan (1979) retracted his early support for the Khmer Rouge, stating “there can be no doubting that the evidence also points clearly to a systematic use of

violence against the population by that chauvinist section of the revolutionary movement that was led by Pol Pot.”

John Barron and Anthony Paul (1977) co-authored *Murder of a Gentle Land: The Untold Story of a Communist Genocide in Cambodia*, which alleges that the Khmer Rouge committed genocide, killing more than one million Cambodians during their reign. Their evidence is derived from analyzing more than three hundred refugee and witness reports of Khmer Rouge brutality.

Using this information, Barron and Paul describe in detail the evacuations, executions, and also the slow process of death that many Cambodians endured due to starvation, disease, and exhaustion.

Francois Ponchaud a former French Roman Catholic priest who lived in Cambodia from 1965 until the fall of Phnom Penh in 1975, when he was forced to leave. Through his knowledge of Khmer language and with the help of his Khmer friends he put together his book *Cambodia: Year Zero*, which was originally published in French in 1977. In this book, Ponchaud focuses primarily on first-hand accounts of witnesses and victims of the Khmer Rouge and also on radio reports that he heard while he was living in Cambodia. Ponchaud details the mass killings and war crimes that plagued Cambodia from the perspectives of many of the people he met during his stay. (Ponchaud, 1978)

Jean Lacouture, a French socialist, initially supported Khmer Rouge. He withdrew this support after reading Francois Ponchaud's book, *Cambodia: Year Zero*, which undoubtedly proved, using credible first-hand accounts, that the Khmer Rouge's mass killings were a reality. Lacouture then wrote a favourable review of *Cambodia: Year Zero*, titled "The Bloodiest Revolution." (Lacouture, 1977) However there were some major discrepancies of facts between the texts of these two scholars. These discrepancies then ignited an intense debate, which will be discuss in the following section, between Lacouture on one side and Noam Chomsky and Edward S. Herman on the other. (Chomsky and Herman, 1977, 1979)

As mentioned earlier most of the scholars agree that Khmer Rouge should be held responsible for the mass killing of Cambodian people. However, some scholars like Ben Kiernan (1996), Michael Haas (1991) and William Shawcross (1979, 2000) argue

that not only the Khmer Rouge should be held responsible, but the international community especially US should also be held accountable for the traumas the Cambodian people had to face during Khmer Rouge regime. They argue that Khmer Rouge managed to achieve power only due to the expansion US's anti-communist war into Cambodia. They points out that although it was indigenous, Pol Pot's revolution would not have won power without U.S. economic and military destabilisation of Cambodia. This was probably the most important single factor in Pol Pot's rise to power. Shawcross (1979) points out that Kissinger must bear some measure of responsibility for the plight of the Khmer people today.

The situation in Cambodia was further worsened with the support of the Khmer Rouge by both US and China to contain the influence of Soviet Union in Indochina. The Cold War strategy of both US and China against the Soviet Union and Vietnam involved sustaining the Khmer Rouge for their own strategic interest. (Hood, 1990) Kiernan (1993) points out that in the diplomatic arena also, most of the world followed the United States and China in their sponsorship of the Khmer Rouge till the 1990s. There is evidence that, in addition to the large supply of weapons, China supported the Khmer Rouge with US \$100 million per annum (Kiernan, 1993). From 1979 to 1986, US \$85 million was given to the Khmer Rouge by the US (Kiernan, 1993). Also, from 1979 to 1991, arms and munitions were provided by the European governments, lead by Britain (Jennar, 2006). United Nations agencies also went along with US and Chinese support for the Khmer Rouge (Kiernan, 1993). It is reported that the aids sponsored by the United States and the international community were channelled to the Khmer Rouge through Thailand. For instance, US \$12 million worth of food was passed by the World Food Program through Thailand to the Khmer Rouge (Kiernan, 1993). For bringing Khmer Rouge to power, for supporting and sustaining the regime for their strategic interest and finally for their continued support of the regime event after it collapsed the international community should also be held accountable for death of about 2 million Cambodian people.

In contrast to the majority of academia, a final group of scholars continues to support or sympathize with the Khmer Rouge for various different reasons. Noam Chomsky and Edward S. Herman, both fervent anti-war activists during the American War in Vietnam, have disputed the positions of numerous scholars over the last thirty years. In their article "Distortions at Fourth Hand," Chomsky and Herman (1977) write

about what they consider the exaggeration and lies of the U.S. media throughout the Vietnam War era, specifically in regards to the Khmer Rouge in Cambodia. According to Chomsky and Herman, rather than exposing the truth, the U.S. media withholds and/or “distorts” any information suggesting that the U.S. played a role in the destruction of Cambodia and the rest of Indochina. In their book, *After the Cataclysm: Post war Indochina and the Reconstruction of Imperial Ideology*, Chomsky and Herman (1979) argue that “The deaths in Cambodia were not the result of systematic slaughter and starvation organized by the state, but rather attributable...to peasant revenge, undisciplined military units out of government control, starvation and disease that are direct consequences of the U.S. war, or other such factors.”

Gareth Porter and George C. Hildebrand (1976) in their jointly authored book, *Cambodia: Starvation and Revolution*, assert that there were no crimes being committed against civilians living in Cambodia. Many of their conclusions were based on witness and survivor stories, which express (contrary to other accounts) Pol Pot’s good intentions and the ease of his revolution. They argue that Pol Pot’s mass evacuation of Phnom Penh to the rural countryside was painless and necessary. These evacuations were only for the good of the Cambodian people, as Phnom Penh and other large cities were grossly overpopulated, had major health and famine crises, and were very susceptible to internal disaster. Therefore, by moving people to the open countryside, Pol Pot was supposedly moving them away from several hazards. During this evacuation, which eye witnesses supposedly claim was set at a “comfortable pace.” Like Chomsky and Herman, Porter and Hildebrand also argue that the outside perception of the Khmer Rouge is twisted as a result of the U.S. media: “What was portrayed as a destructive, backward-looking policy motivated by doctrinaire hatred was actually a rationally conceived strategy for dealing with the urgent problems that faced post war Cambodia.” Accordingly, they argue that the U.S. media was able to successfully cover the destruction that the U.S. inflicted on Cambodia, because they “avoided the subject of the death and devastation caused by the U.S. intervention in Cambodia, [and] they have gone to great lengths to paint a picture of a country ruled by irrational revolutionaries.”

Below we will discuss some controversial issues related to the tribunal these controversial issues relate to the nature and functioning of the tribunal.

Theoretical and academic debate on the Khmer Rouge regime and trial

One of the issues that concerned the academia and legal experts was on the issue of nature of crimes the Khmer Rouge committed. Most analysts agree that the leaders of the Khmer Rouge regime should be punished; however, scholars and legal experts debated whether the death of about two million Cambodians due to the actions of the Khmer Rouge, according to the available definition of the international law, should be termed as crimes against humanity, genocide, or mass murder.

Ben Kiernan (2000) and Hurst Hannum (1989) argue that as per the definition of genocide¹ by international law the mass killing by the Khmer Rouge forces should be termed as genocide. Both scholars have given their argument from the available evidences of racism and targeting of specific ethnic and religious minorities groups like Vietnamese, Chinese, Thai, and Muslim Cham. Kiernan (2002) points out that targeting of majority Khmer national by the regime can also be considered genocide as they can be considered as political minority groups that supposedly opposed the regime therefore, to him there is sufficient evidence against the Khmer Rouge leaders to convict them for the crime of genocide. According to the narrow definition of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) only the mass killings of minority groups is considered genocide (UN website). Kiernan (2002) also agrees with Jean Lacouture (1977), who proposed the theory of “auto-genocide” which involves the killings of the members of a national group who are in majority by its own members.

Henri Locard (2005) also proposes a new theory according to him the mass killing and execution of the Cambodians can be termed as “politicide” rather than genocide. Politicide, according to Locard, politicide would mean the extermination of an opposing political minority group. The mass killing by the Khmer Rouge according to

¹ According to the Convention on the Prevention and Punishment of the Crime of Genocide (UN Document) genocide is defined as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

him were targeted only against those who were opposing the Khmer Rouge revolution. Locard argues killing under the Khmer Rouge regime cannot be legally termed as genocide because most of the killings were not targeted to a specific religious or ethnic group and most of the people were Khmer nationals so Khmer Rouge leaders should be tried for mass murder or “crime against humanity.” Beth van Schaack (1997) also argues that due to the exclusion of political and majority groups in CPPCG’s definition of genocide, DK leaders cannot be legally held accountable for genocide. Despite the debate on the nature of crime committed by Khmer Rouge most scholars generally agree that those responsible for the death of about two million people in Cambodia should be put on trial on charges of genocide.

Another important controversial issue that came up was about establishing and administering the tribunal. Many argued that the tribunal should be purely of international character with international judges operating outside the territorial boundaries of Cambodia. While many other argued in favour of a domestic tribunal supervised by the Cambodian themselves.

Majority of scholars and analyst however believed that a national tribunal under Cambodian legal system would not be able to provide proper justice to the victims of the Khmer Rouge crimes. Duncan McCargo (2005) argues that many Cambodians did not trust the ability of Cambodian legal system and assumed that the trial it will be substandard which will fail to provide proper justice. Stephen Marks (1999) after having analysed both the positive and negative aspects of a domestic as well as an international tribunal came to the conclusion that a domestic tribunal under Cambodian authority would not be able to prosecute the defendants in a fair manner due to corruption and political pressure.

However, most of the scholars have argued in favour of for a hybrid tribunal which would consist of both international and Cambodian judges. Michael Lieberman (2005) argued that a hybrid will be able to provide better justice because the international judges and officials involved in such a tribunal will be able to in check the Cambodian judges and officials who are prone to political interference and corruption.

Another important controversy was on determining which member of the Khmer Rouge should be put on trial. As all ready stated the Khmer Rouge tribunal law only provides the provision of prosecution the most senior and the most responsible

members of the Khmer Rouge. Stephen Heder (2001) and Ben Kiernan (2002) both supporting this arrangement argued that if the prosecution is to be extended beyond the senior leaders than making distinction on person to be tried and not to be tried will be difficult task due to lack of specific evidences and resources. Furthermore, Craig Etcheson (2005) also is in favour limiting prosecution only to the top leaders for two reasons. Firstly, prosecution of a small number of KR leaders will help in maintaining cohesion and political stability. Second, prosecution few of the members will bring down the cost of the tribunal.

There is another group of academician argued that distinction between a senior leader who is more responsible and other leaders supposedly followed orders is somewhat ambiguous. Fawthrop and Jarvis (2004) in their book argued that the prosecution process should include a broad range Khmer Rouge of leaders and associate primarily because if only the senior leaders are being prosecuted thousands of cadre of the KR who participated in many crimes against the Cambodian will never face trial and remain free.

Despite the above mentioned controversies the tribunal was finally set up and the trial is ongoing with one conviction already. However, many have express doubt about the validity and relevance of the trial which is happening 30 years after the demise of the DK regime. Questions have been raised on the reason for restricting the scope of the trial only to the four years of the regime and also limiting the trial only to only a few senior leaders of KR. These are important implications of the ongoing trial which one needs to explore. The Khmer Rouge period is the most remarkable period in modern Cambodian history. The measures and reforms of the regime greatly transformed every aspect of the lives of Cambodian people. Many scholars and journalist have written extensively about this period of Cambodian history because of the importance of the period. Understanding the implications and the relevance of the trial will not be possible without the understanding of the history of the KR period and the effects of the regime's action on the people of Cambodia. Therefore, the proposed study will begin with the analysis of history of Khmer Rouge period. Than the study will try to deal with many important questions related to Khmer Rouge and trial of the leaders. The focus of the study is on analysing some important aspects and implication of the Khmer Rouge trial. Assessing the relevance of the trial and analysing the

responsibility of domestic as well as foreign players for the death of 1.7 million people in Cambodia are some of the core issues that need to be analysed.

Understanding the different implication of Khmer Rouge trial will require a proper understanding of Khmer Rouge's history. Therefore the study will provide a historical background leading to the trial. Historical background will include discussion of rise of Khmer Rouge and their coming to power. The impact of ideology, Vietnam War and bombing of Cambodia will also be discussed in the section. Than policies and measures of the regime which greatly transformed Cambodia well also be discussed. An important part of the analysis would be the nature of support the regime got from international community especially US and China. The impact of cold war politics on the regime will also be analysed. This analysis should be done from the perspective of identifying the responsibility of the international community in the genocide of Cambodia. These perspectives are important to understand the true purpose of the trial.

Three important phases can be mark out for the analysis relevant for understanding the ongoing trial. The first important phase is the period from Sihanouk era to the end of Lon Nol regime in 1975. During this period Sihanouk was overthrown and pro US regime of Lon Nol came up. Civil war ensued between Sihanouk supporters (allied with CPK) and the Lon Nol government. This was the period when CPK was gaining popularity and power and threatening to take over the government largely due to the secret US bombing of Cambodia. The analysis of this period becomes particularly important to understand the role of international players like the US for their unintended help in bringing Khmer Rouge to power.

The second phase is that of the DK regime itself. The ongoing trial is to punish the KR leaders for their crimes against the people of Cambodia. Analysing the actions and reforms of the KR regime leading to the death of over a million Cambodians is important to understand the ultimate responsibility for the crimes against the Cambodian people which happened during their regime.

The third phase is from 1979 till 1991. During this phase after the collapse of the DK regime in 1979 the international community lead by US and China continued supporting the Khmer Rouge. From 1979 to 1991 the US and China gave Khmer Rouge massive financial and military help. (Kiernan, 1993). This period also forms an important part of the analysis because despite the authentic reports of torture,

execution and mass murder of civilians the international community continued supporting Khmer Rouge and recognised it as the legitimate government of Cambodia. It was only after the end of the Cold War that western capitalist countries withdrew support of the Khmer Rouge.

Another important area of analysis would be the role of Vietnam installed government in their attempt to bring justice to the victims of Khmer Rouge. Important question to address would be 'Were they really concerned about providing justice to the victims of Khmer Rouge regime?' Then the discussion would be on the process of providing justice to the victims, this will include the negotiations between UN and Cambodian government on the exact nature of the tribunal and the final establishment of the tribunal. The progress of the tribunal till date will also be discussed.

In pursuing the research both descriptive and analytical methods will be used. Using descriptive method it will be shown how Khmer Rouge came to power and what effect the regime had on the people and society of Cambodia. Using analytical methods the research will try to answer many important questions related to Khmer Rouge's coming to power, and role of both domestic and international players in supporting and sustaining the regime.

Accordingly primary and secondary sources will be collected from books, articles, news paper reports, published interviews, agreements, declarations and websites. The collected sources will be properly analysed and classified to be used quantitatively and qualitatively for the proposed researched. The above collected data will be further analysed using various theoretical stand points to properly understand the various events and phenomenon associated the Khmer Rouge regime.

This work is divided into five chapters. First chapter is the introductions describing the theme, problems, methods and scope of the research. Second chapter will be the historical overview: In this chapter there will be detail description of the process of the Khmer Rouge coming to power, the policies and actions they implemented, involvement of major global powers like US and China and the impact of the regime's actions on the people of Cambodia. Third chapter is on the ECCC and Cambodian response. This chapter will look into the process of establishment of ECCC and manner of Cambodian response to it. Cambodian response will include both the response of the Cambodian government and the Cambodian people. Fourth chapter

will analyse the role of the UN and international players in the Cambodian genocide and also their response towards ECCC.

CHAPTER 2

HISTORICAL OVERVIEW

To analyse the ongoing trial of the Khmer Rouge leader it would be necessary to have a good overview of Cambodian history focussing on DK regime, its rise to power, its actions and reforms leading to the death of over a million people and also its continued existence in exile. This chapter will primarily focus on describing the historical background of Khmer Rouge regime, not much analytical questions will be dealt in this chapter. Proper discussion on Cambodian and international responses to the trial will be discussed in chapter 3 and 4 respectively.

Historically Cambodia had its own share of greatness. The period of Cambodian greatness lasted from the beginning of 9th century to the mid of 15th century of the Common Era². Known as Kambuja-desa in the inscriptions, Cambodia in these six hundred years was the mightiest kingdom in Southeast. The influence of that Cambodian empire reached far away to the present-day Burma, Malaysia and Thailand drawing visitors and tribute from these regions (Chandler, 2008). This was the Angkorean period in the history of Cambodia. The north western part of Cambodia, where the state we know as Angkor sprang up in the ninth century, had been inhabited by Khmer speaking peoples for several hundred years (ibid). The present Cambodian state and society owes much to Angkorean past. A well known fact of history is that civilizations are bound to decline. Similarly, Angkorean civilization also declined, followed by a period of political turmoil. During this time of Angkorean decline new developments had taken place in the neighbouring areas. New power centres had emerged around Cambodia representing distinct cultures namely Theravada Thailand in the west and Sinicized Vietnam in the east (ibid). These developments had profound impact on the history of Cambodia, which continued till very recent times.

² Common Era (CE)/Before Common Era (BCE) is an alternative name given to the most commonly used calendar era i.e. Before Christ (BC)/*Anno Domini* (AD). In recent times many scholars prefer to use CE/BCE rather than BE/AD considering the religious sentiments of non-Christians and wishing to be religiously neutral in academics.

CAMBODIA BETWEEN THAILAND AND VIETNAM

By the eighteenth century the Cambodia became a semi-independent state subordinate to its neighbours – Thailand in the northwest and Vietnam in the east. Cambodia became a victim of its location as it lay along a cultural fault line between Theravada cultural zone that included Burma and Siam (Thailand) and the expanding Sinicized Vietnam (Chandler, 2008). It is important to examine the effects on Cambodian politics and society of the country's location between Thailand and Vietnam. This has been crucial since the second half of the eighteenth century and it is only recently that the importance of Cambodia's location to its politics and society has faded. From late 18th century onwards Cambodians elite were forced to either prefer Thailand or Vietnam or to call on to an outside power to neutralize both the neighbour. This situation lasted for over 200 years (Chandler, 2008). During these years, Cambodia was often a protectorate of either Vietnam or Thailand, which forced Cambodia to cede some of its territory to these countries, and also caused instability within Cambodia (Steinberg et al., 1987). By 1816, Cambodia had been forced to pay tribute to both Vietnam and Thailand. Then, in 1833, Vietnam drove Thailand out of Cambodia, leaving Vietnam as Cambodia's sole protectorate. Vietnam immediately began to impose their ways on Cambodia, which did not sit well with the Cambodian people. This produced a series of revolts against the Vietnamese, which eventually became strong enough to force them out of Cambodia. As soon as this happened, Thailand once again moved in. The Vietnamese then began fighting with the Thai until they were able to negotiate a peace agreement in 1846. This agreement stipulated that both countries would withdraw from Cambodia and recognize Ang Duang, a Cambodian, as king (ibid pp 124 -126). After this brief taste of independence under King Duang (1848–60), the kingdom succumbed to French protection. French colonialism started a new era in the history of Cambodia.

COLONIALISM AND INDEPENDENCE

During the period when Cambodia was struggling under Thai and Vietnamese pressure, France had a growing desire to begin colonizing areas of Southeast Asia. The French Revolution of 1789 ignited the birth of nationalism and the desire for French conquest. In the years following the French Revolution, Napoleon Bonaparte led France on a series of wars of conquest to expand his empire. The colonizing

mission of France under Napoleon, mission civilisatrice, achieved success in Southeast Asia in the year 1863, when they formally colonized the region of Indochina which included Cochinchina, Tonkin, Annam, and Cambodia. With the signing of 1863 agreement by king Norodom Cambodia had become a French protectorate. Cambodian initially welcomed the French, but the new French protectorate began to impose similar restriction on the Cambodian authority in the manner the Vietnamese did before the French. Therefore the Cambodians started resisting reforms introduced by the French. The French *mission civilisatrice*, to the Cambodians, soon began to resemble the civilizing mission by the Vietnamese earlier (Chandler, 2008). Despite this resistance, the French eventually took control of Cambodia and remained in power until the late 1930s. Colonialism brought many changes in the economy, society, and culture of Cambodia. The changes introduced by the French helped to put together a framework that help Cambodia to emerge as a nation-state very briefly in 1945 and again in 1953 (Chandler, 2008).

It was during this period of steady imperialism and colonization that World War II (1939-1945) happened. World War II had a significant impact on Cambodia as well. Japan was rapidly expanding its empire in Southeast Asia during the War. Cambodia then was under French protection. The French already defeated in Europe and with ever increasing pressure France granted Japan permission to station their military in Indochina during the War with France retaining nominal control of Cambodia. The Japanese occupation of Cambodia had some profound effect on the Cambodian nationalist movement especially on the Cambodian youth. Japan during their occupation of Cambodia to weaken French control executed their *coup de force* – arresting many French colonists and driving the remainder out of Indochina (Chandler, 2007). At the closing years of the war facing imminent defeat the Japanese started encouraging the states of Indochina to push for their independence and finally, in 1945 summer Japan granted independence to Cambodia. The Japanese occupation and subsequent granting of independence with encouragement to remain independent had a significant impact on the Cambodian specially the youth. These even enable the Cambodians to form a new political ideology, an ideology based on movements for independence and individuality, rather than inferiority and subordination (Chandler, 2008).

The French returned to Cambodia in late 1940s after its liberation from German occupation. But with the new revolutionary ideology many Cambodians opted to fight against the re-occupation of Cambodia by France. These developments in the 1940s and early 1950s continued as an undertone to Cambodian political ideology ever since (Chandler 2008). France this time faced difficulty in retaining its former colonies. Therefore, to pacify the Cambodians French signed an agreement with the Cambodians that allowed forming a constitution and political parties. In the process Communist party of Kampuchea (CPK) emerged as the leading faction – a party assembled by Vietnamese speaking Khmers. Later the party was joined by Pol Pot and his followers. The CPK then consisted of many young Cambodians, such as Saloth Sar (Pol Pot), Ieng Sary, Khieu Samphan, and others, who were sent to France to study in their early years. This group known then as “radical generation of Cambodians” brought many radical ideas from their learning in France and began fighting for independence (Chandler, 1993). It was also during this time that France was heavily involved in a war with Vietnam also known as the First Indochina War. Finally, France lost the decisive battle of Dien Bien Phu in 1954 to Vietnam. After this crucial loss, the French were out of resources and could not continue with the war. France then conceded to signing the Geneva Agreement, which stipulated that they would finally withdraw all of their forces from Indochina, including Cambodia (Owen et al., 2005). With the 1954 Geneva agreement Indochina including Cambodia became independent.

The seed of communist revolution in Cambodia was sown at this time of anti-colonial struggle. Many young Cambodians who were educated in France were exposed to new revolutionary ideas. These new ideas shaped their minds towards a revolutionary movement. Saloth Sar, Ieng Sary, Khieu Samphan and many others were among many who were educated in France during the late colonial era. These future leaders came back to Cambodia and joined the newly formed Communist Party of Kampuchea (CPK). The importance of the developments during this period can be guessed from the fact that these leaders became the core members of CPK and assumed control of Cambodian government in 1975 under the name of Khmer Rouge or Red Khmers.

SIHANOUK ERA 1955 TO 1970

The Sihanouk era was another eventful period in the history of Cambodia. Cold War entered Southeast Asia with the US intervention in the Vietnam. Cambodia again became hostage to events outside Cambodia. As the War threatened to spill over Cambodia Sihanouk repeatedly proclaimed Cambodia's neutrality and sought guarantees from outside powers for his country's frontiers. Sihanouk made all possible diplomatic manoeuvres to avoid Cambodia from involving in the Vietnam War. On 10 April 1965 he broke off diplomatic relations with the U.S. and swung politically to the left as he believed that communist victory in Indochina was inevitable in spite of direct US involvement in the region (Chandler, 2008). Sihanouk was also aware that in case of communist victory Cambodia's military would not be able to face the communist forces of the Democratic Republic of Vietnam (North Vietnam). Therefore, it became a diplomatic necessity to align Cambodia with the future victor i.e. communist North Vietnam. For the survival of Cambodia and his regime he had to make a bargain with the communist. After breaking off relations with the US Sihanouk needed a new patron which would provide both economic and political support to Cambodia and his regime. For that he turned to the People's Republic of China and entered into an agreement with China. One of the terms of the agreement was that Cambodia would allow the use of its eastern border by the North Vietnamese to fight the US and the communist army in turn would leave the Cambodian civilians alone (Chandler, 2008).

Financial aid by the US was also blocked with the break of diplomatic ties. To compensate the financial loss Sihanouk had to nationalize the foreign trade. The nationalization of the foreign trade however encouraged clandestine trading by the commercial elite with Communist insurgents in Vietnam which paid higher prices than the Cambodian government could afford. In early 1967, to stem the outflow of rice, Sihanouk decided to forcefully collect rice surplus using Cambodian military. Resentment against this decision led to armed conflict near Samlaut in western Battambang. Thousands of farmers were wiped out by government forces. About 10,000 Cambodians are believed to be killed by government forces (Chandler, 2008). Because of the worsening situation and his growing suspicion about the North Vietnamese the prince attempted to realign himself with the United States again but also at the same time reasserting his friendship with the North Vietnamese.

Dismayed condition of Cambodia's economy and the presence of North Vietnamese base in Cambodia made the prince unpopular among many powerful officials. They started plotting for removing the prince from power. When Sihanouk was away on a holiday the Cambodian Nation Assembly, under the influence of Sirik Matak and other officials, removed Sihanouk from power in March 1970 (Chandler, 2008).

According to David Chandler (2008) foreign policy choices Sihanouk made were mostly unavoidable. Chandler argues that if Sihanouk had not made alliance with the North Vietnamese than the Communist forces would have moved across Cambodia and decimated any Cambodian forces sent against them as they did in 1970–71, when the post-Sihanouk government tried to drive them out of the country.

Many important developments took place during the fifteen years rule of Sihanouk. The gradual evolution of the Communist Party of Kampuchea was one important development relevant to the analysis of the ongoing trial. The development of CPK during Sihanouk regime will be discussed in more detail in the following sections of this chapter.

LON NOL ERA

After Sihanouk was removed from power Lon Nol remained prime minister with Matak as his assistant. The Prince wanted to seek political asylum in France, but Zhou Enlai and the Vietnamese premier, Pham Van Dong convince the Prince to make an alliance with CPK and take command of a united front to fight against the pro U.S. Lon Nol regime. Thus Sihanouk allied himself with the CPK, an action that gained the CPK guerrillas thousands of supporters. Cambodia, then, was split in civil war between the GRUNK – the Royal Government of National Union of Kampuchea, consisting mainly of the Khmer Rouge and Sihanouk's nationalist and royalist supporters – and government forces of Lon Nol's Khmer Republic (ibid).

Meanwhile, U.S. bombing of Cambodia further intensified. Due to the bombing many Cambodians died and were displaced from their homes. Those Cambodians who suffered greatly in the bombing were attracted to the revolutionary path of CPK (Showcross, 1978). By early 1970s, with the support of Vietnam and China, CPK had become a powerful force. Gradually, CPK expanded their territorial hold in Cambodia.

By 1973, CPK were threatening to over the capital city. However, the inevitable was only delayed for some time by intense U.S bombing.

At the end of March the prince broadcast an appeal to his “brothers and sisters” to take up arms against Lon Nol. Pro-Sihanouk riots broke out almost immediately in the eastern part of the country. Fuelled by panic, arrogance, and racism, Cambodian army units massacred hundreds of unarmed Vietnamese civilians near Phnom Penh on the dubious grounds that they were allied with the Communists. The viciousness of the massacre, and Lon Nol’s failure to express regret, evaporated the goodwill the regime had earned overseas.

Lon Nol gave the Vietnamese Communists forty-eight hours to leave the country. But Vietnamese completely ignored his threat. As a consequence Lon Nol poured tens of thousands of fighters into the armed forces to drive the “invaders” from the country. Thousands were killed or wounded over the next few weeks, picked off by Vietnamese soldiers who had been in combat in some cases for over twenty years. In May 1970, a joint U.S.–South Vietnamese invasion of eastern Cambodia drove the North Vietnamese forces farther west. The invasion protected the U.S. withdrawal from Vietnam, but it probably spelled the end of Cambodia as a sovereign state. Lon Nol’s two offensives against the Vietnamese in late 1970 and 1971 were named after the pre-Angkorean kingdom of Chenla. With North Vietnamese training and support, the forces of the CPK smashed a major government offensive of late 1971 – Chenla II. They were encouraged by the United States, but Lon Nol’s troops were badly trained, poorly equipped, and often badly led. Experienced North Vietnamese forces cut them to pieces, and after 1971 Lon Nol’s troops mounted no major offensive actions.

By the end of 1972 the Khmer Republic only controlled Phnom Penh, a few provincial capitals, and much of Battambang. The rest of the country was either in Communist hands or unsafe for anyone to administer. In the first half of 1973 the United States brutally postponed a Communist victory by conducting a bombing campaign on Cambodia that, in its intensity, was as far-reaching as any during World War II. Over a hundred thousand tons of bombs fell on the Cambodian countryside before the U.S. Congress prohibited further bombing. No reliable estimate of casualties has ever been made, but the campaign probably halted the Communist

forces encircling Phnom Penh, even though some have argued that it hardened the will of the surviving Communist forces. The war dragged on for another year and a half, but President Nixon's reaction to the end of the bombing was to declare to an aide that, as a result, the United States had "lost" Southeast Asia—a section of the world it had never owned. (Shawcross, 1979; Kiernan, 1989)

The end came in early 1975 when the Communists mined the riverine approaches to Phnom Penh and thus prevented shipments of rice and ammunition from reaching the capital. Airlifts arranged by the United States were unable to bring in enough rice to feed Phnom Penh or enough ammunition to defend it (Chandler, 2008). For the next three months the Cambodian Communists tightened their noose around the city, now swollen with perhaps two million refugees. In early March, Lon Nol fled out of the country taking along a million dollars awarded him by his government (ibid). Last-minute attempts to negotiate with Sihanouk, set in motion by the United States, came to nothing. At this point or shortly beforehand, and without waiting for approval from his Vietnamese allies, Saloth Sar and his colleagues decided to take Phnom Penh. On the morning of April 17, 1975, columns of Communist troops dressed in peasant clothes or simple khaki uniforms, ominously silent and heavily armed, converged on Phnom Penh from three directions (Chandler, 1999). Many of them were under fifteen years of age. Walking slowly down the capital's broad avenues, emptied of other traffic, they responded coldly to the people's welcome. Their arrival coincided roughly with the Cambodian New Year and came two weeks before the Communist victory in South Vietnam. The coincidences were deliberate, for the Communists probably intended that the year to come, like year one of the French Revolution, would usher in an entirely new phase of Cambodian history, without any connections to the revolution in Vietnam. (Ponchaud, 1978)

THE ERA OF DEMOCRATIC KAMPUCHEA

The era of Democratic Kampuchea (DK) (1975-1979) has become one of the most important era in the history of Cambodia. The four year reign of terror unleashed by the Khmer Rouge was a traumatic and unforgettable period for nearly all the Cambodians who have lived and experienced the atrocities of the regime (Chandler, 2008). The regime sought to create a new socio-economic order by transforming or replacing the old decadent feudal order of elitism and individualism with

revolutionary zeal. ‘Cambodia’s poor, they said, had always been exploited and enslaved.’(Chandler, 2008). ‘No Cambodian government had ever tried to change so many things so rapidly; none had been so relentlessly oriented toward the future or so biased in favour of the poor’ (ibid). All the decadent institutions representing feudal elements like money, markets, formal education, Buddhism, books, and private property were abolished (Chandler, 1999). All the people have to follow the ‘revolutionary organisation’ *angkar padevat*. “The survivors of the regime remember the time as *vinh chu chot* (three words for the sharp tastes of unripe fruit)” (Chandler, 2008).

Before going into the details discussion of actions, programmes and reforms introduced by the Khmer Rouge which transformed Cambodia forever, let us first discuss the origin the Khmer rouge and its raise to power in 1975. The origin of Khmer Rouge can be trace from the progression of the Cambodian communist parties which had its beginning with the Khmer People’s Revolutionary Party (KPRP) in 1951 (Kamboly, 2007). Aided by Vietnamese communists, Saloth Sar who later became to be known as Pol Pot, helped establish a legal party called the People’s Party out of the KPRP, and also helped formulate the party’s organization and political program (ibid). After winning only 3 percent of the National Assembly’s seats in 1955 and in the years to follow till early 1960 the KPRP had hardly gain any momentum, only two rural party branches remained fully functioning (ibid). At the end of September, 1960, a secret KPRP congress was held to reorganize the party, changing its name to the Workers’ Party of Kampuchea and establishing a new political line (ibid). An emergency congress held in 1962 elected Pol Pot as its new secretary while Noun Chea remained deputy secretary (ibid). In 1966, Pol Pot changed the party’s name to the Communist Party of Kampuchea (CPK) in an attempt to lessen Vietnamese influence to the Cambodian communist movement and to strengthen Cambodia’s relationship with China (ibid). The CPK developed their revolutionary organization in the jungle as they prepared for a full-scale war to overthrow Sihanouk’s regime (Etcheson, 2005). Subsequently, an important development took place which greatly helped CPK to bolster its organisation. The development was the successful coup staged by Lon Nol which deposed Prince Sihanouk from power when he was away from the country in March 1970.

Stage was set for the rapid advancement of the Khmer Rouge or Red Khmer – a name given to the CPK by Prince Sihanouk in the 1960s (Kamboly, 2007). When Lon Nol took over the government from Sihanouk in 1970 the economy of the country was already in a bad shape. The matter was made worst during the Lon Nol regime with rampant corruption. The Khmer Rouge drew support from thousands of Khmer who disliked Lon Nol's American-backed Khmer Republic government, and joined the CPK to help return Prince Sihanouk to power. From exile in China, Prince Sihanouk had formed the National United Front of Kampuchea and a government in exile, called the Royal Government of the National Union of Kampuchea, whose membership included CPK members (Chandler, 2008). Support for the Khmer Rouge grew even further when the United States in agreement with the Lon Nol regime bombed communist supply lines and bases, killing as many as 300,000 people solely between the months of January and August of 1973, (Kamboly, 2007) and prompting many Cambodian's to join the CPK's revolution. By early 1973, the Khmer Rouge controlled around 85 percent of Cambodia's territory, but U.S. assistance prolonged the civil war between Lon Nol's Khmer Republic government and Pol Pot's CPK forces for another two years. In total between 1969 and 1973, the tonnage of bombs dropped on Cambodian soil was over three times the tonnage dropped on Japan during World War II, with almost half of it dropped in 1973 (Hinton, 2005).

Hinton (2005) argues that "it was only after the Vietnam War intensified and Sihanouk was overthrown that the Khmer Rouge began to gain the legitimacy and support that would bring them to power." A significant factor in this legitimacy was Sihanouk's backing of the Khmer Rouge soon after his overthrow in 1970 (ibid). "Sihanouk's speech galvanized large numbers of peasants to follow their beloved, charismatic, fatherly king in joining the Khmer Rouge movement" (ibid). As Hinton (ibid) further describes that the Khmer Rouge came to power after "a period of extreme socioeconomic upheaval... As their lives were torn apart, tens of thousands of Cambodian peasants—particularly the extremely poor and the young—joined the Khmer Rouge in order to restore their king to power, to seek vengeance against the corrupt 'oppressors' who were responsible for their impoverishment and for the bombings of their homes."

After five years of political, economic, and social instability, Cambodians were optimistic on April 17, 1975, when Khmer Rouge cadres entered Cambodia's capital

city of Phnom Penh. This date, however, marks the beginning of Cambodia's terrorization by the Khmer Rouge regime, a time characterized by exceedingly inhuman brutality, constant fear for one's life, and the mass murders of Khmer by fellow Khmer. The Khmer Rouge immediately ordered the urban population to evacuate the cities forcing them into the rural countryside to perform agricultural work (Chandler, 1999). The evacuation had no exceptions, clearing out everything from hospitals and religious institutions and killing those who resisted (Kamboly, 2007). Evacuees died by the thousands while on the road from a variety of ailments: many pregnant women died while giving birth without medical services; the sick died without medicine; the very young and elderly died from the trek alone (ibid). David Chandler (2008) points out that the reasons for evacuating were due to shortage of food and over population which they could not administer, also CPK leaders concern their security. 'Perhaps the overriding reason, however, was the desire to assert the victory of the CPK, the dominance of the countryside over the cities and the empowerment of the poor.' (Chandler, 2008)

The evacuations of Phnom Penh and Cambodia's cities were the CPK's first actions to "achieve a 'super great leap forward' into socialism that would be unprecedented and would supposedly create, as a May 1975 radio broadcast announced, 'the cleanest, most fair society ever known in our history'." (Hinton, 2005). This 'leap' was the goal of Pol Pot's Four Year Plan that was hastily written in 1976 to be implemented from 1977 until 1980 and which demonstrated the Khmer Rouge's determination to "turn the country into a nation of peasants and workers in which corruption, feudalism, and capitalism could be completely uprooted." (Kamboly, 2007). The Four Year Plan called for the collectivization of all private property, and aimed to use the money earned by exporting agricultural products—primarily rice and secondarily other resources such as cotton – to buy machinery that would allow the CPK to build light industry, followed by medium and then heavy industry. 'Three tons per hectare' became a national slogan calling for an average national yield of three tons of unhusked rice per hectare (Chandler, 1999).

According to Chandler (1999) the Four Year Plan was deeply as the expected rice production was to be achieved through a collectivized revolutionary will rather than by increased technology or material incentives. The plan includes no explanation of how light industry would be constructed; let alone how the increase in rice production

would procedurally be accomplished. For example, factories producing thousands of irrigation pumps were expected to come into being, but “Where the material to make the pumps would come from or how the funding and labour were to be acquired was not specified.” (Chandler, 1999)

The Four Year Plan was never promulgated, even the existence of the CPK was kept secret until September 27, 1975, when Radio Phnom Penh played a five-hour speech delivered by Pol Pot. The party was most likely only announced due to pressure from China, one of Cambodia’s few allies and a major financial backer of the CPK, as China’s new leadership was “unhappy that the Cambodian Communists continued to conceal the party’s existence and to claim independence from the international Communist movement.” (Chandler, 1999)

The CPK wanted to make their state of Democratic Kampuchea (DK) both economically and politically independent, and labelled the Vietnamese as one of DK’s enemies to unite the Khmer people against. Chandler (1999) describes, when the Khmer Rouge created the state of Democratic Kampuchea, they “declared their independence from Vietnam, expunging Vietnam from party histories and making brutal raids across the frontier. Cambodia’s leaders had always resented Vietnamese patronage. Therefore, Vietnamese living in Cambodia were expelled when the Khmer Rouge came to power in 1975, and in 1977 and 1978 the Khmer Rouge began to systematically kill the small number of Vietnamese who had remained in Cambodia.

The interrogation operations at Tuel Sleng demonstrate the massive and systemic nature of the CPK’s paranoia. Also known as S-21, Tuel Sleng was a high school converted into a prison by the Khmer Rouge, and was described by factory workers located nearby S-21 as “the place where people went in and never came out.” (Chandler, 1999) Interrogators at S-21 extracted thousands of confessions to crimes against the CPK by torture. As Chandler (1999) explains, “The primary value of the documents en masse is as evidence of the continuing phobias of the party’s leaders. Taken as a whole, the confessions are a bleak testimony to the extent which the Khmer Rouge were riddled with brutality and distrust.”

The extreme collectivization present in the cooperatives, especially communal eating, severely restricted family life, and was seen as unpleasant and cruel because Cambodian families had eaten together for thousands of years (Khamboly, 2007) The

Khmer Rouge classified people in their new and supposedly classless society as either 'new people' or 'old people,' based on their occupation before the Khmer Rouge came to power in 1975: 'old people,' also known as 'base people,' were those who lived in rural areas under CPK control before April 17, 1975; 'new people,' also known as '17 April people,' were those evacuated from the cities and towns in April, 1975, although many had lived in the countryside and had moved to escape the bombings (ibid). These classifications dehumanized those classified as oppressors, by portraying them as less than fully human beings (Hinton, 2005). These oppressors were one of many classifications of the CPK's enemies, which included both external and internal enemies. Those classified as internal enemies were the 'new people,' those whose status was classified as capitalist or feudalist or who were not ethnically Khmer, including: officials of the Khmer Republic government, minority groups, Cham Muslims, Vietnamese, ethnic Chinese, intellectuals, and alleged traitors. All of these minorities groups were systematically persecuted by the Khmer Rouge regime.

In destroying all roots with the past as part of the CPK's revolutionary struggle to create the first real communist society the Khmer Rouge abolished religion, prohibiting religious worship. Buddhism, which had served as the basic source of Khmer identity, was seen as a threat to the revolutionary struggle for a homogenized population. The Khmer Rouge has been said to have committed "autogenocide" because many Cambodians fell under the categories of the CPK's enemies creating a situation in which Khmer were killing Khmer people (Hinton, 2005). The crimes Khmer Rouge cadres committed ranged from mass executions to cannibalism; Khmer Rouge cadres would often eat the livers of their victims (ibid).

No one was safe under the Khmer Rouge regime, including those who were Khmer Rouge cadres. Youth cadres assigned to guard prisoners at S-21 were scared for their lives just as the people working at cooperatives were. One S-21 guard was even killed for yelling "the house is on fire" in his sleep (Maguire, 2007). This demonstrates the paradox of perpetration: those committing crimes on behalf of the Khmer Rouge were often doing so on pain of their own lives, such that cadres often killed their victims in order to keep themselves alive.

The Khmer Rouge regime continued to terrorize the country, creating a society characterized by unrelenting work, malnutrition, starvation, illness, brutality, terror,

and death until January of 1979, when Vietnamese forces invaded Cambodia and the CPK leadership fled into Thai borders. The Vietnamese initiated a new regime in Phnom Penh called the Peoples Republic of Kampuchea (PRK) that would govern Cambodia until 1990 when Vietnamese forces withdrew from Cambodia, and under which Cambodians began to rebuild their lives. After the Vietnamese liberation, individual Cambodians faced the loss of family members and the psychological effects of living through extreme trauma, while often living nearby former Khmer Rouge cadres. Local communities were also faced with the promotion of reconciliation and the rebuilding of both Buddhism and village life. Cambodia as a whole faced the deaths of at least two million people and a demolished infrastructure. As Linton (2004) describes, “The devastation of traditional life and values during the Khmer Rouge rule has meant a loss of the frameworks and rituals that governed how society functioned, and has left individuals and wider society without structured ways of coping with tensions and anxieties”.

CAMBODIA SINCE 1979

In early 1979 the Vietnamese intervened militarily and ousted the terror regime of Khmer Rouge and helped to establish the People’s Republic of Kampuchea (PRK). The top leaders of the new regime were former military officers of the Democratic Kampuchea regime who had defected to Vietnam in 1978. Heng Samrin, Chea Sim, and Hun Sen were among the most prominent face of the new regime. Almost all the Cambodians welcomed the invasion by the Vietnamese because it signalled the end of the dreaded DK regime. The new PRK regime reinstated many of the prerevolutionary institutions, including markets, Buddhism, and family farming (Chandler, 2008). In the meantime, remnants the DK forces and its leaders had moved towards the Thai-Cambodia borders where they were fed and rearmed by the US and China with the help of Thailand. China and the US also ensured that DK delegates retain the Cambodian seat in the UN. China and the United States supported this state of affairs so as to punish Vietnam for invading Cambodia, standing up to China, and defeating the United States.

World public opinion became very critical about the actions of the DK regime with reports about their atrocities coming to light often. Therefore it became difficult to continue supporting the genocidal regime. China, the US and its western European

allies effective came up with a plan to cover for the continued support of the Khmer Rouge. Thus a coalition of all the factions fighting the RPK regime was proposed with Sihanouk as its head. The three factions - royalist party FUNCINPEC, the Party of Democratic Kampuchea (Khmer Rouge) and the Khmer People's National Liberation Front (KPNLF) came together to form the coalition in 1982, named the Coalition Government of Democratic Kampuchea (CGDK). Pol Pot, Ieng Sary and all other prominent leaders of the Khmer Rouge, remained in place in the occupying important positions in CGDK (Chandler, 2008).

The end of Cold War and raising efficiency of the PRK (renamed SOC or state of Cambodia) army facilitated the Vietnamese withdrawal which was done in September 1989. However, even during the time of Vietnamese withdrawal the Khmer Rouge was still potent threat to the SOC. The end of Cold War resulted in another important development, with the threat of Soviet domination no more there, the US and its allies were no more compelled to support the Khmer Rouge. In July 1990 U.S. Secretary of State James Baker announced that the United States would cease backing the CGDK's representative at the United Nations (Chandler, 2008).

International community, finally were able to look for a solution to the Cambodian problem. An international conference on Cambodia was convened in Paris in October 1991 and an agreement was reached. Under the terms of the Paris Peace agreement a temporary government was to be established in Phnom Penh comprising the four factions – SOC, FUNCINPEC, KPNLF and Party of Democratic Kampuchea. The four groups joined to form a Supreme National Council (SNC) presided over by Prince Sihanouk. The arrangements under the in Paris were to be monitored in Cambodia by UN personnel. Three main issues were to be dealt – disarmament and cantonment of the factional troops; the repatriation of refugees from Thailand; and national elections for a constituent assembly (Chandler, 2008). To achieve these goals, the UN established the United Nations Transitional Authority in Cambodia (UNTAC). However, the Khmer Rouge refused to honour the terms of Paris agreement. They refused to disarm and expanded their territory under their control. The SOC also in response refused to disarm and denied the UN. By the time the mission ended in October 1993, UNTAC had spent over \$2 billion, making it the most costly operation to date in UN history. Much of the money had gone into inflated salaries (Chandler, 2008). Peaceful repatriation of over three hundred thousand Cambodian refugees from Thailand and

successful hosting the national elections in 1993 were some of the positive achievement of the UNTAC.

In the election FUNCINPEC led by Norodom Rannaridh, won seven more seats than the Cambodian Peoples' Party (CPP) in the constituent assembly (Chandler, 2008). With Hun Sen refusing to accept defeat, a deadlock ensued, finally at the end of 1993 a compromise was reached whereby FUNCINPEC and the CPP formed a coalition government with two prime ministers; Prince Rannaridh and Hun Sen. However, many problems started in the fragile coalition due to disagreement between the two parties. In July 1997, Hun Sen launched a pre-emptive coup against FUNCINPEC troops and followers in Phnom Penh and remove Rannaridh from power. But this measure discredited Hun Sen's regime and several donor nations suspended their aid programme. Donor nations now urged him to conduct free and fair election for the National Assembly in 1998 as scheduled. The result of the 1998 also did not gave a clear mandate and another coalition was agreed between CPP and FUNCINPEC

All the while during this time the Khmer Rouge was disintegrating Ieng Sary, the former had defected to Phnom Penh in August 1996 and hundreds of Khmer Rouge soldiers were absorbed into the national army. Pol Pot had died and by 1998 almost all the fighting unites of the Khmer Rouge had laid either their arms or entered the national army.

Mean while an important development took place during this time towards achieving accountability for the crimes committed by the Khmer Rouge against the people of Cambodia. In 1997, the two prime minister Rannaridh and Hun Sen made a formal request to the for establishing a tribunal for the trial of the Khmer Rouge leaders. Protracted negotiation continued for more than six years for the establishment of the tribunal between the Hun Sen government and the UN. The prolonged negotiation was due to disagreement on the character of the tribunal, Hun Sen insisted on a national tribunal which was to be monitored by the UN and financed internationally while the UN insisted on an international tribunal with international legal standards. Finally, a compromise was reached for a hybrid tribunal in which both domestic and international judges would participate. Extraordinary Chambers in Courts of Cambodia (ECCC) or the Khmer Rouge tribunal was set up in June 2003. The tribunal has already convicted Duch and trial is ongoing for some other prominent leaders of Khmer Rouge. Details of the tribunal will be discussed in the following chapter.

CONCLUSION

The Angkorean period is considered the greatest period in the in the history of Cambodia. Khmer people still take great pride for having produced a great civilization in the history of mankind. As every other great civilization the Angkorean civilization also declined and began to be dominated by its neighbour. By the 17th century CE socio-political situation in the whole of Southeast Asia had been transformed. The era of Khmer dominance of Southeast Asia was over. Thais and Vietnamese had emerged as powerful socio-political group in Southeast Asia. The Thai or Siamese empire was expanding on the Northern and western border of the former Khmer empire. The Vietnamese was also expanding on the eastern side of Cambodia. The economic and demographic superiority of the Siamese and the Vietnamese meant that Cambodia sovereignty depended on one of these powers. From the late 17th century onwards till the establishment of French protectorate in 1863 Cambodia for most of the time had been under the dominance of either Siam or Vietnam. In fact the significance of Cambodia's location to its politics and sovereignty has ended only recently with the Vietnamese withdrawal in 1989.

Even after the end of colonialism Cambodia's fate continued to be determined by events outside its border. The war against communism in the neighbouring Vietnam again threatened the sovereignty of Cambodia. Despite Sihanouk's desperate attempts Cambodia was finally dragged in the war with the American bombing which started in 1969. American involvement in Cambodia ended with the final bombing in 1973. The American bombing and invasion had a profound impact on the political setting in Cambodia. Due to discontent against the pro-US government of Lon Nol and hatred generated by the American bombs made it easier for the Cambodian communist to recruit fighting force and followers. In 1975 the Khmer Rouge occupied Phnom Penh and overthrew the Lon Nol regime. Without the bombing by the US the Khmer Rouge would never have come to power.

The new Khmer Rouge regime started a reign of terror, their action and reforms led to the death of about two million Cambodians. Their four years reign was ended with the Vietnamese intervention in 1979. Cambodia then had become a mere pawn in the game of Cold War. China, the US and its allies refused to recognise the new Vietnam installed regime of Cambodia instead they kept on recognising and supporting the ousted regime. The legitimate regime in Cambodia was outcaste and punished these

powers only because their patron was no friend to them. The fate which has befallen Cambodia was of not their choice, the geo-strategic location of Cambodia made impossible to avoid the effect of events that happened outside their borders.

The Cold war ended and only then the international community agreed to prosecute the perpetrators heinous crime committed against the people of Cambodia. Today the tribunal for the trial of top Khmer Rouge leaders is in place in the form of Extraordinary Chambers in Courts of Cambodia which became a reality in June 2003.

CHAPTER 3

THE ECCC AND CAMBODIAN RESPONSE

The chapter will mainly focus on the Cambodian responses to ECCC, which would include both the responses of Cambodian government and the people of Cambodia. Before analysing their responses to ECCC, there will be discussion on nature, structure and purpose of the tribunal and also work done so far by the tribunal. This will be followed by discussion on the origin and setting up of the tribunal. Finally, proper analytical discussion on the responses of the Hun Sen Government and the people of Cambodia towards the tribunal will be done.

The Cambodian government in 1997 requested the UN to assist in establishing a tribunal for the prosecution of the senior leaders of the Khmer Rouge. The Cambodian National Assembly in 2001 passed a law to establish a tribunal to prosecute the KR leaders for their serious crimes committed during their regime (<http://www.eccc.gov.kh/en/case/topic/2>). The tribunal was created after an agreement was reached between the UN and government of Cambodia in June 2003 (ECCC website). As mentioned in the introduction ECCC is a Cambodian court with application of international standards. According to the agreement between the UN and Cambodian government the tribunal is restricted to try only important leaders for crimes committed only inside Cambodia during the period of KR regime. The Cambodian government insisted on holding the trial inside Cambodia with Cambodian staff and judges along with foreign personnel.

The court has two chambers - the Trial Chamber and Supreme Court Chamber. Any conviction has to be made by a 'super majority' method. The maximum is life imprisonment and minimum being five years, no death penalty will be awarded.

One unique feature of the tribunal is that the ECCC rules provide provision for allowing the participation KR crime victims in the proceedings as civil parties. The participation KR regime victims in the proceeding of ECCC were considered to be of historic importance in the development of humanitarian international law. To date, no international or hybrid tribunal mandated to investigate war crimes, crimes against

humanity or genocide has involved victims as civil parties, giving them full procedural rights.

The ECCC is handling four cases:

Case 001: Defendant: Kaing Guek Eav alias Duch

Case 002: Defendants: Khieu Samphan, Ieng Sary, Nuon Chea, Ieng Thirith

Case 003: Defendants: The identities of Suspects have not been made public

Case 004: Defendants: The identities of Suspects have not been made public

(<http://www.eccc.gov.kh/en/about-eccc/introduction>)

Case 001

Case 001 was the first case before the ECCC. Kaing Guek Eav alias Duch (ex - Chairman of the S-21 prison) was the defendant of the Case 001. Duch was found guilty according to “Articles 5, 6 and 29 (new) of the ECCC Law of the following crimes committed in Phnom Penh and within the territory of Cambodia between 17 April 1975 and 6 January 1979:” (ECCC website)

- Crimes against humanity
 - persecution on political grounds,
 - extermination (encompassing murder),
 - enslavement,
 - imprisonment,
 - torture and
 - other inhumane acts

- Grave breaches of the Geneva Conventions of 1949,
 - wilful killing,
 - torture and inhumane treatment,
 - wilfully causing great suffering or serious injury to body or health,
 - wilfully depriving a prisoner of war or civilian of the rights of fair and regular trial, and
 - unlawful confinement of a civilian

(<http://www.eccc.gov.kh/en/case/topic/1>)

Case 002

Under Case 002 two former Khmer Rouge leaders are now on trial. The two Accused are:

1. Nuon Chea, former Chairman of the Democratic Kampuchea National Assembly and Deputy Secretary of the Communist Party of Kampuchea; and
2. Khieu Samphan, former Head of State of Democratic Kampuchea

They are charged with crimes against humanity, grave breaches of the Geneva Conventions of 1949, and genocide against the Muslim Cham and the Vietnamese. Two other co-accused, Ieng Sary and his wife Ieng Thirith, were also part Case 002. The proceedings against Ieng Sary were terminated on 14 March 2013, following his death the same day. Ieng Thirith has been declared mentally unfit to stand trial due to her dementia and was released from on 16 September 2012, and she is currently under judicial supervision. (<http://www.eccc.gov.kh/en/case/topic/2>)

Case 003 & Case 004

Case 003 and Case 004 is meant to try mid ranked cadres of the Khmer Rouge. However, the future of Case 003 and 004 is in doubt as Hun Sen is in favour of closing the case altogether.

THE CREATION OF ECCC

The prosecution of the Khmer Rouge leaders for their crimes against humanity was not a possibility until the end of Cold War. The long delay is mainly due class of interest among international players as well as among domestic actors within Cambodia. The PRK government in August 1979 established the People's Revolutionary Tribunal to try Ieng Sary and Pol Pot for genocidal crime against the Cambodians (Maguire, 2005). The 1979 tribunal conducted the trial of both Ieng Sary and Pol Pot in absentia and many gruesome and dramatic testimonies were heard during the trial (Linton, 2004). The tribunal declared both the leaders guilty and sentenced them to death however the conviction of 1979 was never recognised by the international community (ibid). The lack of fair trial also mired the reputation and

legitimacy of the tribunal, according to Maguire (2005) the court appointed defence lawyer of Pol Pot and Ieng Sary offered very little or no defence against their accused crime.

After Cold War ended pressure started building for the creation of a tribunal for the trial of DK leaders. In April 1994 the Cambodia Genocide Justice Act was passed in the US. Cambodian government also passed a law to outlaw the Khmer Rouge in July 1994. These two developments were turning points towards the path of achieving accountability for Khmer Rouge crimes (Hammer and Urs, 2005) Therefore, after receiving a request from the two co-prime ministers of Cambodia in June 1997 for assistance in establishing a tribunal, the UN started efforts to set up an international tribunal to prosecute the leaders of Democratic Kampuchea. In response to the request the UN General Assembly on 12th December adopted a resolution. The resolution was significant development as it showed the commitment of the UN for establishing a tribunal to achieve accountability for KR crimes. The resolution of 12th December acknowledges that Khmer Rouge has committed the most serious human rights violations in recent times.

However, negotiations between the UN and the Cambodian government on the nature and character of the tribunal turned out to be difficult. The situation in Cambodia, however, changed completely within few months after the formal request from from the two prime ministers to the UN (Menzel, 2007). “The Khmer Rouge collapsed, Pol Pot was dead, and First Prime Minister Ranariddh was removed from office through military action by Deputy Prime Minister Hun Sen in 1997.” (Menzel, 2007). The government of Cambodia under Hun Sen now insisted on a establishing a Cambodian Court with international assistance whereas the UN desired an international court consisting purely of international judges, which would also to be located outside Cambodian territory (ibid).

This issue generated a heated debate both domestically and internationally. It was during this time the Special Representative of the Secretary General for Human Rights in Cambodia Thomas Hammarberg, brought up the idea of a mixed hybrid tribunal (Fawthrop and Jarvis, 2005). The idea of a mixed tribunal was not received well by both Cambodian government and the UN. This idea alarmed the members of Hun Sen’s the ruling party therefore Hun Sen opposed the idea of a joint tribunal

dominated by international jurists declaring it a matter of Cambodian sovereignty (Taylor, 2006). Cambodia rejected the idea that its sovereignty was dependent on its human rights record. “An angry Prime Minister Hun Sen reminded the UN and the US that both had recognized Pol Pot’s phantom state of Democratic Kampuchea for 12 years after its disappearance, simply to justify their castigation of socialist Vietnam as an aggressor, a country whose intervention in 1979 had ended the mass murders” (Form, 2009).

The negotiation process went smoothly only after the complete disintegration of the Khmer Rouge in 1999 after the arrest of top leaders of the ex-regime. However, both the negotiating parties had different ideas about the proposed hybrid tribunal. The UN came up with its own idea on the hybrid in the form of a memorandum consisting of 12 points. At the same time, the Cambodian government had also developed its own concept on hybrid court. Both parties circulated proposal of their own idea of hybrid court. Hun Sen idea of a hybrid tribunal was a small court with external financing, supported by a small international staff. The UN proposed a court dominated by international personal and similar to the Nuremberg-style joint trial of all suspects together (Form, 2009).

The hybrid tribunal proposed by Thomas Hammarberg was to contain a majority of international judges and an international prosecutor (Klein, 2006). The UN came up with a second proposal after Hun Sen rejected the first proposal under which “the tribunal was to have one trial chamber and one appeals chamber to prosecute genocide and crimes against humanity” (Klein, 2006). This proposal according to Klein (2006) struck a balance as under this new proposal “the Cambodian personnel would be active participants in the trial alongside a majority of international personnel and the tribunal would function under the jurisdiction of Cambodian law with implementing legislation, before commencement of the trials.” However, Hun Sen’s Government rejected this second proposal as well.

After Cambodian government rejected the second proposal, the United States injected itself between Hun Sen and the United Nations as a broker of political deals and inventor of new legal mechanisms to implement those deals. This intervention followed the failure of U.S. attempts since 1997 to achieve international-standard accountability for DK-era crimes, pursuant to its stated policy goal of replacing "the

Cold War ... with the War Against Atrocities." (Scheffer, 1999) The United States had tried to obtain a Security Council mandate for an International Criminal Tribunal for Cambodia, and also to snatch senior CPK suspects from hideouts along the Thailand-Cambodia border in order to whisk them off to a foreign court where they could be tried under the doctrine of universal jurisdiction. The Security Council route was actively obstructed by the DK's onetime close ally, China, and more subtly by Cambodia's former colonial overlord, France, which was eager to please Hun Sen. Thus, starting in October 1999, the United States began putting its own ideas to the United Nations and Hun Sen about how to proceed, and then attempting to pressure or induce both to accept these ideas, relying on its superpower status vis-?-vis the United Nations and offering to reward Hun Sen with a lifting of the U.S. congressional restrictions on aid to Cambodia which was imposed following Hun Sen's coup de force of 1997. The U.S. strategy was to convince the United Nations to lower the bar while offering to pay Hun Sen to jump over it. Supported more or less strongly by Japan and France, the United States was able during the first half of 2000 to overpower the United Nations, forcing it into making the greatest concessions. However, these remained insufficient to satisfy Hun Sen, who also made accommodations but repeatedly stalled progress towards a final deal. In this, he continued to enjoy the support of China and the encouragement of France.

The negotiation seem to be going to the right tract when the Cambodian government in October 1999 endorsed the United States' proposal for a joint tribunal however this agreement fell apart when the Cambodian government rejected it and replaced it with its own proposal for a domestic tribunal that would allow limited participation by foreign judges (Klein, 2006). The Cambodian proposal was also for a hybrid tribunal, but which was fundamentally national in character with "one trial chamber and two appeals chambers, with a majority of Cambodian personnel" (Klein, 2006). There was another problematic aspect of the proposal that it included a new definition of genocide, which violated the international law against retroactivity.

To avoid stalling of negotiation the US and the Cambodian government agreed on a draft Memorandum of Understanding which "included the modern definition of genocide and a domestic tribunal with co-prosecutors and "supermajority" requirements" (Klein, 2006). As per the proposal the tribunal "would have three Cambodian and two international judges on the trial level and four Cambodian and

three international judges on the appeals level”, requires the agreement of at least one international judge for all decisions (ibid). The progress in the negotiation so far made was halted for a while when Cambodian government took a rash unilateral action in August 2001. The Cambodian government passed a legislation approving Hun Sen’s legally unsound proposal for a joint tribunal by a Cambodian National Assembly (ibid). Shortly thereafter, on February 8, 2002, the Office of Legal Affairs of the United Nations Secretariat officially ended negotiations with Cambodia (ibid).

No further negotiation could happen until June 2002 when Hun Sen again made another request to the UN Secretary General requesting further assistance (Luftglass, 2003). In 2002 December the UN General Assembly passed resolution requesting that Secretary-General Annan renew negotiation with Cambodian government. The resolution made a series of recommendations to the United Nations negotiating team. First, the resolution directed that the Extraordinary Chambers have subject matter jurisdiction consistent with the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia and personal jurisdiction over the former leaders of the Khmer Rouge. Second, the resolution called for the exercise of this jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in articles 14 and 15 of the International Covenant on Civil and Political Rights. Third, the resolution called for the independence and impartiality of judges and prosecutors.

Till January 2003, differences between the UN and the Cambodian government persisted, as they could not agree on the composition of the court. International pressure helped move the negotiations along, and this time they succeeded. In March 2003 an agreement was reached. Hans Corell, the United Nations legal counsel, announced that they had reached a draft agreement⁹⁷ with Cambodia on the status of a court (Luftglass, 2003). It took five years and eleven rounds of negotiations before Om Yentieng, an advisor to Prime Minister Hun Sen, stated, “We have agreed on a draft cooperation agreement in which the United Nations will assist Cambodia in the proceedings of a special tribunal.”(ibid) On May 13, 2003, a consensus of the United Nations General Assembly approved the March Agreement. Finally, on 6 June 2003, the “Agreement between the UN and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes committed during the Period of Democratic Kampuchea” was signed as a bilateral treaty. The agreement was

officially adopted by the Cambodian National Assembly in October 2004(ibid). The UN Legal Counsel, Hans Corell, said: “With this step, the quest of the Cambodian people for justice, national reconciliation, stability, peace and security is brought closer to realization.” (UN News Centre, 2009)

Kofi Annan, however, because of insufficient financial backing for the tribunal, refrained from publicizing the operative starting date of the agreement, and the struggle over the Khmer Rouge Tribunals raged on. The tribunal’s financing proved to be the most formidable obstacle. All of these efforts bore fruit on 29 April 2005 when the agreement was implemented.

In 2006, the court began its work in a newly constructed military complex several kilometres outside Phnom Penh in the midst of scandals and difficulties that nearly scuttled the tribunal on several occasions. The first defendant, Duch, the former warden of S-21, did not make an appearance in court. The main proceedings against him and other leading figures still alive were to begin in the spring of 2008. The reality, however, was different. Because of procedural complications, Duch’s trial did not begin until 17 February 2009.

HUN SEN GOVERNMENT AND ECCC

The process of establishment of ECCC took over decades, as discussed already. There were many hindrances to the path of creation of ECCC. But the main obstacle was the disagreement between Hun Sen Government and the UN over the nature of the tribunal. The UN wanted a tribunal purely international in character under their supervision, which should be set up outside the territorial boundary of Cambodia. However, Cambodian government under Hun Sen wanted a national tribunal, with financial help from the international community. The UN argued that Cambodian legal system was too corrupt and prone to political interference, which would make fair trial on par with international standard unachievable. Hun Sen on the other hand made it a question of Cambodian national sovereignty and argued that pushing for trial of important Khmer Rouge leader might lead to renewal of violence in Cambodia.

To analyse the responses of the Hun Sen government towards ECCC, it would be important to discuss the manner in which the government conducted the negotiation

for the establishment of the ECCC. Contrary to the request made to the UN, Hun Sen after assuming full control of the government (after the coup of 1997) started pressing for a national tribunal with international funding, where international organisation plays only advisory role. From the beginning itself, Hun Sen seems to be uninterested in establishing a tribunal. At the same time he was quite aware of the advantages he might get out of such a tribunal i.e. a tribunal which he could influence. After he forcefully assumed power in 1997, his regime was discredited in the eyes of the world community. The US stopped providing aids and criticism came from all corners of the world. ECCC was a chance he got to get back the international favour his regime lost after 1997. However, Hun Sen also knew it quite well that a tribunal can also bring trouble to his regime. As discussed earlier, Hun Sen and many of his party members are former Khmer Rouge cadre. Therefore, he was quite suspicious that if a tribunal is established as proposed by the UN, fingers could be pointed at him and his party members. In such a scenario he suspected that his regime might get destabilised. Therefore, Hun Sen was firmly against an international tribunal. In the negotiations which ran over decades, Hun Sen did make some concessions. But the concessions were made in such a way that the Cambodian judges would be in majority in the trial court. Hun Sen's lack of honesty is reflected in the comments he made at a Central Committee meeting of the ruling party, the Cambodian People's Party, in February 2000, Hun Sen "reassured anti-tribunal cadres that there was no need to worry about the tribunal because he had successfully stalled progress on the negotiations for 3 years, and would continue to stall them until the key suspects had died of natural deaths."(Kiernan, 2007) Unknown to other international actors involved in the negotiations, Hun Sen was offered increased bilateral aid and development assistance from China, which had been the "principal ally and patron of the Khmer Rouge for several decades"; these offers were intended to pressure the Prime Minister into derailing the tribunal (ibid).

Hun Sen's vehement opposition to an international tribunal coupled with his status as a former member of the Khmer Rouge casts a questionable light on his sincerity with regard to bringing the former leaders of the Khmer Rouge to justice. Hun Sen's comments that the Khmer Rouge were murderers lacks some effect due to the fact that he only defected as a soldier of the party when one of the many purges of the Khmer Rouge began to focus on his own ranks. Additionally, there is evidence that Hun

Sen's requests for international assistance with establishing a tribunal may have been strategic ploys to divert attention from the bloody military coup he staged in 1997 to overthrow the then First Prime Minister Norodom Ranariddh. Hun Sen's motives, which appear to lack good faith, combined with his power as the Prime Minister and ability to interfere in the future trials, casts considerable doubt as to the appropriateness of a joint tribunal.

The timing of Hun Sen's pursuit for international prosecution of the Khmer Rouge evokes suspicion that his motives were disingenuous. Hun Sen was extremely concerned with gaining international credibility and may have advocated international prosecution as a means of garnering credibility and diverting attention from the coup.

Hun Sen's refusal to accept any suggestions for an international tribunal, despite his specific call for United Nations assistance, indicates that he may be acting in bad faith and for his own self interest. For instance, Hun Sen's assurances to the Cambodian public that low-ranking members of the Khmer Rouge will not be subject to trial may be prompted by the fact that as a former Khmer Rouge soldier Hun Sen fears that if all officials of the Khmer Rouge are subject to trial, he may be called before the court. Regardless, the fact that Hun Sen, who has a significant conflict of interest, is capable of dictating who will be called before the court clearly defies the basis of impartiality that is a cornerstone of the judiciary. Furthermore, the structure of the March Agreement fails to safeguard against potential interference of the Cambodian government or to address the concerns regarding a lack of judicial independence and the limited number of competent Cambodian judges.

In welcoming the surrender of Sary, Pok, Nuon, and Samphan, Hun Sen had declared a policy of forgetting their pasts. He had retreated from a request he had made in 1997 for United Nations assistance to set up an international criminal tribunal to try alleged CPK criminals, and had rejected an early 1999 proposal by three U.N.-appointed legal experts on how to organize one. Instead, he called for a "Cambodian-style" trial with some international participation. He clearly had in mind something like the show-trial that had been organized under Vietnamese auspices in Cambodia in 1979. Pol Pot and Ieng Sary were convicted in absentia of genocide in this Vietnamese-scripted event that focused exclusively on them, and was dressed up with the participation of fellow travelling foreign jurists. Its selectivity reflected a Vietnamese policy of granting

impunity from prosecution to all former CPK members who were prepared to work with them against the DK regime. Those protected included Hun Sen himself, who had been a junior CPK military cadre, and a number of others who are now senior officials in Hun Sen's ruling Cambodian People's Party (CPP). Hun Sen's behaviour in 1998 and 1999 continued the originally Vietnamese policy of protecting long-term CPP members from legal scrutiny. It promised the same exemption to Ieng Sary, Rae Pok, Nuon Chea, and Khieu Samphan. It envisaged a thinly-disguised remake of the 1979 trial, with Mok and Duch in the dock instead of Pol Pot and Ieng Sary, but again hopefully legitimized by the presence of friendly foreign jurists who would not contradict Hun Sen's script for the proceedings. These continuities rendered implausible Hun Sen's attempts to claim he was pursuing a "Cambodian" solution to the problem of DK accountability.

Instead, Hun Sen and his spokesmen argued, first, that proceeding with an international trial would provoke a violent reaction from rallied DK remnants and disrupt the country's political stability and economic development; and, secondly, that opening up the issue to a public democratic debate, as would be required for passage of a tribunal law in parliament, would result in the obstruction of the legislation by "hardline" elements within the CPP. However, both arguments were discredited by the end of the year. The first claim was contradicted by mounting proof that no DK remnants were about to resume armed struggle.

Understanding the nature of the regime is also important to analyse Hun Sen Governments responses towards ECCC. Hun Sen regime came up as a result of Vietnamese invasion of Cambodia in 1979. After screwed manoeuvring Hun Sen was able to achieve authoritative power over Cambodian government by late 90s. Regime security seems to be the main concern of Hun Sen government. Therefore, the regime is mired by corruption and problem of impunity. The problem of impunity in the regime is clearly reflected by the fact that the government for many years refused any move to implicate the leaders of Khmer Rouge. In fact the manner in which Hun Sen assumed power in 1997 after a violent coup shows that the culture of impunity is deeply embedded even within the highest level of authority. According to Etcheson, "the disease of impunity impacts the way Cambodians look at everyday life and their relationship to society and has especially corrosive effects on the socialization of the young." The problem of impunity has not only consistently been a substantial

impediment to bringing justice to Cambodia over the past three decades, but it is also a problem that has been particularly worsened by the involvement of international actors. For example, despite the atrocities they committed, the Khmer Rouge leaders avoided responsibility for the crimes because of international support and recognition of “the government in exile of Democratic Kampuchea as the lawful representative of the Cambodian people, permitting them to occupy Cambodia’s seat at the General Assembly until 1991.” Under the shadow a corrupt government with the problem of impunity present, one can’t help but doubt the efficacy of ECCC.

One major concern which the UN representatives and scholars pointed out during the negotiation for the establishment of ECCC was that corrupt Cambodian judiciary might come under the influence of the government which will compromise the fairness of the trial. There has been plenty of evidences were Hun Sen tried to influence the working of ECCC. Cambodian judges are extremely vulnerable to political pressures, since they operate in a patronage-based, corrupt and extremely politicized domestic court system (Dearing, 2009). Many judges are members of the ruling CPP or have close personal connections to the ruling elite; while several of the ECCC’s Cambodian judges are very well qualified, observers fear that ultimately key judicial decisions will be made for political reasons.

To date, there have been several controversies suggesting political interference in the working of the ECCC. Most of these concern the pursuit of additional trials of key leaders to follow the Duch and politburo cases i.e. Case 002 and Case 004. In late 2008 a dispute broke out between international co-prosecutor Robert Petit and his Cambodian counterpart Chea Leang over the submission of five additional suspects to be charged and investigated. Chea Leang refused to support Petit’s actions. In March 2009 Prime Minister Hun Sen declared that charging additional suspects beyond the five currently in custody could lead to violent unrest in Cambodia. The pre-trial chamber, asked to rule on the question of whether additional suspects should be charged, was divided along international/national lines, and failed to achieve a supermajority on the issue. While the investigation by the international co-prosecutor was able to proceed, the Cambodian side of the court did not participate. As the Open Society Justice Initiative reported: ‘It appears likely— and concerns have been raised confidentially by sources inside the ECCC—that Cambodian members of the staff will refuse to participate in the investigation and prosecution of the additional

suspects in Cases 003/004.’(Open Society Justice Initiative, Political interference). The possibility that Cambodian court staff could boycott additional cases suggests that the Hun Sen regime exercises a strong influence on the ECCC’s operations. Parallel concerns have been raised about the investigation of witnesses for Case 002; summonses by the international co-investigating judge were not supported by his Cambodian counterpart (Gillison, 2010).

There remains a big question mark on the effectiveness of the tribunal if the Cambodian government is intent on thwarting the work of the ECCC by blocking further prosecutions, preventing witnesses from being called, and enforcing boycotts by local staff. Hun Sen underlined his determination to prevail in October 2010, when he reportedly told UN Secretary General Ban Ki-Moon during a visit to Phnom Penh that the ECCC should close itself down after Case 002 and not pursue Cases 003/004. (Cambodia Daily, 28 Oct. 2010.). Under the terms of the 2003 agreement (article 28), the UN could withdraw from the ECCC if there is evidence that the Cambodian government is interfering in the proper functioning of the tribunal. In practice, however, despite the increasingly compelling evidence of political interference, the UN has shown little interest in pulling the plug on the ECCC: too much has been spent, too much political capital has been invested, and too much remains at stake in Case 002 for New York to take such drastic action.

A crisis is looming over the progress of Cases 003 and 004, which Hun Sen appears intent on blocking. Without Cambodian government support, the tribunal would simply collapse; it is entirely dependent on local staff, and without the Cambodian security forces no further arrests of defendants could be made. Indeed, the government could even free the existing prisoners at any time. Would the UN ever call Hun Sen’s bluff? A hybrid tribunal to try former Khmer Rouge leaders, even an unsatisfactory one, serves the purposes of many stakeholders. Aborted trials and the closure of an international tribunal when its work had only just begun would be a huge loss of face all round, not to mention a massive waste of money. But at what point would no further trials look better than flawed trials? The classic liberal argument is that whatever the shortcomings of war crimes tribunals, they are still better than any of the obvious alternatives. Yet where such trials are not led and managed by liberal states but partially subcontracted to authoritarian regimes, such

arguments are distinctly weakened. The ECCC looks set to become the first such tribunal over which authoritarian practices and values gain a decisive upper hand.

CAMBODIAN PEOPLES RESPONSES TO THE KHMER ROUGE TRIBUNAL

It is difficult to make a generalized assessment of the responses and perceptions of the Cambodian to the ECCC. To understand their responses and perception this study will look into the data provided by a recent survey conducted by Human Rights Center University of California, Berkeley School of Law in 2010. The survey has shown that attitudes towards the ECCC have remained positive. Eighty four percent respondents believed that the court would respond to the crimes committed by the Khmer Rouge. While seventy six percent of respondents believes that ECCC will justice to the victims of the Khmer Rouge regime. Seventy-five percent believed the Court to be neutral. Over three-quarters of respondents believed the ECCC would have a positive effect on the victims of the Khmer Rouge and/or their families. Even though most respondents had a positive response towards ECCC on the question of priorities a majority of the respondent would rather focus on problems that Cambodians face in their daily lives than address crimes committed during the Khmer Rouge regime (83% in 2010 compared to 76% in 2008).

On responses regarding the Duch trial the survey suggest that trust in the justice sector increased since the Duch's trial started. When asked about the direct impact of the Duch trial on their trust in the legal system seventy two percent of the respondents said the trial had increased their trust, while six said their trust had decreased. On understanding community attitudes towards forgiveness and reconciliation the survey found that the proportion of respondents who forgave the Khmer Rouge top leaders has remained unchanged (36%) since 2008. Large majority of Cambodians (81%) still has reported feelings of hatred (81%), and desires to see those responsible suffer (68%). On understanding the attitudes about reconciliation the survey shows that the level of comfort interacting with members of the former Khmer Rouge during various social settings has changed very little between 2008 and 2010 and that only a minority (41%) was ready to reconcile with Duch after his trial.

The survey clearly points towards a positive perception of the ECCC by the Cambodians. One important point which can be noted on the result of the survey is on the issue of trust the Cambodians have on the functioning and impact of the ECCC. Majority of respondents believed that the trial of Duch was fair and ECCC at the end will be able to provide justice to the victims and family of the Khmer Rouge's crimes. Considering the fact that Cambodians have lived under state excess and atrocities for more than fifty years without anybody ever being held accountable, the amount of trust the Cambodians have shown for ECCC is remarkable.

Another interesting fact which can be noted from the survey is that in spite of majority of Cambodians having positive attitude towards the ECCC and believing that the ECCC will bring justice to the victims of the Khmer Rouge regime. When it comes to the question of priority majority of Cambodians would rather focus on problems they face in their daily lives than address crimes committed by the Khmer Rouge regime. This shows that the Cambodians in spite of considering the ECCC to be a positive development for Cambodia also consider the ECCC to be somewhat of a futile exercise. This contradictory position might be because of the long delay in bringing the former Khmer Rouge leaders to trial.

CONCLUSION

The Extraordinary Chambers in Courts of Cambodia came into being in June 2003. The main purpose of the ECCC is to provide justice and reconciliation for the victims and survivors of Khmer Rouge regime. Considerable doubt has been raised regarding the effectiveness and purpose of the tribunal. The ECCC which came up about 30 years after the fall of the Khmer Rouge regime have made many to question the validity of the tribunal. Moreover, there are concerns about the ECCC on its ability to provide justice to the victims as many doubts that the functioning of the ECCC may come under political pressure from the present Cambodian government.

During the negotiation period many parties both domestic and international were influencing the process to accommodate their interest. Hun Sen was adamant on the demand that the tribunal should be of national character with domestic judges and international observer. However, many academicians and legal analyst doubted the

effectiveness of Cambodian legal system to be able to handle such a tribunal in a fair and just environment. Therefore the UN was pressing for an international tribunal independent from the Cambodian authority. However, Hun Sen made it a matter of national sovereignty and argued that such a tribunal might disturb the peace and order in Cambodia. The negotiation got stuck with both sides holding their ground.

The manner in which Hun Sen conducted the negotiation with the UN has made many to question his motives. Hun Sen himself a former Khmer Rouge cadre was apprehensive about a purely international tribunal which could bring trouble to his regime. Important point to note is that most of prominent leaders in the present Hun Sen government were also former Khmer Rouge cadres. He feared that if an international tribunal is established which his government could not influence, him and his colleagues in the government might be put on to the trial. Therefore the manner in which Hun Sen and his government approach towards the ECCC has been highly practical and calculative. After he and Ranariddh had approach the UN for help in establishing a tribunal in 1997, there were major changes in the political scenario in the following years. By 1998 Khmer Rouge was no more a threat to his government and he had forcefully removed the co-prime minister Ranariddh. His request for a tribunal earlier in 1997 had a definite purpose and the purpose was to further isolate the Khmer Rouge in the eyes of international community. However, later after the disintegration of the Khmer Rouge he backed out from his appeals. But the 1997 coup had discredited his regime in the eye of the international community and he realised that agreeing to a Khmer Rouge tribunal might just get his credibility back.

It was under these circumstances that the negotiation for the tribunal began. Hun Sen was well aware of the advantages he could gain from the proposed tribunal but he had also to ensure that the tribunal does not harm the interest of his government. This was the main reason for his insistence for a domestic tribunal. He was never genuinely concerned about providing justice and reconciliation for the victims of Khmer Rouge regime. His main aim was getting back the lost credibility of his regime and also to protect himself and his colleagues from ever being persecuted. These aims he cleverly achieved by agreeing the establishment of the Khmer Rouge tribunal and ensuring Cambodian majority in the hybrid tribunal which came up in 2003.

CHAPTER 4

ROLE OF THE UNITED NATIONS AND INTERNATIONAL PLAYERS

The UN and international players have reacted and acted towards Democratic Kampuchea regime in different manners according to time and context. As Cold War intensified the two power blocs were trying to outmanoeuvre each other in different theatres of conflict throughout the world through proxy wars and diplomacy. Ideas like ethics and morality were forgotten in international politics. Cambodia like many others became the victim of ruthless Cold War politics. Cambodia was dragged into the Vietnam War with massive US bombing, as Cambodia was harbouring the North Vietnamese guerrillas. According to Michael Leifer (1975) the massive secret bombing of Cambodia by the US played an immense role in the Cambodian genocide, as without the anger generated by the massive secret bombing by the US Khmer Rouge could never have been able to recruit so many cadres to take control of Phnom Penh. Ben Kiernan (2006) points out that these new recruits were told that the bombs came from Lon Nol's military force in Phnom Penh, further fuelling anger at Lon Nol regime and further boosting the recruitment drive. Khmer Rouge coming to power, indeed, was one of the important results of the American bombing. Without the bombing of Cambodia, Khmer Rouge would not have come to power and so many people might not have died. The UN which was meant to keep world peace and protect the weaker State from other more powerful States could do nothing to protect Cambodia. With intense Cold War rivalry, UN was powerless to do anything which harmed the interest of the super powers.

Despite the revelation of crimes of Khmer Rouge the western powers kept on supporting Khmer Rouge even after it was removed from power. Major Powers like US and China in pursuit of their own interest choose to support Khmer Rouge despite the knowledge of their horrific crimes against the people of Cambodia. It was only after the end of Cold that these powers agreed for a tribunal for the trial of the Khmer Rouge leaders.

To understand the role of UN and international players in the Cambodian genocide and the establishment of the tribunal, it would be important to analyse their involvement and diplomatic dealing with Cambodia and Southeast Asia from Vietnam War till the setting up of ECCC. The involvement the US and its western European allies with DK went through major shifts during the concern period. The most important shift came with the end of Cold War. The Cold War and post Cold War phase had sharp distinction in the way US and its western allies dealt with Khmer Rouge. In the Cold War phase US and its allies gave full support to the DK regime. In the post Cold War phase DK lost the favour, US and allies de-recognised the DK regime and started favouring the establishment of a tribunal for the trial of the DK regime leaders. The circumstances under which these shifts occurred will be analysed in detail in the following sections.

THE COLD WAR PHASE

Direct involvement of Cambodia in to the Cold War politics came with the US bombing of Cambodia. From 1969 to 1973, the Nixon administration, without notifying the US Congress dropped over 500,000 bombs and landmines on Cambodia and illegally deployed troops over its border (Conachy, 2001). The first bombing of Cambodia began in 1969 focussing on the Ho Chi Minh trail to prevent effective supply of war materials to the North Vietnamese guerrillas fighting in the South Vietnam (Shawcross, 1986). In the second assault in 1973, B-52s bombers pounded Cambodia for 160 consecutive days, dropping more than 240,000 tons of bombs on rice fields and villages – 50 per cent more than the Allies dropped on Japan during the Second World War (Shawcross, 1986). It is believed that there were 2,565 sorties into Cambodia from 1965 to 1968, with 214 tons of bombs (Owen and Kiernan, 2006). The reasons for the bombing Cambodia were to drive away the North Vietnamese guerrillas from the Cambodian soil and also to protect the Lon Nol regime from the Cambodian communist forces. Conachy (2001) argues that the American bombing caused more than 700,000 Cambodian deaths and left about a third of the population homeless. Cambodia during the Vietnam War was sacrificed to the wider interests of the global players in their political games of the Cold War. The death and destruction due to the bombing was followed by economic slowdown and subsequent corruption

in the government. The withdrawal of the US forces compounded the problem of Lon Nol government which was overthrown by the Khmer Rouge guerrillas in 1975 leading the way for Pol Pot to assume power in Phnom Penh.

During this period the relationship between the two communist powers, USSR and China, had become sore. Vietnam had already drifted towards USSR. The new Khmer Rouge regime in Cambodia gave China a good opportunity to counter the Soviet Vietnam threat in Southeast Asia. Similarly the US, who earlier had massively bombed Cambodia to prevent Khmer Rouge from acquiring power, also show the new regime in Cambodia as an opportunity to re-establish their influence in the region. China started giving diplomatic and financial support to the new regime in Cambodia in spite of the emerging information of the regime's brutality against the people of Cambodia. The US and its allies on the other hand kept on ignoring the crimes of the Khmer Rouge. Also in 1978 China and the US for the first time since the Second World War normalised their relations. For both China and the US this new friendship had great importance as both realised that the partnership can be of great help to counter the Soviet threat. Their first effort together was to prevent Vietnam from obtaining international acceptance of its crushing defeat of the Pol Pot regime. In the emergency session of the United Nations Security Council hastily arranged for 11 January 1979, one day prior to the formal declaration of the People's Republic of Kampuchea in Cambodia, China called for the immediate withdrawal of all foreign troops and 13 out of 15 Security Council members voted to support the resolution (Fawthrop and Jarvis, 2004).

During the Cold War era the division of the world was not simply based on communist and capitalist interests. Every individual country had its own agenda besides the ideological inclinations. Therefore, the support DK got from many major powers of the world was part their strategic manoeuvre to out match their opponent. Major Powers that supported Khmer Rouge were US and its western European allies, China and ASEAN countries. These powers had their own agenda. The US and its west European allies were concern about extensive Soviet influence in Southeast Asia. China even though being a communist country had its difference with Soviet, and was concern of being encircled by the enemy. Thailand and other Southeast Asian country had the feared of Vietnamese dominance.

In early 1979 Vietnam intervened and pushed the DK cadres into the borders of Cambodia towards Thailand and installed a new regime that of the People's Republic of Kampuchea (PRK) in Phnom Penh. Although the US had supported Lon Nol's regime in its fight against Pol Pot's forces, President Gerald Ford along with Secretary of State Henry Kissinger and Secretary of Defence Donald Rumsfeld were quick to begin supporting Pol Pot's Khmer Rouge (Kiernan, 2006). The administration was well aware of Pol Pot's violent ruthlessness but chose to sacrifice the people of Cambodia for the benefit of American policy objectives in Vietnam (ibid). Prince Sihanouk stated himself in 1970, shortly before being overthrown by Lon Nol, that the Khmer Rouge "would present no great danger if they did not receive orders, weapons and supplies from abroad." (Leifer) The ASEAN countries, China, US and the west denounced the act and called for unconditional and immediate Vietnamese withdrawal and for self-determination. These calls according to Chandler (2008) seemed to take no account of the fact that Cambodia after the DK regime was not in any position to take the path of self determination. If Vietnam had withdrawn DK would have come back and assumed control of Cambodia unleashing another reign of terror.

Meanwhile, by the end of 1979 after the collapse DK regime a number of refugee camps sprang up sheltering several anti-Vietnamese resistance factions. One of the largest of these, led by Son Sann, sought foreign support to remove the Vietnamese occupation forces and to re-impose prerevolutionary institutions, except Sihanouk, whom Son Sann had come to distrust (Chandler, 2008). However, Son Sann was unable to obtain enough foreign support to establish an effective military force. China, US and other countries opposing Vietnam preferred the murderous DK over other factions. In 1979 and 1980 the Thai government fed, clothed, and restored to health several thousand DK soldiers who had straggled across the border, and these soldiers also received arms, ammunition, and military supplies from China, ferried through Thai ports (ibid). By 1982 the DK remnants had become a relatively effective military force. Their dependents, which were treated as political refugees, were fed and housed by agencies of the United Nations. However, UN development agencies were prohibited from operating in Cambodia itself since the new PRK regime in Cambodia was not recognised by UN as the legitimate government of Cambodia. Those people who badly needed immediate help were deprived of it simply because Vietnam was

no friend to the western powers who dominated the UN. Most of the aid coming from the UN and other international NGOs were channelled to the refugee camps inside Thailand, rather than to the population inside Cambodia itself (Fawthrop and Jarvis, 2004). Boua (1993) noted that for thirteen years, from 1979 to 1992, Cambodia did not receive UN development aid because the Vietnam installed regime not recognized by the UN or Western countries. Millions Cambodians living under the Hun Sen regime continued to be punished by the world community. While the exiled Khmer Rouge received aids sponsored by the United States and the international community channelled through Thailand. For instance, US \$12 million worth of food was passed by the World Food Program through Thailand to the Khmer Rouge (Kiernan, 1993). There is evidence that, in addition to the large supply of weapons, China supported the Khmer Rouge with US \$100 million per annum (Kiernan, 1993). From 1979 to 1986, US \$85 million was given to the Khmer Rouge by the US (Kiernan, 1993). Also, from 1979 to 1991, arms and munitions were provided by the European governments, lead by Britain (Jennar, 2006). However, no western government rushed to send humanitarian aid to the new Cambodia, not even diplomatic observers or a fact-finding mission (Fawthrop and Jarvis, 2004). The US and British governments even sought to block later NGO attempts to get emergency aid into Phnom Penh (Mysliwicz, 1988). The international community turned a blind eye to Cambodia during the 1980s while its people were living in hunger, poverty, and fear.

The situation for Cambodia was made worst as other neighbouring Asian countries feared Soviet-backed communist domination of the region. This fear was exploited by China and the US in their favour to further isolate Cambodia. Cambodia having just survived the Pol Pot regime was in bad shape and needed a great deal of help to be able to stand up again as an independent nation state. These life - support systems were provided by Vietnam and the Soviet Union. But the anti Soviet-Vietnam powers preferred the infant regime to die, rather than a new society to be born under Hanoi's sphere of influence.

Fawthrop and Jarvis (2004) in their book cited a transcript of a conversation between Chinese vice Premier Deng Xiaoping and Ieng Sary which happened in January 1979 captured from the Khmer Rouge base at Ta Sanh and later published by Phnom Penh's foreign ministry in 1982. According to the transcript of the conversation, China urged Pol Pot forces to form a united anti-Vietnamese front with Prince

Norodom Sihanouk and other non-communist forces. The Chinese agreed to support a Khmer Rouge-led guerrilla war with both massive arms shipments and generous funding in hard cash. Following is an excerpt of the conversation:

BEIJING MEETING BETWEEN DENG XIAOPING AND IENG SARY IN JANUARY 1979

DENG XIAOPING (to Ieng Sary): How do we supply you with money? Send it to Bangkok? Or to Kriangsak [the Thai prime minister]? Or deposit in Thai banks? You can withdraw it at any time. We can deposit five million dollars subject to withdrawal at any moment. We can deposit it in Thai banks, or leave it with the Chinese embassy, or the Kampuchean embassy in Thailand. IENG SARY: We will take it from the Chinese embassy in Bangkok. (Fawthrop, 2004)

Fawthrop and Jarvis further adds that from 1979 until 1989 China maintained a direct aid programme worth between \$80–100 million a year. Nayan Chanda (1984) to show the nature of support the Khmer Rouge got from China quoted the statement of Chinese Vice Premier Deng Xiaoping made in 1984 “I do not understand why some people want to remove Pol Pot...it is true that he made some mistakes in the past but now he is leading the fight against the Vietnamese aggressors.”

Another important step which China and the US took was to ensure the diplomatic survival of the Khmer Rouge regime even after it was removed from power. Sihanouk after his failure to get asylum in the US had escape to North Korea and from there he wrote an open letter unleashing scathing attacks on the Khmer Rouge and appealed to China and other world powers to stop supporting the fallen regime (Fawthrop and Jarvis, 2004). However, the US, China and the ASEAN countries ignored Sihanouk’s appeal and went all out to retain the UN seat for the Khmer Rouge delegation ensuring the diplomatic survival of the regime. The reasons for the US supporting the Khmer Rouge claim to the Cambodia seat at the UN was highly strategic political decision i.e. to play the China card against Vietnam. This meant holding the Cambodian people hostage, sweeping aside all considerations of human rights, the interests of Cambodian survivors and international humanitarian law. China and Vietnam had already fallen out with each other and China sought to use the Khmer Rouge to counter Vietnamese and Soviet influence in the region. This stance put China and the US on common ground. The diplomatic backing of the Khmer Rouge

by the US, UK, and China continued till 1992. The Cold War conflict against the Soviet Union and Vietnam by China and the United States reflected their own political strategies, but both involved sustaining the Khmer Rouge. The USSR and Vietnam were outmanoeuvred by a new coalition between China, the US and the ASEAN nations, now shamelessly aligned with Democratic Kampuchea. Following the collapse of the Khmer Rouge regime in 1979, the Pol Pot government was still recognized by the United States, China, and the European states as the only legitimate government of Cambodia (Conachy, 2001). Not only did these governments delay justice for Cambodian victims, but they also continued to sponsor the Khmer Rouge forces to fight against the Vietnamese-installed government.

Fawthrop and Jarvis (2004) points out that in the late 70s and the 80s quite often International law had to deal with the question of regime ousting and UN seating – Tanzanian intervention in 1979 ousting the Ugandan dictator Idi Amin; French intervention also in 1979 toppled the Central African Empire regime under Emperor Bokassa; and the US intervention in Grenada (1983) and Panama (1989) to install pro-US regimes. All these regime changes involved military intervention by a foreign power. Fawthrop and Jarvis argue that very few objections were made when the question came for seating these new regimes in the UN general assembly. However, the reaction to the Vietnamese intervention was a total contrast from the above mentioned examples. China along with the US and its western European allies condemned the intervention and demanded immediate withdrawal from Cambodia. The question of human rights violation and mass murder being rise against the DK regime did not bother them. To China and western powers containing the Vietnam – Soviet dominance of the region was of more important concern than the suffering of the Cambodian people. Clearly most countries that voted for DK's credentials as the legitimate representative of the Cambodian people at the UN were not principally concerned with the sanctity of international law. The prime reason of denying the Cambodian seat to the new regime installed by Vietnam was strategic as China and western powers were determined to block by any means what they perceived to be a strategic advance of the USSR and its allies in Southeast Asia. It was primarily a Cold War manoeuvre with little concern for international law and people of Cambodia. Many western governments, for all their talks about human rights, proved to be opportunistic and cynical when it came to taking sides on the Cambodia issue.

When the Khmer Rouge was still in power, the UN Commission on Human Rights based in Geneva had launched an investigation into the Khmer Rouge regime in 1978. Hearings were held in Geneva, with testimony taken from a number of refugees and human rights bodies. Mr Abdelwahab Boudhiba from Algeria was appointed UN Special Rapporteur and mandated to assess the documentation of the Khmer Rouge regime's human rights violations. His conclusion referred to violations of genocidal proportions and represented the 'the worst to have occurred anywhere in the world since Nazism.'(UN Document, 1979). But the Khmer Rouge and their allies were effective in stopping the report from ever reaching the floor of the commission.

The pressure mounted by US and China, to enforce rigorously the UN's recognition of the Khmer Rouge regime in exile ensured that UN agencies were not permitted to sign any agreements with the real but 'illegal' government in Phnom Penh. The UN's recognition of the Pol Pot regime meant that the only functioning Cambodian administration, the Heng Samrin government, had no legal existence in the eyes of the UN. Nearly all the UN agencies that would normally undertake major programmes to rehabilitate the country were banned from dealings with Phnom Penh as long as the Pol Pot group occupied the Cambodia seat in New York. The diplomatic thinking behind this rigorous isolation of the Heng Samrin government under the UN mandate was to prevent the consolidation of the Vietnam installed government. They believed that without development aid Hanoi installed regime would soon collapse and then pro-western forces would take over the rebuilding of Cambodia according to their preferred model.

The Coalition Government of Democratic Kampuchea (CGDK)

Evidence from the Pol Pot–Ieng Sary trial, testimonies of the refugee and confessions found in the archives at Tuol Sleng confirmed the atrocities of the DK regime. The PRK inaugurated "days of hate" in 1982 that provided occasions for survivors of the DK era to tell their stories (Chandler, 2008). Even though PRK propaganda was often heavy-handed and inaccurate, cautious estimates of DK-related deaths caused by overwork, starvation, mistreated diseases, and executions came close to two million Cambodians, or close to one in four then living (Etcheson, 2005). With the DK regime continuously losing its credentials and rising anti DK public opinion in the west. It became difficult for the western powers to keep supporting the DK as the

legitimate regime of Cambodia. However, the US, China and other western powers could not just let Vietnam and soviet to take hold of Cambodia. So they had to device a new plan, this plan was the coalition plan. China and other powers, faced with the task of improving DK's image while continuing to punish Vietnam, began pressuring Prince Sihanouk, who was living in exile in Beijing, to return to political life. During 1981 and 1982 all possible diplomatic steps were taken to form an anti-RPK coalition involving Sihanouk, Son Sann, and the Khmer Rouge.

In September 1981 the three factions – royalist FUNCINPEC, Son Sann's KPNLF and Khmer Rouge announced that they were prepared to act together. Soon afterward, the Khmer Rouge leaders declared that their party had converted to capitalist ideas and announced the dissolution of their party (Chandler, 2004). The alleged dissolution of the CPK convinced no one, but it was a good cover for the western powers to continue giving aid to the Khmer Rouge and other factions.

The Coalition Government of Democratic Kampuchea (CGDK) was launched on 22 June 1982 in Kuala Lumpur. According to Chandler (2008) it was neither a true coalition, nor a government as it hardly had any presence within Cambodian territory. The formation of the coalition, however, did served the intended purpose for the US and other western powers i.e. to continue supporting Khmer Rouge and other anti-RPK factions without public anger back home. Their aids to those factions were crucial for survival and sustenance of the anti-RPK factions enabling them to continue waging war against the Hun government.

Therefore CGDK was used by US, UK and ASEAN nations as a cover for their support of the Khmer Rouge. John Pilger wrote in *The New Statesman* (2000) that the British government of Margaret Thatcher sent highly-trained Special Air Service (SAS) commandos to train the Khmer Rouge how to use British-supplied landmines as well as “booby-traps and ... time-delay devices,” all the while denying that such assistance was being given. The civil war which began with the fall of DK regime continued till late 1990s was only made possible through these aids provided by the US, UK, China, and Thailand prolonging the suffering of the Cambodians. If these powers had not supported Pol Pot's Khmer Rouge the civil war would not have prolonged and so many thousands of Cambodians would not have died in vain.

The illusion of the CGDK coalition served many important purposes for the anti Vietnam-Soviet clique. One important purpose, as mentioned earlier, was to continue providing financial and military aid to the Khmer Rouge using the coalition as a cover. Another important purpose was to prevent the UN from recognising a pro-Vietnamese government in Cambodia. The formation of the CGDK was also a huge success for the Khmer Rouge as they were able to keep the UN Cambodia seat firmly in their grasp just by tolerating the expansion of their delegation to include a few Sihanouk supporters and KPNLF representatives (Fawthrop and Jarvis 2004).

POST COLD WAR PHASE AND VIETNAMESE WITHDRAWAL

Cold War ended in 1989 with the collapse of USSR and with USSR not in existence financial and military aid provided by former Soviet Union for Cambodia dried out. Moreover the PRK regime had already gained enough military strength to counter Khmer Rouge threat. Therefore, in 1989 Vietnam decided to withdraw from Cambodia. However, the Khmer Rouge forces were still a serious menace to the PRK regime. After the Vietnamese withdrawal DK troops occupied sparsely populated parts of Cambodia's northwest and southwest. Khmer Rouge forces raided villages at night and planted antipersonnel mines along paths and in rice fields, which resulted into many deaths and other casualties to the Cambodians. The war waged allegedly against the RPK regime and the Vietnamese was now killing only Khmer civilians. Such casualties continued till the late 1990s, until the minefields were cleared through the help of international NGOs (Chandler, 2008).

The collapse of USSR and of Cold War was a wind of change for the US and its allies. The fear of world communist domination ended with the end of Cold War. Now these powers can take sigh of relief from their *realpolitik* diplomatic game. The western powers now dropped their devils attire and suddenly acquired a more humane one. These powers that shamelessly supported the Khmer Rouge in the Cold War phase now started questioning Khmer Rouge legitimacy. Consequently, in July 1990 U.S. Secretary of State James Baker announced that the United States would cease backing the CGDK's representative at the United Nations. Baker's move encouraged China to diminish its patronage of DK (Chandler, 2008).

As the Cold war atmosphere subsided the world started looking for a solution for the Cambodian problem. Pressure started mounting on State of Cambodia (SOC), for the establishment of a care taker government in Cambodia. This was done by decisions made at the international conference on Cambodia that convened in Paris in October 1991. Under the terms of agreements reached in Paris, a temporary government was established in Phnom Penh comprising representatives of the incumbent regime and delegates from the factions that had been opposing it since 1981. The four factions joined to form a Supreme National Council (SNC) presided over by Prince Sihanouk. UN representatives were to monitor the working of the SNC.

The Paris Peace Agreements of 1991 coincided with the end of the Cold War. Under the terms of the Paris agreements UN personnel were to monitor the proposed disarmament of the different factions, the repatriation of refugees from Thailand, and national elections for a constituent assembly. To achieve these goals, the UN established a multinational protectorate over Cambodia – the United Nations Transitional Authority in 1991. However, the United Nations Transitional Authority in Cambodia (UNTAC) could not gain enough respect from the factions and refuse to give co-operation in implementing the terms of the Paris agreement. In the following year the Khmer Rouge further expanded their territorial control and refused to disarm its forces. The SOC too, in response, also refused to disarm and refused to allow the UN to oversee the daily operations of its powerful national police. The UNTAC had many inherent problems from the start itself – the mandate was ambiguous, its time was limited, and most of the UN personals had very little practical knowledge about Cambodia (Heder, 1996). By the end of the mission in October 1993 UNTAC had spent over \$2 billion, making it the most costly operation to date in UN history (Heder, 1996).

Despite many its failures of the UNTAC did achieved some success especially the repatriation of over 350,000 Cambodian refugees lodged in Thai-Cambodia borders and also successful staging the 1993 elections (Fawthrop and Jarvis, 2004). The era of Khmer Rouge legitimacy thanks to the Paris Peace Agreements was over. When the UNTAC mission left Cambodia Khmer Rouge forces were still strong, however, by then except Thailand the international community had stopped recognising and supporting the Khmer Rouge. By 1997 the Khmer Rouge had disintegrated and was

no more a potent force. Path towards the accountability of the Khmer Rouge for their crimes against the Cambodian people, for the first time, seem to be cleared.

THE TRIBUNAL

Crimes committed during the Second World War had raised the consciousness of the International community about mass atrocities being committed on the people in the name of war. A ground work was being laid for setting international safeguards to prevent mass atrocities against the people. Founding of the UN and codification of the customary international humanitarian law was part of the post-war enthusiasm for the creation of a new world order. These deliberations resulted in the adoption of the Genocide Convention in 1948. Again the Geneva Convention of 1949 defined and proscribed all manner of war crimes. But after the Geneva Convention these developments came to a halt and things stayed on paper for about half a century. The newly acquired enthusiasm for a new world and humanitarian law was lost with the emergence of a new form of conflict that of Cold War. Both sides in the Cold War played their political and diplomatic games through proxy wars in areas of the world where their interests were being threatened. The newly adopted conventions were ignored and rampant use of the veto power prevented any effective implementation of the international humanitarian law.

With the end of Cold War a new campaign was launched to establish a permanent International Criminal Court. Such a Court had been envisaged before and again it was the Cold War situation had prevented it from becoming a reality. The concept was resurrected again and after years of detailed negotiations the Statute of Rome in 1998 outlining the ICC's structure and powers was adopted by the UN. The International Criminal Court was formally established in March 2003. The background was set for the setting up of a tribunal for trying the Khmer Rouge leaders, internationally the Cold War has ended and ICC was in place and domestically the Khmer Rouge was disintegrating. Also the passing of the Cambodia Genocide Justice Act in the US in April 1994 and the Cambodian government's passing of an act to outlaw the Khmer Rouge in July 1994 were important turning points in the path towards accountability (Hammer and Urs, 2005). It was under these scenarios the

Cambodian government in June 1997 requested the United Nations to provide assistance in establishing a tribunal to try senior Khmer Rouge leaders who masterminded the Cambodian genocide. The negotiation for such a tribunal took another six years which finally came up in June 2003 in the form of Extraordinary Chambers in Courts of Cambodia or ECCC in short.

More than 20 years after, the world finally, was ready for the trial of the Khmer Rouge leaders. However, establishing the tribunal turn out to be a tough task, as every contending party wanted to guard their share of interest. There were controversies regarding the number of deaths in DK regime and the scope of the trial. Definition of genocide under international law made the matter worst because as most of the killing by KR does not fit the genocide definition of the international law (Rome Statute of the International Criminal Court).

The issue of the numbers Cambodians who perished during the Khmer Rouge regime remains a matter of heated debate. Many scholars have analysed and given different opinions on the issue. Fawthrop Recent studies, according to Fawthrop and Jarvis (2004), seem to be converging Ben Kiernan estimating of 1,671,000 and Marek Sliwinski 1.8 million on the basis of extrapolations from very different samples.

On the question of the nature of crimes committed by Khmer Rouge many scholars have given different arguments. The debate is largely generated due to some inadequacies in the definition of genocide provided under the Convention on the Prevention and Punishment of the Crime of Genocide of 9th December 1948 (UN doc). The convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group; and
5. Forcibly transferring children of the group to another group.

Scholars like Ben Kiernan (2000) and Hurst Hannum (1989) believes the mass killing by the Khmer Rouge can be termed as genocide as they have targeted specific ethnic

and religious minorities like Muslim Chams, Chinese and Vietnamese. Also argue that killings of the majority Khmers can also be considered as genocide as they were targeting only political minorities who opposed them. Lacouture (1977) and Locard offers a similar theories. Lacouture argues that the killing by the Khmer Rouge can be termed as "autogenocide" as which would mean targeting and mass killing of a majority nationality by its own members. Locard on the other hand argues that the mass killing by the Khmer Rouge should be termed "politicide" as Khmer Rouge mostly targeted people who opposed them or those considered threat to their revolution. Ratner and Abrams (1997) also argued that most of the deaths caused by the Khmer Rouge do not fit the convention's definition of genocide, but rather belong to the category of "political genocide" or "auto-genocide," which the convention does not cover. According to these scholars, "the argument that the Khmer Rouge committed genocide with respect to the Khmer national group appears to be relatively weak in light of the facts." It seems clear that the killing of one's own national group, even on a mass scale, was not intended by the drafters to be covered by the convention. Thus, whatever tribunal may eventually judge Khmer Rouge leaders, the charge of genocide will only be applied to victims belonging to one of the minority groups.

Instead, the mass extermination of Khmers, as well as acts of forced labour and torture, would be punishable under the charge of crimes against humanity. Moreover, mass, arbitrary killings and torture, regardless of the victims' group, constitute violations of customary international law for which Khmer Rouge leaders may also be held criminally liable (Hannum, 1989) The charge of war crimes is also applicable with respect to a more limited number of acts committed during warfare against the Vietnamese (Ratner, 1997) Finally, separate charges may be brought under conventional or customary international law for slavery, forced labour, torture and violation of the immunities of diplomatic and consular personnel.

Despite the debate on the nature of crime committed by Khmer Rouge most scholars generally agree that those responsible for the death of about two million people in Cambodia should be put on trial on charges of genocide.

Deciding the scope of the trial created further controversies. Main question on the scope of the trial was 'who to be tried?' Related to this question was the issue of time

period within which the trial was to be restricted. Cambodia's Khmer Rouge tribunal law states that only senior leaders of Democratic Kampuchea and those who were most responsible for the crimes can be prosecuted. Stephen Heder (2001) and Ben Kiernan (2002) are two scholars who support this statement. Both scholars argue that the trials should consist of only top Khmer Rouge leaders. They argue that if more than just the most prominent leaders are put on trial, it will be too difficult to make a distinction as to who should and should not be tried due to lack of resources and specific evidence to associate with each individual. Furthermore, Craig Etcheson (2005) also supports prosecuting only top Khmer Rouge leaders for two reasons. First, prosecution of only a handful of perpetrators will maintain political stability and cohesiveness in Cambodia. Second, the United Nations will benefit from prosecuting a small number of individuals because it will keep their costs relatively low.

Another group of scholars contend that the distinction between who is a "senior leader" of the Khmer Rouge and who carried out those leaders' orders remains somewhat ambiguous under Cambodia's Khmer Rouge tribunal law. Consequently, Fawthrop and Jarvis (2004) argue that the trials should include a broad range of Khmer Rouge associates, extending well beyond known leaders. This is because if only top leaders are prosecuted, thousands of participants of the Khmer Rouge, such as those who tortured and executed tens of thousands of victims in prison camps, will continue to walk free and will never face the appalling reality of their crimes, which is not fair to the Cambodian people.

However, the decision made on 'who to try and when' depended heavily on the desire of the global powers and powerful individuals. On the question of 'who' the powers who supported the Khmer Rouge earlier wanted and pushed for the prosecution to be limited only to the period of Khmer Rouge regime. The New York Times reported on the dilemmas faced by many governments fearing their dirty secrets being revealed under an open-ended tribunal. 'All Security Council members ... might spare themselves embarrassment by restricting the scope of prosecution to those crimes committed inside Cambodia during the four horrific years of Khmer Rouge rule.' (Cited by Fawthrop, 2004). On the question of 'when' for the US and its western European allies prosecution of the Khmer Rouge was not politically convenient till the early 1990s. Therefore, the tribunal has proceeded in a manner which is

convenient to the US and its friends and deliberately ignoring their dirty inconvenient truth.

Limited and selective nature of the tribunal cast a considerable doubt on its moral and legal principles as well as on the effectiveness of the tribunal for providing justice to the victim of the Khmer Rouge regime. Resting the responsibility of the violence only to some senior Khmer Rouge leaders and deliberately keeping the leaders of China, the US and other western countries outside the jurisdiction of the tribunal contradicts the principle of universality of international law. It is because of these reasons many scholars and analysts have questioned the validity of the tribunal and rejected the hypocrisy of such selective justice. Many more has challenged the credibility of the tribunal if it does not address all the crimes committed in Cambodia including the US bombing and all the other crimes against the people of Cambodia.

But the United States, in their attempt to protect its citizens from being dragged to the trial of Cambodian genocide, refused to become a party to the ICC, and started giving pressure to other members of the ICC to sign specific agreements under Article 98 to exempt US personnel from possible prosecution in future under its powers (Fawthrop and Jarvis, 2004). Cambodia was one such country which the US pressurised to sign such an agreement on Article 98. Cambodia finally had to sign the agreement which was endorsed by the Cambodian government on 3 October 2003 (ibid).

Clever diplomatic manoeuvres the super status of the US ensured that only the Khmer Rouge leaders will stand the trial for the genocide and other crimes against humanity. People like Henry Kissinger who master minded the bombing of Cambodia, which caused many thousands of deaths and brought Khmer Rouge to power of Cambodians remains exempted from prosecution. The tribunal does not have the mandate to decide whether or not the US bombing of Cambodia in the 1970s constituted war crimes. The reasons for exclusions of US bombing, and the Chinese and others support of the Khmer Rouge regime, have little to do with any principle of justice and everything to do with international politics (Fawthrop and Jarvis, 2004).

Regarding the functioning of the ECCC, it one of a small number of hybrid tribunals set up by the United Nations in conjunction with national governments. East Timor, Kosovo and Sierra Leone are other example of hybrid tribunals. Because of the extraordinary delays in its establishment, the ECCC is the only internationally-backed

court ever to prosecute crimes committed during the Cold War, and it is the only tribunal to begin operations since the establishment of the International Criminal Court. It faces significant challenges of overcoming political interference from the local Cambodian government and upholding standards of fairness, and prosecuting crimes committed more than 30 years ago.

Even if it manages to meet these legal and operational demands, questions remain as to the ECCC's ability to satisfy the need for accountability and Cambodian desires for truth and justice, and most importantly, an understanding of why such crimes were committed by Cambodians against their own people. The temporal jurisdiction of the ECCC means it cannot prosecute the crimes perpetrated by governments which preceded or followed the Pol Pot regime which means neither the crimes of the Lon Nol government and Hun Sen government against the people of Cambodia will not be prosecuted nor the ECCC can address the role of foreign governments in aiding and abetting the Khmer Rouge. The personal jurisdiction of the ECCC is limited to bringing to justice "senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations" (Meijer, 2004).

On the question of ECCC effectiveness on providing justice according to Maguire (2005), some Cambodians have given up on punishment and 'today they simply seek acknowledgment'. What these Cambodians want is acceptance and acknowledgment by the former Khmer Rouge leaders that they have indeed committed horrific crimes against their own people. However, faith in the ECCC to provide truth and acknowledgement by the former Khmer Rouge is likely to be misplaced. There is no sign that former Khmer Rouge leaders who have been indicted by the ECCC will depart from the practice of defending their previous actions as being in the interests of the Cambodian people. Khieu Samphan, in an open letter in December 2003, admitted 'systematic killings', but in his 2004 book he claimed that he 'didn't know' about Tuol Sleng and had no power to stop the atrocities (Fawthrop & Jarvis 2004). Nuon Chea feels no remorse for the past (Fawthrop & Jarvis 2004), admits only that the regime made some mistakes and blames the Vietnamese for the killing fields (Maguire 2005). Both portray themselves as patriots (Maguire 2005). All blame Pol Pot. Even if these former Khmer Rouge leaders continue to deny their culpability, the

finding by the ECCC of individual guilt could provide a strong counter to this denial and the punishment meted out could satisfy the calls for retributive justice. The symbolic potential of the ECCC should not be underestimated in this regard.

CONCLUSION

The violence and destruction of the world after the Second World War, at one point of time, seem to have awoken the global community making them aware of the futility of such violence. However, such awakening only turned out to be only an illusion as the world entered into a new phase of conflict between the communist USSR and the capitalist US and its western European allies. These developments had great consequences Cambodia and Southeast Asia as a whole. In the name of saving the free world from communist domination the US entered the war in Vietnam against the North Vietnamese communist forces. A regional conflict took the shape of a global conflict with the US involvement in the war. Cambodia was engulfed into the war with the US bombing of 1969. The bombing campaign which lasted till 1973 had everlasting effects for Cambodia. The bombing created discontent against the Lon Nol Regime and the communist party was able to recruit large number of fighting force and followers as a result of the bombing. Without the bombing Khmer Rouge would not have come to power. The suffering the Cambodians endured during the Khmer Rouge regime would not have happened if American bombs had not fallen on the Cambodian soil. The leaders of the United States like Nixon and Kissinger should also be held accountable for the crimes against the people of Cambodia. However, the super power status of the US has protected and will continue to protect these leaders from ever being tried for their responsibility for the crimes against the people of Cambodia. The story does not end here the US began to see Khmer Rouge as an opportunity to counter the Soviet-Vietnam influence in the region. Therefore, in spite of the knowledge of Khmer Rouge brutalities the US and its allies supported the regime and ignored their crimes against the people of Cambodia. Even in this instance China, the US and its allies were indirectly responsible for the death of about two million Cambodians. Again when the question of accountability comes the leaders will never be brought out in a tribunal for supporting a genocidal regime.

In terms of international accountability the situation even became worst. The Vietnamese intervention of 1979 and removal of genocidal Pol Pot regime from power was seen by China, the US and ASEAN nation as aggression against a legitimate regimes. These powers even kept on supporting and recognising the regime even after its forces were driven to the borders of Thailand. It was through the financial and military support provided by these powers the Khmer Rouge was able to rebuild itself and prolong the fight against the new Vietnam installed regime. The civil war which lasted for about 13 years killed thousands of Cambodians. If China, the US and its allies, and Thailand and other ASEAN nations had not supported the Khmer the civil war would not have prolonged and Cambodian people would not have suffered such atrocities. The primary responsibility for the death and other casualties that happened to the Cambodians as a result of the civil wars lies on those powers that supported and sustained the ex-regime.

If we turn to the establishment of the tribunal, China and western powers only agreed for the tribunal when the time was convenient for them. Until the threat of communist domination was looming such a tribunal was far from possibility. The convenient time for the western powers came only with the end of Cold War.

Roland Joffe, the director of the movie '*Killing Field*', in the forward to the book by Fawthrop and Jarvis (2004) wrote that both the Cold War power blocs were linked by a common view of reality that existed outside their commitment to their respective ideology. That link was the geo-political philosophy of *realpolitik*, which the American State Department terms 'reality politics'. Joffe further adds that the essence of this philosophy is that it is every government's job to protect the interests of its own nation state at all costs. It follows from this that a nation state views the world as composed of anything other than a set of shifting self-interested alliances. And since there is no international court to guarantee fairness, each country should fend for itself from the influence and effectiveness of competing nation states. This self serving, political philosophy, according to Joffe, has corrupted the very ethical foundations of those states of the world.

CHAPTER 5

CONCLUSION

The history of Cambodia in the second half of the twentieth century is complexly interwoven with trans-regional political processes in Indochina. Time played—and continues to play—a unique role. Cambodia did not enjoy peace after the collapse of the Khmer Rouge regime. Vietnamese interventions, international isolation, and a fragmented political landscape prevented the development of an adequate peace process. Nothing essentially changed until the Treaty of Paris of 1991. In retrospect, from the end of the 1960s we can discern three significant conflicts relevant to the work of the tribunal today: the rise of Lon Nol (the first civil war—until 1975), the armed struggle of Pol Pot (1975–1979), and the “second civil war” (the People’s Republic of Cambodia) from 1979 to 1991.

In the eventful history of Cambodia, the Khmer Rouge period is, perhaps, the most remarkable period to the people of Cambodia. Very few countries have seen so much political shifts in the last fifty years as Cambodia has seen. The greatest of those shifts occurred during the regime of Democratic Kampuchea. In fact, the regime tried to bring changes in such a way that many had to pay a huge price for it. Actions, policies and reforms of DK, though intended well, brought great miseries in the life of many Cambodians. Under the regime over a million people died due to political executions, tortures, starvation and over work. More than a quarter of Cambodia’s population was wiped out. It is only recently that international community come to agree that Khmer Rouge leaders should be held accountable for the death of over a million Cambodian as a result of their quest for an agrarian utopia during 1975-1979. The initiative started after the end of Cold War, with the proposal for creation of a tribunal to prosecute the responsible ones. The tribunal in the form of ECCC is a reality now. One Khmer Rouge leader is already convicted and trial is on for some other prominent leaders. In spite of these initiatives, many doubts still pertain on the effectiveness and purpose of the tribunal. A number of questions have been raised on the relevance of the trial which is happening more than 30 years after the collapsed of the Khmer Rouge regime. Will it serve any good to the victims or Cambodia? Is the trial going the right way by restricting its scope only to the four years of the regime?

Should only the top leaders be held responsible for what happened in Cambodia? Shouldn't the major global powers like the US and China be held responsible for the sufferings Cambodians endured? The current research has tried to answer these questions.

Internationally analysis of the role and responsibility of China and the western powers in the Cambodian genocide has shown the crude reality of world diplomacy. As world diplomacy in the Cold War era came to be dominated by the philosophy of *realpolitik*. The two power blocs tried to outmatch each in all their confrontation. This *realpolitik* approach in world diplomacy was clearly visible in Southeast Asia. The secret bombing of Cambodia to flush out the Viet Cong guerrillas was nothing but brute application of this realist philosophy. The bombing had severe consequences for Cambodia. Along with the death of thousands of Cambodians, the bombing also brought Khmer Rouge to power in Cambodia. Perhaps, without the bombing Khmer Rouge would not have come to power in Cambodia. Under Khmer Rouge's four years of reign about 2 million Cambodians died. The fact is that Cambodia was subjugated to the Cold War power struggles for hegemony in Southeast Asia. The meteoric rise of Pol Pot's Khmer Rouge, fully supported by communist China from the beginning, was fuelled largely by two events: the indiscriminate and secret carpet bombing of Cambodia by the US military under the direction of the Nixon regime during 1969-73, and the ouster of head of state Sihanouk by a pro-American general which in turn drove Sihanouk into the arms of the Khmer Rouge.

Western press asserted that the Vietnamese liberation of Cambodia from Khmer Rouge rule, in January 1979, was followed by — ten years of civil war. In fact the so called civil war happened primarily because of the continued recognition and support of ousted Khmer Rouge regime by the US, China and ASEAN. As a corollary the United Nations also continued to recognize the Khmer Rouge regime as the legitimate government of Cambodia, rather than the new People's Republic of Kampuchea in Phnom Penh, which soon gained control over 90% of the country. The alleged reason given was that Vietnam had invaded Cambodia, but the obvious truth was that Vietnam was on the wrong side of the Cold War. Opposing this UN decision to maintain Khmer Rouge representation were the Soviet bloc, India and a number of others, who were easily out voted in the UN. This stalemate continued for 11 years during which time the Khmer Rouge flag continued to fly over Manhattan. To

disguise this outrage, the Khmer Rouge was persuaded to form a coalition, the Coalition Government of Democratic Kampuchea (CGDK) with two non-communist factions—the Royalists' FUNCINPEC and a pro-American group, the KPNLF. In the field, the CGDK received ample aid from its Western and Chinese backers, initiating, fuelling and prolonging the so-called civil war. Only with the end of the Cold War, in 1991, the Paris Peace Agreements were finally signed, and the United Nations Transitional Authority in Cambodia (UNTAC) brought the stalemate to an end by organizing elections that established a new, now supposedly, legitimate coalition government in Cambodia. However, it is ironical that the international press and Western academics, almost in unison, now insist that the Khmer Rouge trials must continue, and that the Cambodian government should not protect anyone from the tribunal.

Then the question arises - shouldn't the US and other be held accountable for the suffering of the Cambodian? In my opinion the answer is yes, unfortunately, the super power status of the US makes it untouchable for whatever crimes they have committed against humanity. Moreover after their shameless act of cruelty the US, through their diplomacy, was able to ensure that no Americans will ever be prosecuted for what happened in Cambodia. The story of shamelessness does not end here. The US and its allies had information of alleged crimes against Cambodian by the DK regime. But these powers did not bother to fine out the truth because they prefer a monstrous regime who is an enemy of their enemy. After Vietnam intervened and removed DK from power. The western powers were not concerned of what the Khmer Rouge did to the people of Cambodia. Their main concern was countering the threat posed by a pro - Vietnamese and pro - USSR regime in Cambodia. It was under this plan to counter the possible communist threat, these powers kept on supporting Khmer Rouge in all possible way even after Khmer Rouge was removed from power. China, ASEAN countries, the US and its allies kept on recognising DK as the legitimate government of Cambodia till the end of Cold War. Therefore, these powers supported a devil until the devil served their interest.

Hundreds of thousands of human beings perished between 1979 and 1991 from hunger and war. If the victims of US bombing and the civil war during the Lon Nol era are added to these numbers (as many as 200,000 were killed) (Kiernan, 2002), the scope of destruction is frightfully clear. In the interval between the end of the Khmer

Rouge dictatorship and the first free elections, the focus was centred chiefly on the consolidation of the political and financial system as well as the infrastructure of the devastated country.

Analysis of the role of domestic players has shown that the process of setting up of ECCC was heavily influenced by the Hun Sen government. Hun Sen wanted a national tribunal, with financial help from the international community. Hun Sen made it a question of Cambodian national sovereignty and argued that pushing for trial of important Khmer Rouge leader might lead to renewal of violence in Cambodia. Hun Sen being a former KR cadre was worried that such a trial might drag him and his colleagues in his government into it. Evidences clearly points out that Hun Sen was apprehensive about an independent tribunal under UN supervision. He made it sure that the trial would be conducted in the way he wanted through intense pressure during the negotiation for setting up the tribunal. At the same time he was aware of the benefits the propose trial could bring to his regime. By agreeing to the tribunal he was trying to enhance the image of his regime which went down after the coup of 1997. After he forcefully assumed power in 1997, his regime was discredited in the eyes of the world community. The US stopped providing aids and criticism came from all corners of the world. ECCC was a chance he got to get back the international favour his regime lost after 1997. He is trying hard to block any attempt to pursue Case 003 and Case 004 which evolves the trial of mid rank KR cadres. If such happens, he fears that he and his colleagues in the government might be somehow dragged into it.

Death and destruction unleashed by the KR was not only the crime against the people of Cambodia, Sihanouk's politically motivated killings, American bombing killing thousands of Cambodians and political extermination during Hun Sen regime all were serious crimes against Cambodians. All these crimes against Cambodian, except that of Khmer Rouge's, have remained unpunished and it is very unlikely that those responsible for these crimes will ever be prosecuted. It is quite obvious from the above analysis that the setting up of the tribunal and its proceeding was/is influenced by powerful governments and individuals to ensure selective trial of only few. It was argued by many that it would be impossible to prosecute each and every individual Khmer Rouge cadres or leaders involved in the genocide. Although, it is true that financially and logistically it would not be viable to prosecute all the Khmer Rouge

cadres but restricting the scope of the trial only to the Khmer Rouge period and limiting the prosecution only to a few leaders challenges the very purpose of the trial. Therefore many rightly view the prosecution as merely setting up a scapegoat to cover up other serious crimes against the people of Cambodia.

Looking at the way the tribunal has progressed one cannot help but to question the validity of the tribunal itself. The tribunal was set up decades after the collapsed of Khmer Rouge. The Khmer Rouge leaders on trial now, are very old and may die any time soon. In fact Ieng Thirith was declared unfit to stand trial in September 2012 and her husband Ieng Sary died recently in March 2013. Moreover, many former Khmer Rouge commanders who might have killed many people are roaming freely in Cambodia. In many cases they still live next door to victims or families of victims of that regime. The matter is made worst in rural areas where the victims often come face to face with these former commanders. Such meetings to the victims are a grim reminder of the suffering they endured during that time. Then one can ask what kind of justice the trial is delivering to the victims?

Looking from the perspective of providing justice for the victims, despite many major loop holes in the ongoing trial, one can also seriously take into consideration some positive functions such a court can fulfil. Some justice will be served by bringing to trial some of the top leaders of Khmer Rouge. Apart from some spontaneous revenge killings after the collapse of the regime, perpetrators have never been punished. The aim of the trial is to “bring to justice” at least some of the most responsible Khmer Rouge. It thereby reflects a tendency in modern international criminal law that ultimate state crime should principally not stay unpunished. After decades it is evidently not possible any more to bring each and every person involved in the crimes of that time to justice, but by prosecuting at least the remaining top leaders justice may be served on a symbolic level. Full justice can probably never be achieved after a fully fledged state excess but it is definitely an impossible goal with a time gap of 30 years. Criminal justice remains necessarily incomprehensive, as many perpetrators guilty of crimes are either dead already or not within the jurisdiction of this court.

It seems that many Cambodians hope that the trial will bring some form of reconciliation for Cambodian society. There may be doubts whether a trial as such is able to heal a society or end nightmares. A third of the survivors of the Khmer Rouge

regime are estimated to suffer from some form of post traumatic stress disorder (Menzel, 2007). A trial will not cure them all and it might be argued that it is a somewhat dangerous shock therapy, as the trial will first of all bring memories back and force people to reflect again on a terrible period of their lives that they probably had hoped to forget about. This, however, might be indeed necessary in order to find some peace.

For Cambodia and Cambodians the ECCC, established to judge on a total state excess and ultimate crimes a generation ago, are already an event of major importance. The trial itself will be a challenging confrontation with the past and present of its society and institutions alike. Despite all scepticism many Cambodians seem to be in favour of such a trial and this indicates that there is a feeling at least that the past cannot simply be buried. However, the trial will not only be important for society, but also for its legal system. The fact that even the most prominent surviving members of the former Khmer Rouge leadership currently live freely within the country has become a symbol of a culture of impunity and there is an often articulated expectation that the Khmer Rouge Tribunal might help to spark the legal and judicial reform process as a whole.

It should be clear that such a court cannot fix all problems in Cambodia deriving from the Khmer Rouge times and expectations should therefore not be too high from the outset. Apparently there are uncertainties not only about the actual impacts on society and the legal system but even about the more technical success of a trial bringing some perpetrators to justice. The court operates in a difficult political and legal environment of challenges, expectations and critical observation. On a more fundamental level, history teaches that no court dealing with the fundamental state crime of a prior regime has been without problems. There is no perfect justice after the total collapse of humanity. Nobody should therefore expect everything to go smoothly and be perfect in the Cambodian Extraordinary Chambers. It is, however, despite all the problems and challenges, the last chance to bring at least some of the Khmer Rouge leaders to justice and it might be some “window of opportunity” for Cambodian society. The ongoing trial is a symbolic criminal trial against a few main perpetrators. This is not much, but probably better than nothing. It also gives an important message that heinous crime against the people will not remain unpunished giving a blow to the culture of impunity deeply embedded in Cambodia political

culture. ECCC will also serve as a good legal precedent to the judicial system of Cambodia. It would be impossible to make right all the wrongs done on the Cambodian in the last fifty years. No matter what we do the sufferings the victims endure cannot be reversed and lives lost cannot be regenerated. The victims will not get anything back of their losses in this trial nor will they be compensated in other ways. But the tribunal does serve an important purpose that of giving hope to the Cambodians for a better Cambodia where they will not have to endure such atrocities again.

Like other transitional periods, a “willed amnesia,” (Form, 2010) coupled with selective memory (killing fields, Tuol Sleng) compromised the confrontation with the past. The interaction of external and internal actors in the struggle to control a criminal court for prosecuting Khmer Rouge crimes only marginally lifts the veil of forgetting. For the first time, the activities of numerous national and international NGOs, in league with the ECCC, enabled the Cambodian people to come to grips with their past.

Looking the nature of ECCC the concept of hybrid tribunal adopted by ECCC is of relatively recent in the realm of international law and relations. In addition to the usual goals of criminal justice, such tribunals are tasked with achieving peace, telling a much contested truth and educating the world against the horrors of mass violence. The purpose of such a tribunal is, first and foremost, to achieve accountability. It cannot, however, reach this goal in a vacuum and must be conscious of the political context in which it operates and be prepared to accommodate, and if necessary defer, to other mechanisms and processes that complement its quest to establish a stable society based on the rule of law. Particularly in the context of a hybrid tribunal such as the ECCC, this entails due respect for national needs such as reconciliation, recognition of the interests motivating national actors, and giving voice to the interests of people who will be most affected by the processes of the tribunal.

In spite of its limited scope and controversial nature of the tribunal the establishment of the Khmer Rouge Tribunal has to be regarded as positive development for the people of Cambodia and in the field of international law and relations. The prosecution of a few senior officials of the Khmer Rouge will render some form of justice to the victims of the mass atrocities. The Court sets straight the historical

record about the crimes for the Cambodian people and the international community. The Khmer Rouge Tribunal, instead of a multilateral treaty like the Rome Statute for the ICC the Court, is based on a Cambodian Law together with a bilateral agreement between Cambodia and the United Nations. The proliferation of hybrid tribunals (Kosovo 2000, East Timor 2000, Sierra Leone 2002, Cambodia 2003, Bosnia and Herzegovina 2005, Lebanon, 2007) has become a common feature of the international landscape and forms part of a tendency in international criminal law to national solutions with international participation.

The Court constitutes an opportunity to restore the feelings of dignity and worth of the victims and may therefore contribute substantially to national reconciliation. School children do not know about the atrocities of the Khmer Rouge because this period is not part of the history curriculum. Therefore, the trials will educate Cambodia's youth about the darkest period in the country's history. The historic importance of this war crimes trial lies in signalling an end to impunity, even at the highest level and thus to contribute to the prevention of such crimes.

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