

Khmer Rouge: Evolution of the Academic Debate

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By  
Breanna Atwood  
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## KHMER ROUGE: EVOLUTION OF THE ACADEMIC DEBATE

On April 7, 1975, Khmer Rouge revolutionary forces invaded and took control of the capital city of Phnom Penh, Cambodia. The Khmer Rouge regime remained in power for the next four years, causing destruction, violence, torture, and death to devastate the citizens of Cambodia. Since the revolution, the intentions, motives, and appropriate process of justice regarding the actions of the Khmer Rouge have been the subject of contentious debate among academic scholars. This paper will evaluate the evolution of this debate over the last thirty years, considering how and why the views of various scholars have changed or remained the same and how these views have often conflicted with one another. I will argue that from 1975 to 2009, academic scholars have selected various types of evidence to reach different conclusions about the events of the Khmer Rouge, primarily as a result of their own perceptions of the political situation of Indochina during this time, as well as their willingness to admit that the Khmer Rouge revolution was not improving the situation of Cambodia.

On April 7, 1975, the Communist Party of Kampuchea (CPK), under the leadership of Pol Pot, took control of Cambodia's capital city, Phnom Penh. Although many residents of Phnom Penh cheered, they were grossly unaware of the violence, torture, destruction and death that were to follow over the course of the next four years. Immediately, Khmer Rouge forces removed all aspects of Lon Nol's previous regime—all private property was seized, laws and religion were abolished, markets and currency disappeared, public spaces were closed, and any opposition to the new regime was considered treasonous.<sup>1</sup> The borders of Cambodia, which was then called Democratic Kampuchea, were closed; thus no outsiders were allowed in and no Cambodians were allowed out.<sup>2</sup> Then, large cities such as Phnom Penh, Pursat and Battambang were promptly evacuated, forcing millions of civilians into the countryside to begin strenuous forced labor under gruesome working conditions.<sup>3</sup>

Throughout this process of returning Cambodia to “primitive communism,” or an agrarian state, Pol Pot ordered the systematic elimination of a number of different ethnic, religious and political groups who inhabited Democratic Kampuchea, including the Muslim Cham, Buddhist monks, Vietnamese, Thai, and even some ethnic Khmer.<sup>4</sup> As a result, from 1975 to 1979, it is estimated that Khmer Rouge forces directly or indirectly contributed to the deaths of more than one million Cambodians and also led to the exile of roughly half a million Cambodians to Thailand and other parts of the world.<sup>5</sup>

Despite obvious devastation, the events, intentions, motives, and appropriate process of justice regarding the actions of the Khmer Rouge have long been the subjects of contentious

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<sup>1</sup> David Chandler, *Brother Number One: A Political Biography of Pol Pot* (Colorado: Westview Press, 1999), 1.

<sup>2</sup> Ben Kiernan, “The Cambodian Genocide 1975-1979,” in *A Century of Genocide: Critical Essays and Eyewitness Accounts*, ed. Samuel Trotten and William S. Parsons, 283-313 (New York: Routledge, 2009), 285.

<sup>3</sup> Chandler, *Brother Number One*, 1.

<sup>4</sup> Henri Locard, “State Violence in Democratic Kampuchea (1975-1979) and Retribution (1979-2004),” *European Review of History* 12, no. 1 (Spring 2005): 127.

<sup>5</sup> David Chandler, *The Tragedy of Cambodian History: Politics, War, and Revolution since 1945* (New Haven: Yale University Press, 1991), 1.

debates among academic scholars. This paper will evaluate the evolution of this debate over roughly the last thirty years, considering how and why the views of various scholars have changed or remained the same and also how these views have often conflicted with one another. I will argue that from 1975 to 2009, academic scholars have selected various types of evidence to reach different conclusions about the events of the Khmer Rouge, primarily as a result of their own perceptions of the political situation of Indochina during this time, as well as their willingness to admit that the Khmer Rouge revolution was not improving the situation of Cambodia.

Academic scholars have expressed both similar and opposing viewpoints by means of books, journal and newspaper articles, and even private correspondence letters between one another. These books and articles use carefully selected evidence to help convey an author's personal opinions and conclusions, while at the same time often disputing the ideas of other scholars. Consequently, depending on a scholar's position, the evidence they use to support their conclusions generally varies.

Scholars who criticize the Khmer Rouge tend to support their conclusions using first-hand accounts of survivors and witnesses, which convey the idea that the regime was committing horrific crimes against the innocent and helpless people of Cambodia. Because these accounts were only available once the violence had already begun, many of the scholars who use this evidence were initial supporters of the Khmer Rouge. However, as soon as overwhelming amounts of this evidence began to surface, it became apparent that the regime was not working to improve the situation of Cambodia. Therefore, by using these first-hand accounts, scholars are able to substantiate the argument that brutality did occur at the hands of the Khmer Rouge, and as a result, civilians in Cambodia were either directly or indirectly affected.

On the other hand, scholars who sympathize with or support the Khmer Rouge generally defend the regime's innocence by using data and/or statements that were carefully constructed by its members. Since the Khmer Rouge did not want the public to become aware of its hidden agenda, most of this information suggests that there was little to no unnecessary brutality imposed on the citizens of Cambodia and that the regime's actions did not cause civilians to suffer. Furthermore, a handful of these scholars then tend to blame entities outside of Cambodia, such as the international media and foreign governments, for their untruthful portrayal of the regime's cruelty. As a result, the international public formed unfavorable perceptions of the Khmer Rouge, which were based off of alleged distortions, exaggerations, and lies. To dispute the strong arguments associated with scholars who use first-hand accounts, scholars supportive of the Khmer Rouge tend to explain that survivor stories are historically embellished and often untrue, and therefore this evidence is baseless and unconfirmed.

In summary, the conclusions that an author reaches are highly correlated to the evidence and sources that they use to support them. Since these conclusions are generally only based on one particular type of evidence—first-hand survivor accounts or Khmer Rouge reports—it was important to avoid being misled or misinformed by such opposite findings. Therefore, it was important to weigh both sides of each argument, address the biases of each scholar, and also examine the evidence each scholar used to support their conclusion.

### **History of Cambodia**

Geographically, Cambodia is located between Vietnam and Thailand, two countries that have fought for power and control of the Cambodian territory since the middle of the eighteenth century.<sup>6</sup> 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

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<sup>6</sup> David Chandler, *A History of Cambodia* (Colorado: Westview Press, 2008), 1-2.

instability within Cambodia.<sup>7</sup> 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 Duong, a Cambodian, as king.<sup>8</sup> It was during this period, however, that 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. France's colonizing mission, or *mission civilisatrice*, was finally successful in Southeast Asia in 1863, when they formally colonized Cochinchina, Tonkin, Annam, and Cambodia, also known as the region of Indochina.<sup>9</sup>

There are several reasons that Cambodia was susceptible to colonization by the French. In 1860, Ang Duong died and Norodom came to power, although Norodom was not officially declared king at this time. During his rule, Norodom accepted gifts from the French and eventually signed an agreement that made Cambodia a tributary state of France. Shortly after signing this agreement, Norodom went to Thailand to finally be crowned king. When he did this, the French moved in and erected their flag at Cambodia's capital, although Norodom soon

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<sup>7</sup> David Joel Steinberg et al., *In Search of Southeast Asia: A Modern History* (Hawaii: University of Hawaii Press, 1987), 123.

<sup>8</sup> *Ibid.*, 125-6.

<sup>9</sup> Clarke W. Garrett, "In Search of Grandeur: France and Vietnam 1940-1946," *The Review of Politics* 29, no. 3 (July 1967): 304.

returned and they were forced to take it down for the time being. Long-lasting French control, however, was in Cambodia's near future.<sup>10</sup> Even though Cambodia initially welcomed the French, they soon began resisting their reform efforts, just as they had with Vietnam decades earlier. Despite this resistance, the French eventually took control of Cambodia and remained in power until the 1930s.<sup>11</sup>

During this period of steady imperialism and colonization, the world was undergoing massive changes. World War II (1939-1945) was occurring on numerous different fronts throughout the world, which had a significant impact on Cambodia. During World War II, Cambodia was still a French protectorate, but Japan was beginning to assert themselves and their expanding empire into the region of Southeast Asia. In 1940, France granted Japan permission to station their military in Indochina during the war, although France established that the French would still maintain control over the region. During this time, however, Japan worked to weaken French control, and eventually succeeded.

On March 9, 1945, the Japanese executed their *coup de force*, which placed many French colonists in Indochina under arrest and drove the remainder out of the region. Consequently, this caused the French to lose their control over Indochina for the time being.<sup>12</sup> The Japanese then began to encourage the states of Indochina to push for their independence. Finally, during the summer of 1945, Japan granted Cambodia their independence, which had a significant impact on the formation of a new political ideology of many Cambodians in the years to come. This

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<sup>10</sup> Steinberg, 126-7.

<sup>11</sup> *Ibid.*, 191.

<sup>12</sup> David Chandler, "Legacies of World War II in Indochina," in *Legacies of World War II in South and East Asia*, ed. David Koh Wee Hock, 23-35 (Singapore: Institute of Southeast Asian Studies, 2007): 23-4.

ideology was based on movements for independence and individuality, rather than inferiority and subordination.<sup>13</sup>

A short time later, the French returned to Indochina. In 1946, the French signed an agreement with Cambodia, which stated that Cambodia could form a constitution and political parties. Through this process, a leading faction that rose to power was the Communist Party of Kampuchea (CPK), assembled by Vietnamese-speaking Khmer and later joined by Pol Pot and his followers.<sup>14</sup> The CPK consisted of many young Cambodians, such as Saloth Sar (Pol Pot), Ieng Sary, Khieu Samphan, and others. Most came from wealthy families and were sent to France to study in their early years. In France, these young men and women learned many radical ideas, which they brought back to Cambodia. This group then became known as the “radical generation of Cambodians.”<sup>15</sup>

By 1953, many of these young Cambodians began returning to Cambodia and fighting for independence. During this time, France was heavily involved in the First Indochina War, which primarily took place in Vietnam, but used much of France’s power and resources. Faced with increasing resistance in Cambodia, France finally “caved,” granting the country independence and allowing Cambodia’s Prince Sihanouk to control the country’s armed forces, judiciary, and foreign affairs.<sup>16</sup> Finally, in Vietnam in 1954, France lost a defining battle at Dienbienphu. 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.<sup>17</sup>

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<sup>13</sup> Chandler, *A History of Cambodia*, 6.

<sup>14</sup> Norman G. Owen and others, *The Emergence of Modern Southeast Asia: A New History* (Honolulu: University of Hawaii Press, 2005), 364-6.

<sup>15</sup> Chandler, *The Tragedy of Cambodian History: Politics, War, and Revolution since 1945*, 51.

<sup>16</sup> Chandler, *A History of Cambodia*, 227.

<sup>17</sup> Owen, 345.



A final war that was occurring during this time was the American War in Vietnam (1946-1975). This war began as a primary result of an American fear of Communism, particularly of Mao Zedong's Communist China. This fear carried over to Vietnam when the U.S. government began associating Mao's communists with those led by Ho Chi Minh in Vietnam. During this war, the United States began both an aerial bombardment and ground war with Vietnam to fight this Communism, although they were met with fierce resistance from the Vietnamese communists. Although Vietnam and Cambodia were separate countries at this time, they were neighbors. As a result, the violence in Vietnam significantly crossed the borders into Cambodia. This is because Vietnam's supply lines ran north and south along the Ho Chi Minh Trail, which went straight through Cambodia. The United States specifically bombed these supply lines to create a disadvantage for the Vietnamese.<sup>18</sup>

While the U.S. was fighting Communism in neighboring Vietnam, Communist factions in Cambodia were rapidly growing in popularity. The main leader of these Cambodian Communists was Pol Pot, who was formerly known as Saloth Sar.<sup>19</sup> Saloth Sar, was born into a wealthy family and began his schooling at a Catholic school in Phnom Penh. He was then given a scholarship to study in France, where he learned about imperialism, revolution, and even Marxist-Leninism.<sup>20</sup> In 1952, it is believed that he even joined the French Communist Party, although he failed their exams and returned to Cambodia the following year.<sup>21</sup> Aside from taking ideas from the French Communists, Saloth Sar also learned many ideas from Mao Zedong, the radical Communist leader of China who was also a personal friend. When Saloth Sar visited China in 1953, he was especially interested in Mao's ideas about class struggles, the

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<sup>18</sup> Owen, 345-6.

<sup>19</sup> Chandler, *Brother Number One*, 6-7.

<sup>20</sup> *Ibid.*, 22.

<sup>21</sup> *Ibid.*, 26.

cleansing of political opposition, and revolution.<sup>22</sup> Therefore, when he finally returned to Cambodia, he was beginning to plan for a Communist revolution of his own.

In 1963, Saloth Sar became secretary of the CPK. He worked as secretary until he took control of Phnom Penh on April 17, 1975 and began his rise to power in Cambodia.<sup>23</sup> It was not until an election announcement in 1976 that Saloth Sar became known to the people of Cambodia as “Pol Pot;” before this time, his identity was largely unknown to the public.<sup>24</sup> Pol Pot remained in power for nearly four years, ordering the destruction that resulted in the killings of roughly a quarter of the population of Cambodia.<sup>25</sup>

Pol Pot and his followers, known as the Khmer Rouge, ruled Cambodia for nearly four years. First, Pol Pot eradicated all aspects of Lon Nol’s previous regime: all private property was seized, laws and religion were abolished, markets and currency disappeared, public spaces were closed, and any opposition to the new regime was considered treasonous.<sup>26</sup> Second, the borders of Cambodia were closed, not allowing outsiders in or Cambodians out.<sup>27</sup> Then, cities such as Phnom Penh, Pursat and Battambang were promptly evacuated, displacing millions of Cambodians and forcing them to the countryside to begin forced labor.<sup>28</sup> The entire process of this Khmer Rouge “revolution” was extremely brutal and violent.

Finally, the Vietnamese invaded in 1979, forcing Pol Pot to leave Phnom Penh.

Although he was no longer in the capital city, Pol Pot was still a significant threat and continued

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<sup>22</sup> Ibid., 137.

<sup>23</sup> Ibid., 7.

<sup>24</sup> Ibid., 111.

<sup>25</sup> Scott Luftglass, “Crossroads in Cambodia: The United Nation’s Responsibility to Withdraw Involvement from the Establishment of a Cambodian Tribunal to Prosecute the Khmer Rouge,” *Virginia Law Review* 90, no. 3 (2004): 893.

<sup>26</sup> Chandler, *Brother Number One*, 1.

<sup>27</sup> Kiernan, “The Cambodian Genocide 1975-1979,” 285.

<sup>28</sup> Chandler, *Brother Number One*, 1.

to give orders to his Khmer Rouge cadres.<sup>29</sup> Pol Pot eventually moved to Thailand and China, but returned to Cambodia in 1989 when Vietnamese forces left. He remained in Cambodia until April 15, 1998, when he died of natural causes.<sup>30</sup>

### **Khmer Rouge Criticisms**

Over the course of the nearly four years that the Khmer Rouge terrorized Cambodia, several prominent academic scholars supported the regime and some even argued for their innocence. Many of these scholars, however, later retracted this support as evidence in contrast to their beliefs began to surface. First, David Chandler, a leading scholar on Cambodia, briefly supported the Khmer Rouge because he wanted to give the regime a chance to finally return Cambodia to the prominence it held several centuries prior. In his article “Transformation in Cambodia,” Chandler 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.”<sup>31</sup>

It became evident to Chandler that the Khmer Rouge did not go about this process of returning Cambodia to prominence in the correct manner, as evidence began surfacing of mass evacuations, labor camps, torture, starvation, and death, all of which were unnecessary.<sup>32</sup> As a result, Chandler changed his views and began writing texts criticizing the Khmer Rouge and their ideology. These texts include a well-known history of Cambodia, an analysis of Pol Pot, and discussions of how the Khmer Rouge was able to come to power based on Cambodia’s history.

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<sup>29</sup> “Pol Pot’s Men Vow to Carry on War,” *The Globe and Mail*, January 15, 1979.

<sup>30</sup> Seth Mydans, “Pol Pot, Brutal Dictator Who Forced Cambodians to Killing Fields, Dies at 73,” *New York Times*, April 17, 1998.

<sup>31</sup> David Chandler, “Transformation in Cambodia,” *Commonweal* (April 1, 1977): 210.

<sup>32</sup> Chandler, *Brother Number One*, 1.

Ben Kiernan, a history professor and also the current director of Yale University's Cambodian Genocide Program (CGP), also initially supported the Khmer Rouge. This support stemmed from Kiernan's initial fascination with the regime's socialist ideology, as he was "sympathetic to their purported reforms and nationalism."<sup>33</sup> However, in 1978, Kiernan began the process of 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.<sup>34</sup>

One year later, in 1979, Kiernan issued a public apology in the *Bulletin of Concerned Asian Scholars*, titled "Vietnam and the Governments and Peoples of Kampuchea." In this apology, Kiernan 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."<sup>35</sup> He states that at first, he believed that the Khmer Rouge was doing what they believed was best for Cambodia, although it later became evident that this certainly was not the case. As a result, Kiernan admits that he grossly underestimated the amount of violence that was used to implement the socialist ideology of the Khmer Rouge, and therefore he would no longer support any aspects of the regime.<sup>36</sup>

As stated above, Kiernan is currently the director of Yale University's CGP; however, his important position in this program remains controversial to some as a result of his previous support for the Khmer Rouge. Two scholars who remain skeptical of Kiernan and the CGP are Stephen Morris and Nancy deWolf Smith. Morris and Smith both argue that because Kiernan

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<sup>33</sup> Ben Kiernan, "Bringing the Khmer Rouge to Justice," *Human Rights Review* 1, no. 3 (April 2000): 92.

<sup>34</sup> Ben Kiernan, "Vietnam and the Governments and Peoples of Kampuchea," *Bulletin of Concerned Asian Scholars* 11, no. 4 (1979): 19.

<sup>35</sup> *Ibid.*, 19.

<sup>36</sup> *Ibid.*, 19.

previously supported the regime, it is inevitable that he is still a Khmer Rouge sympathizer, despite the apology he made.

In his article, “The Wrong Man to Investigate Cambodia,” Morris explains that Kiernan supported Pol Pot’s revolution and was “confidently predicting a wonderful future for Cambodia under the Khmer Rouge.”<sup>37</sup> Until his apology, Kiernan allegedly disputed the horror stories told by Khmer Rouge refugees and widely circulated by the Western press, claiming that the press was more interested in the “bloodbath” in Cambodia than was necessary.<sup>38</sup> Although Kiernan did eventually apologize for his early Khmer Rouge support, Morris argues that he still supports a remaining faction of Pol Pot’s regime because some currently maintain power in the Cambodian government. Therefore, because Kiernan still supports officials associated with the Khmer Rouge, he does not completely deny their ideology, and despite his apology, still supports the regime. Finally, considering Kiernan’s early transgressions in Cambodia, Morris is confused as to why Kiernan was picked to run the CGP, which was setup to ultimately bring the Khmer Rouge to justice.<sup>39</sup>

Like Morris, in her article “America’s Cambodian Coda,” Nancy deWolf Smith raises similar questions about Ben Kiernan. Smith agrees that due to Kiernan’s alleged questionable views, he should not be the director of the CGP, which is given federal funding by the U.S. Department of State to conduct research to bring the Khmer Rouge to justice. Furthermore, the program should no longer receive this federal funding because Kiernan has refused to disclose several of the program’s valuable findings to the U.S. government. For example, Smith cites it has been suspected that some of the CGP’s research could possibly contain valuable information

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<sup>37</sup> Stephen J. Morris, “The Wrong Man to Investigate Cambodia,” *The Wall Street Journal Europe*, April 18, 1995.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

regarding the location of missing U.S. soldiers, or prisoners of war, in Cambodia.<sup>40</sup> However, in a subsequent letter to the *Wall Street Journal*, Kiernan criticized Smith's article, arguing that the CGP did in fact give the U.S. government the relevant information and documents regarding those missing persons and also allowed them access to their research archives as was asked.<sup>41</sup>

John Barron and Anthony Paul are two American scholars who also initially supported the Khmer Rouge, as they wanted to give the regime a chance to finally help Cambodia flourish. Again, this support was short-lived as survivor stories suggesting its brutality began to surface. Barron and Paul 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.<sup>42</sup> This book can be considered Barron and Paul's ultimate apology to the Cambodian people, as the authors finally admitted that what happened from 1975 to 1979 was indeed horrific and undoubtedly real. 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.<sup>43</sup>

Much like Barron and Paul, Francois Ponchaud also once supported the Khmer Rouge, as he believed that their rise to power would improve the already dismal conditions of Cambodia. This support was short-lived once he became aware of credible accounts of civilian suffering and brutality. Ponchaud was a French Roman Catholic priest who lived in Cambodia from 1965 until the fall of Phnom Penh in 1975, when he was forced to leave. During his stay in Cambodia,

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<sup>40</sup> Nancy deWolf Smith, "America's Cambodian Coda," *The Wall Street Journal*, December 19, 1996.

<sup>41</sup> Ben Kiernan, "Malicious Falsehoods," *The Wall Street Journal*, December 19, 1996.

<sup>42</sup> John Barron and Anthony Paul, *Murder of a Gentle Land: The Untold Story of a Communist Genocide in Cambodia* (New York: Reader's Digest Press, 1977): 206.

<sup>43</sup> *Ibid.*, 206.

Ponchaud witnessed and even originally supported the rise of the CPK, although he did not predict the violence that would be associated with this party in the years to come. While living in Cambodia, Ponchaud learned the Khmer language and was able to make numerous friends and connections among the Cambodian people. Many of these friends and acquaintances then helped Ponchaud 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.<sup>44</sup> Much like Barron and Paul, hearing these survivor stories from his trusted friends helped Ponchaud to denounce the Khmer Rouge regime and their horrific actions.

A final scholar who switched sides to eventually criticize the Khmer Rouge is Jean Lacouture, a French socialist and expert scholar on Indochina. Originally, Lacouture supported the idea of a socialist revolution by the Cambodian people, as he believed it would be in the country's best interest. Lacouture 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 favorable review of *Cambodia: Year Zero*, titled "The Bloodiest Revolution," although there were some major discrepancies of facts between the two texts. These discrepancies then ignited an intense debate, which I will discuss in the following section, between Lacouture and Noam Chomsky and Edward S. Herman.

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<sup>44</sup> Francois Ponchaud, *Cambodia: Year Zero*, trans. Nancy Amphoux (New York: Holts, Rinehart and Winston, 1978), ix-xi.

In “The Bloodiest Revolution,” which can also be considered Lacouture’s apology for initially supporting the Khmer Rouge, he admits to his earlier flawed judgments in siding with the regime, explains the differences of facts between him and Ponchaud, and finally affirms that “it is not only because I once argued for the victory of [the Khmer Rouge regime], and feel myself partially guilty for what is happening under it, that I believe I can say: there is a time, when a great crime is taking place, when it is better to speak out, in whatever company, than to remain silent.”<sup>45</sup>

### **Khmer Rouge Support**

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. Both scholars believe that Cambodia became “the third victim of U.S. aggression and savagery in Indochina.”<sup>46</sup> In their article “Distortions at Fourth Hand,” Chomsky and Herman 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.<sup>47</sup> In addition, the U.S. media also withholds information that would expose the many U.S. failures in Indochina, as this information is “unpalatable” to the public.<sup>48</sup> Why and how is the U.S. media able to accomplish

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<sup>45</sup> Jean Lacouture, “Cambodia: Corrections,” *New York Review of Books*, May 26, 1977.

<sup>46</sup> Noam Chomsky and Edward S. Herman, *After the Cataclysm: Postwar Indochina and the Reconstruction of Imperial Ideology* (Cambridge: South End Press, 1979), 135.

<sup>47</sup> Noam Chomsky and Edward S. Herman, “Distortions at Fourth Hand,” *The Nation*, June 25, 1977.

<sup>48</sup> Ibid.



this? According to Chomsky and Herman, the answer is “freedom of the press.”<sup>49</sup> With freedom of the press, “all are free to write what they wish,” so they can manipulate, exaggerate, and even lie about some stories to make them newsworthy and acceptable to the public.<sup>50</sup>

Two years later in their book, *After the Cataclysm: Postwar Indochina and the Reconstruction of Imperial Ideology*, Chomsky and Herman further their argument that the U.S. media supplies an unfavorable and untruthful portrayal of Indochina during the post-Vietnam war years from 1975 to 1978. For example, they deny that the Khmer Rouge is at fault for the mass killings that occurred: “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.”<sup>51</sup> They explain that citizens of countries such as the U.S. began forming negative perceptions of the Khmer Rouge, which were not based on accurate facts, because the “U.S. role and responsibility ha[s] been explicitly denied as the mills of the propaganda machine grind away.”<sup>52</sup>

According to Chomsky and Herman, the U.S. media has worked tirelessly to blame the region of Indochina for their own problems, while at the same time revealing that Communism is at the core of these problems. Therefore, U.S. attacks on Indochina can be attributed to their leanings toward the “evils of Communism.”<sup>53</sup> Then, after being attacked by the U.S., the countries of Indochina, especially Cambodia, were forced to restore and rebuild their countries and the lives of their citizens. Chomsky and Herman do not deny the fact that in Cambodia, Pol

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Chomsky and Herman, *After the Cataclysm: Postwar Indochina and the Reconstruction of Imperial Ideology*, 139.

<sup>52</sup> Ibid., 135.

<sup>53</sup> Ibid., ix-x.

Pot rose to power and “undertook drastic and often brutal measures to accomplish this task.”<sup>54</sup> However, rather than arguing that Pol Pot’s actions further deconstructed and brutalized the population of Cambodia, they assert that Pol Pot helped them to “overcome the dire and destructive consequences of the U.S. war.”<sup>55</sup>

As previously mentioned, Chomsky and Herman have debated the positions of numerous scholars over the last thirty years. One of the most prominent of these debates involves Jean Lacouture. This debate was ignited when Lacouture wrote “The Bloodiest Revolution,” a favorable review of Francois Ponchaud’s book, *Cambodia: Year Zero*. In his review, Lacouture acknowledges Ponchaud’s first-hand accounts as reliable and believable, although there is a noticeable divergence in facts between the two texts. For example, Lacouture states that the death toll is probably closer to two million, a number significantly more than the one million originally presented by Ponchaud.<sup>56</sup> As a result of these differences, Chomsky and Herman criticize Lacouture, deeming his review irrelevant and unsupported.

Chomsky and Herman also criticize Lacouture because he “alleges that Ponchaud has revealed a policy of ‘auto-genocide’ (Lacouture’s word) practiced by the Communists.”<sup>57</sup> Chomsky and Herman, on the other hand, do not admit that any crimes were committed against the citizens of Cambodia. Instead, they state that they are unsure of the actual truth because survivor stories and media reports are often exaggerated and cannot be substantiated. Therefore, they argue that because the facts of the Khmer Rouge are highly controversial, it is unnecessary to expose the international public to this uncertain information.<sup>58</sup>

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<sup>54</sup> Ibid., viii.

<sup>55</sup> Ibid., viii.

<sup>56</sup> Jean Lacouture, “The Bloodiest Revolution,” *New York Review of Books* 24, no. 5 (March 31, 1977).

<sup>57</sup> Chomsky and Herman, “Distortions at Fourth Hand.”

<sup>58</sup> Ibid.

Surprisingly, Chomsky and Herman both agree that Ponchaud's book is "serious and worth reading," despite the fact that it is filled with errors and inconsistencies.<sup>59</sup> For example, Chomsky and Herman argue that the ability of witnesses and victims of the Khmer Rouge to truthfully and reliably relay their stories to Ponchaud is impossible, as "refugees are frightened and defenseless," and "tend to report what their interlocutors want to hear."<sup>60</sup> These alleged errors only fueled Chomsky and Herman's proposal that scholars, as well as the media, were trying to recreate and exaggerate the events of brutality that occurred in Cambodia from 1975 to 1979 to criticize the Khmer Rouge.

Ponchaud fired back at Chomsky and Herman for stating that his book was full of exaggerated and fabricated stories that were allegedly used by the U.S. media to even further amplify the destruction of Cambodia to the American public. Ponchaud explains that in interviewing many of his sources, he methodically evaluated their situation in order to determine their reliability. Second, Ponchaud makes it clear that he was "mainly interested in the ordinary people... who could neither read nor write nor analyze what they had seen [because] those illiterate memories could supply exact details."<sup>61</sup> As a result, Ponchaud's evidence was legitimate and explained the truth of the events of the Khmer Rouge through the eyes of survivors and witnesses.

Malcolm Caldwell, a Marxist scholar who worked at the University of London, was a known and fervent supporter of the Khmer Rouge until his murder by Khmer Rouge forces in December of 1978.<sup>62</sup> On the day of his murder, Caldwell met Pol Pot for the first time and had

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ponchaud, xiv-xv.

<sup>62</sup> Walter Easey, "Obituaries: Malcolm Caldwell," *History Workshop* no. 7 (Spring 1979): 245.

dinner with him. Later that night, Caldwell was shot by a “heavily armed” member of the regime.<sup>63</sup> The details of his murder, however, are widely unknown.<sup>64</sup>

Although many of the abovementioned scholars readily changed their perceptions of the Khmer Rouge due to the emergence of reliable information regarding their actions, the history of Caldwell’s relentless support suggests that he would not have fallen into this category of scholars. Caldwell’s main argument for supporting the revolution was that drastic changes were absolutely necessary for the survival of Cambodia.<sup>65</sup> In his article, “Revolutionary Violence in a People’s War,” Caldwell focuses on the idea that a revolution was necessary in Cambodia, which was acceptable because there was an “avoidance of violence against the people by the liberation forces.”<sup>66</sup> Furthermore, if the civilians did not support the revolution, they could have easily turned on the regime by rising up against the outnumbered Khmer Rouge forces: “guerillas waging people’s war cannot survive without the support, willingly given, of the people.”<sup>67</sup> Because civilians did not rise against the regime, Caldwell argues that the Khmer Rouge had the full support of Cambodians, as they openly welcomed this revolution.<sup>68</sup>

In addition to arguing that the Khmer Rouge had the full support of the Cambodian people, Caldwell also predicts that the regime will have a positive impact in the future. In “Cambodia: Rationale for a Rural Policy,” Caldwell highlights the success of the Khmer Rouge, explaining that the Cambodian people are in a much better place than they were a few years

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<sup>63</sup> Andrew Anthony, “Malcolm Caldwell was a popular and outspoken academic. He was also a great admirer of Pol Pot. But in 1978, on the same day he met the bloodthirsty dictator, he was murdered...: Andrew Anthony reports on the life and death of a radical Scot who saw utopia in the Khmer Rouge’s deadly master plan,” *The Observer*, January 10, 2010.

<sup>64</sup> Ibid.

<sup>65</sup> Malcolm Caldwell, “Inside Cambodia: The Other Side of the Picture,” *The Times*, July 20, 1977.

<sup>66</sup> Malcolm Caldwell, “Revolutionary Violence in a People’s War,” *Social Scientist* 3, no. 12 (July 1975): 44.

<sup>67</sup> Ibid., 44.

<sup>68</sup> Ibid.

prior, when wars in Indochina were devastating the country.<sup>69</sup> However, this idea is highly controversial, primarily because the majority of Caldwell's research is drawn from statements and speeches made by members of the Khmer Rouge, rather than first-hand accounts made by survivors and witnesses. Therefore, the evidence that Caldwell uses does not allow him to conclude that disturbing events were taking place at the hands of the Khmer Rouge. Instead, he is only able to see the revolution through the eyes of Pol Pot and his followers. Caldwell argues that the evidence he chose to use was the only reliable source available regarding the Khmer Rouge. First-hand accounts, such as those used by Barron, Paul, Ponchaud and others, are unquestionably false and unproven due to their reliance on survivors and witnesses, who historically manipulate, exaggerate, and simply do not tell the truth.<sup>70</sup>

Similar to Caldwell, anti-war activists Gareth Porter and George C. Hildebrand are also supporters of the Khmer Rouge. In their jointly authored book, *Cambodia: Starvation and Revolution*, Porter and Hildebrand explain the events that were beginning to unfold in Cambodia. Although the authors claim to be setting the record straight, many scholars argue that Porter and Hildebrand tend to distort evidence, which was originally factual, to favor the Khmer Rouge.<sup>71</sup> Unlike Caldwell, Porter and Hildebrand base many of their conclusions off of witness and survivor stories, which mysteriously express Pol Pot's good intentions and the ease of his revolution. For example, Porter and Hildebrand assert that evidence suggests that there were no crimes being committed against civilians living in Cambodia. They also 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

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<sup>69</sup> Malcolm Caldwell, "Cambodia: Rationale for a Rural Policy," in *Malcolm Caldwell's South-east Asia*, ed. Bob Hering and Ernst Utrecht (Queensland: James Cook University of North Queensland, 1979), 54.

<sup>70</sup> Caldwell, "Cambodia: Rationale for a Rural Policy," 7.

<sup>71</sup> Gareth Porter and George C. Hildebrand, *Cambodia: Starvation and Revolution* (New York: Monthly Review Press, 1976), 11.

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 and closer to vital resources like food and clean water.<sup>72</sup>

Porter and Hildebrand contend that this mass movement of civilians from the cities to the countryside was not at all similar to the “death march” portrayed by the U.S. media.<sup>73</sup> During this evacuation, which eye witnesses supposedly claim was set at a “comfortable pace,” most of those returned to the countryside were from there to begin with.<sup>74</sup> Still, Porter and Hildebrand assert that original city-dwellers were taken to the countryside to avoid the hazards of the cities and also to be used as labor to help produce food and resources for the country’s sustenance.<sup>75</sup> Therefore, Pol Pot had good intentions despite the fact that they led to destruction. In contrast, David Chandler also addresses Pol Pot’s motives to evacuate Phnom Penh; although he claims that the real reason Pol Pot evacuated the capital city was to rid his party of any and all opposition, so that the public was oblivious to the political changes that were occurring.<sup>76</sup>

In supporting the regime, 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 postwar Cambodia.”<sup>77</sup> 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

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<sup>72</sup> Ibid., 45-8.

<sup>73</sup> Ibid., 47.

<sup>74</sup> Ibid., 49.

<sup>75</sup> Ibid., 58-9.

<sup>76</sup> Chandler, *Brother Number One: A Political Biography of Pol Pot*, 102.

<sup>77</sup> Porter and Hildebrand, 56.

the U.S. intervention in Cambodia, [and] they have gone to great lengths to paint a picture of a country ruled by irrational revolutionaries.”<sup>78</sup> Chomsky and Herman supported Porter and Hildebrand’s ideas, stating that the authors had “presented a carefully documented study of the destructive American impact on Cambodia and the success of the Cambodian revolutionaries in overcoming it, giving a very favorable picture of their programs and policies.”<sup>79</sup>

### **Debating the Khmer Rouge’s Crimes**

Despite the debated innocence of the Khmer Rouge and the role of the U.S. media in exposing the regime’s actions to the American public, overwhelming evidence makes it difficult to deny the fact that nearly two million Cambodians were killed as a result of Pol Pot’s regime. Over the past two decades, the international community has started pushing Cambodia to establish tribunals to finally put the leaders of the Khmer Rouge on trial for their actions. Nevertheless, scholars who agreed that members of the regime should be punished then began to debate whether these mass fatalities should be termed genocide, crimes against humanity, or mass murder according to international law.

On January 7, 1979, almost four years after the Khmer Rouge began their reign of terror, Vietnamese forces invaded Cambodia, overthrew Khmer Rouge leadership, and established their own government under Hun Sen.<sup>80</sup> The People’s Revolutionary Tribunal was created and trials soon began in an attempt to convict the Khmer Rouge leaders of genocide.<sup>81</sup> Although all who were tried were convicted, these convictions were considered illegitimate because they were unfair, did not assume the innocence of the defendants, and technically violated international

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<sup>78</sup> Ibid., 11.

<sup>79</sup> Chomsky and Herman, “Distortions at Fourth Hand.”

<sup>80</sup> Philip Short, *Pol Pot: Anatomy of a Nightmare* (New York: Henry Holt and Company, 2004), 424.

<sup>81</sup> Craig Etcheson, *After the Killing Fields: Lessons from the Cambodian Genocide* (Connecticut: Praeger Publishers, 2005): 14-5.

law.<sup>82</sup> Instead, Cambodia should have referred to international law during these trials because in 1951, the country ratified a definition of genocide that was provided by the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). In Article II of this document, the Convention asserted that genocide must be an “act committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.”<sup>83</sup> Therefore, because of a technicality, this definition does not include the killings of neither political nor majority groups. As a result, scholars remain engulfed in a debate about whether the mass killings in Cambodia can constitute genocide under this international law. Scholars also debate who exactly should be tried and what type of tribunal—domestic or international—should be used to prosecute these Khmer Rouge leaders.

### **Genocide**

Ben Kiernan and Hurst Hannum, a professor of international law with a focus on human rights, are two scholars who believe that Khmer Rouge forces committed genocide as defined by international law. Both scholars extrapolate their evidence from the racism and specific targeting of ethnic and religious minority groups living in Cambodia—including Chinese, Vietnamese, Thai, and Cham—even though both scholars recognize that ethnic Khmer and Buddhist majority groups were also killed in large numbers. Accordingly, CPPCG’s narrow definition of genocide only considers the mass killings of minority groups to be genocidal; consequently, Kiernan and Hannum argue that because minority groups were one of Pol Pot’s many targets, the killings can still be judged as genocide.<sup>84</sup>

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<sup>82</sup> Luftglass, “Crossroads in Cambodia,” 903.

<sup>83</sup> United Nations Office of the High Commissioner for Human Rights, *United Nations on the Prevention and Punishment of the Crime of Genocide*, 1948, Article II.

<sup>84</sup> Hurst Hannum, “International Law and Cambodian Genocide: The Sounds of Silence,” *Human Rights Quarterly* 11, no. 1 (February 1989): 95.



Kiernan builds on this theory of genocide by arguing that Pol Pot was driven specifically by “communism and racism.”<sup>85</sup> He not only targeted certain minority groups, but also targeted the majority ethnic Khmer political groups that opposed him (or so he thought).<sup>86</sup> Pol Pot also specifically targeted many groups living in proximity to the Vietnamese and Thai borders because he believed that people living in those regions were disloyal and likely to turn on him. Kiernan argues that this also constitutes the intent to exterminate a minority group, because Pol Pot was specifically targeting these isolated groups living in particular regions of Cambodia.<sup>87</sup> Therefore, although political and majority groups do not fit within CPPCG’s definition of genocide, Kiernan argues that there is still sufficient evidence to convict Khmer Rouge leaders of genocide.<sup>88</sup>

Kiernan agrees with scholar Jean Lacouture, who argues for a theory that he termed “auto-genocide.”<sup>89</sup> Lacouture defines this idea of auto-genocide as “invented” by the Khmer Rouge, because it involves the killings of one’s own national group, even if they are an ethnic, political, or religious majority.<sup>90</sup> William A. Schabas agrees with Lacouture and states, “since [auto-genocide] constitutes the intentional destruction of part of a national group, it meets the Convention definition [of genocide].”<sup>91</sup> Consequently, due to the severity of their crimes, the Khmer Rouge should then be held responsible to the fullest extent of international law, as “we are seeing the suicide of a people in the name of revolution—worse, in the name of socialism.”<sup>92</sup>

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<sup>85</sup> Ben Kiernan, *The Pol Pot Regime*, x.

<sup>86</sup> *Ibid.*, 26.

<sup>87</sup> *Ibid.*, 30.

<sup>88</sup> *Ibid.*, 30.

<sup>89</sup> Lacouture, “The Bloodiest Revolution.”

<sup>90</sup> *Ibid.*

<sup>91</sup> William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), 118.

<sup>92</sup> Lacouture, “The Bloodiest Revolution.”

## Crimes Against Humanity and Mass Murder

Henri Locard offers a similar theory to that of Lacouture, although he believes what occurred in Cambodia can be termed “‘politicide,’ rather than ‘genocide.’”<sup>93</sup> Politicide, according to Locard, is the extermination of an opposing political group. Therefore, in the case of the Khmer Rouge, they were killing only those who opposed their political revolution, namely those associated with Lon Nol’s previous government and those who did not fully support the revolution.<sup>94</sup> Locard argues, however, that the demographic of people killed does not legally allow the term genocide to be used, because no specific ethnic, racial, or religious group was singled out. Therefore, Khmer Rouge forces should be tried for crimes against humanity or mass murder.<sup>95</sup>

Similar to Locard, Stephen Marks, a human rights scholar, argues that according to international law, Khmer Rouge leaders can only be prosecuted for genocide. If genocide cannot be proven, prosecution will be difficult. Therefore, Marks argues that the Khmer Rouge should be tried for crimes against humanity or mass murder for the specific targeting and killing of minority groups, which are lesser, but still legitimate charges.<sup>96</sup> Similarly, Beth van Schaack, an international law professor, argues that due to the CPPCG’s “blind spot,” or exclusion of majority and political groups in the Convention’s definition, Khmer Rouge leaders cannot be held legally responsible for genocide and must be charged with lesser crimes.<sup>97</sup>

Howard J. De Nike, John B. Quigley and Kenneth Jay Robinson argue that while many scholars assert that Pol Pot’s intentional targeting of religious and ethnic minority groups are all

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<sup>93</sup> Henri Locard, *Pol Pot’s Little Red Book: The Sayings of Angkar* (Chang Mai: Silkworm Books, 2005): 303.

<sup>94</sup> *Ibid.*, 303.

<sup>95</sup> *Ibid.*, 303.

<sup>96</sup> Stephen Marks, “Elusive Justice for the Victims of the Khmer Rouge,” *Journal of International Affairs* 52, no. 2 (1999), 695.

<sup>97</sup> Beth van Schaack, “The Crime of Political Genocide: Repairing the Genocide Convention’s Blind Spot,” *Yale Law Journal* 106, no. 7 (May 1997): 2261.

included under the legal definition of genocide, there is no substantial evidence to prove that these groups were singled out among the rest of the Khmer and Buddhist majority, who were also killed in large numbers. As a result, they argue that the regime had no intentions of killing certain people within the country of Cambodia. Although minorities were killed, they were not singled out, and were only part of Pol Pot's ordered torture and killing rampage.<sup>98</sup>

### **Tribunal Setup and Administration**

Putting the Khmer Rouge leaders on trial opens up an entirely new debate among scholars about how the tribunals should be set up and administered, as some believe this process must involve the United Nations and others believe that Cambodia should preside over their own domestic tribunals. First, it is important to note that it is widely acknowledged that the Cambodians themselves have not been actively pushing for any sort of tribunal—international or domestic—even though most would still like to see one take place. Duncan McCargo believes that many Cambodians are hesitant of a trial because they assume it will be “substandard,” will not carry out justice in the way they intend, and they are unsure of exactly which Khmer Rouge participants will be prosecuted (only top Khmer Rouge leaders or everybody who participated in the crimes of the Khmer Rouge?).<sup>99</sup>

Nearly thirty years after the Khmer Rouge was finally overthrown, Cambodia finally asked the United Nations for help in creating a tribunal to try former members of the regime. Although this was a step in the right direction, it took nearly five more years for the two entities to finally come to an agreement regarding the structure of the tribunal, primarily because of disagreements over which body would possess a majority influence in the outcome of the

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<sup>98</sup> Howard J. De Nike, John B. Quigley and Kenneth Jay Robinson, *Genocide in Cambodia, Documents from the Trial of Pol Pot and Ieng Sary* (Pennsylvania: University of Pennsylvania Press, 2000), 5-6.

<sup>99</sup> Duncan McCargo, “Cambodia: Getting Away with Authoritarianism?” *Journal of Democracy* 16, no. 4 (2005): 104.

trials.<sup>100</sup> In previous decades, the United Nations had also helped to administer tribunals in countries such as Yugoslavia, Rwanda, Sierra Leone, Kosovo, and East Timor.<sup>101</sup>

### **A Domestic Tribunal**

The overwhelming sentiment of scholars worldwide is that a domestic, Cambodian-run tribunal would not give proper justice to Cambodians, which is the primary reason for conducting trials in the first place.<sup>102</sup> Stephen Marks debates both the pros and cons of having a domestic versus international tribunal. On the one hand, Marks argues that there is an advantage to having domestic trials. This would allow for better evidence, such as local survivor stories, to be used, local law would come into play, and the majority of Cambodians would be in favor of this tribunal. However, Marks counters his own argument by stating that a Cambodian tribunal would be insufficient and incapable of justly prosecuting these defendants, specifically due to corruption, Khmer Rouge cadres who are still in power in Cambodia, and an already inadequate legal system. As a result, Marks, as well as the majority of academia, assert that it is in the best interest of Cambodians to allow for an international tribunal presided over by the United Nations to properly prosecute leaders of the Khmer Rouge.<sup>103</sup>

### **An International Tribunal**

The majority of scholars argue for an international hybrid tribunal, consisting of both Cambodian and United Nations officials. The main reason for supporting this idea is that questions still remain over whether Cambodian judges, who were campaigning to hold a majority influence over international judges, would be fair in their administration of justice, as it has been

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<sup>100</sup> Elizabeth Becker, "Cambodia Spurns U.N. Plan for Khmer Rouge Tribunal," *New York Times*, March 13, 1999.

<sup>101</sup> Ralph Zacklin, "The Failings of Ad-Hoc Tribunals," *Journal of International Criminal Justice* 2 (2004): 541.

<sup>102</sup> "Judgment Day for Pol Pot," *New York Times*, July 30, 1997.

<sup>103</sup> Marks, 705-8.

widely acknowledged that Cambodia's criminal justice system is inadequate.<sup>104</sup> On top of being inadequate, the Cambodian judiciary is extremely corrupt, as many judges and government officials were previously or are currently tied to the Khmer Rouge. For example, "since 1979, Cambodian judges have been appointed, and their tenure ensured, on the basis of loyalty to the ruling party, rather than on fealty to the standards of the legal profession."<sup>105</sup> Therefore, judges appointed during Khmer Rouge rule could potentially still maintain this loyalty during trials. As a result of these weaknesses within the Cambodian government, many scholars argue that allowing Cambodian officials to have a majority influence during the trials defeats the purpose of collaboration with the United Nations.<sup>106</sup>

Michael Lieberman is one scholar who believes that the United Nations should enforce an international hybrid tribunal for Cambodia.<sup>107</sup> In a hybrid tribunal, international and domestic judges and counsel are used, "combining the expertise and integrity of international personnel with the ownership, accessibility, and perceived legitimacy of a trial staffed by nationals in the place of the atrocities."<sup>108</sup> Therefore, Lieberman argues that Cambodian officials in a hybrid tribunal will be better capable of rendering justice because international personnel will keep them in check and corruption affecting the outcome of the trials is unlikely.<sup>109</sup>

Additionally, the academic community widely supports the idea that the United Nations should set up a permanent International Criminal Court to be used in Cambodia and also similar future cases.<sup>110</sup> For example, there have been numerous war crimes tribunals throughout the world over the past few decades, such as those that were used in Yugoslavia, Rwanda, Sierra

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<sup>104</sup> Seth Mydans, "Flawed Khmer Rouge Trial Better Than None," *New York Times*, April 16, 2003.

<sup>105</sup> Etcheson, 172.

<sup>106</sup> Leslie Hook, "Justice for Cambodia," *The Asian Wall Street Journal*, January 7, 2008.

<sup>107</sup> Michael Lieberman, "Salvaging the Remains: The Khmer Rouge Tribunal on Trial," *Military Law Review* (2005): 165.

<sup>108</sup> Lieberman, 165.

<sup>109</sup> Lieberman, 165.

<sup>110</sup> "Bringing Pol Pot to Justice," *New York Times*, April 10, 1998.

Leone, Kosovo, and East Timor, to name a few. If an International Criminal Court were finally set up, there would be no need to endure years of debate regarding tribunals, at which time many of the most brutal offenders could die or become extremely old.<sup>111</sup> Finally, in 2002, the United Nations did successfully ratify an International Criminal Court (ICC), which by definition will “combat impunity or gross violations of international law, including war crimes, genocide, and other crimes against humanity.”<sup>112</sup> Cambodia was one of the countries that ratified the ICC to allow for its existence, although it cannot be used in the case of Cambodia because the Khmer Rouge crimes occurred prior to the ICC’s establishment.<sup>113</sup>

### **Who should be put on Trial?**

Besides debating over the charges to bring against Khmer Rouge members during trial, it is also important to determine exactly what members of the Khmer Rouge will be tried for their crimes. Duncan McCargo argues that one of the many hesitations that Cambodians have about the trials is that they are unsure of exactly who will be prosecuted (only top Khmer Rouge leaders or everybody who participated in the crimes of the Khmer Rouge?). This question is answered differently among various scholars, as some believe that only select leaders should be prosecuted, while others argue that every person who participated in the crimes of the Khmer Rouge must face trial. Trying to prosecute every person who participated in the events of the Khmer Rouge would be problematic, primarily because this would be impossible to determine and enforce. McCargo argues that many Cambodians, specifically those who are educated, feel that lines are blurred between those who are the Khmer Rouge masterminds, killers, and current government figures who used to be Khmer Rouge cadres. As a result, it is important to

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<sup>111</sup> Etcheson, 175.

<sup>112</sup> Ibid., 182.

<sup>113</sup> Ibid.

Cambodians that they know exactly who will be prosecuted and what they will be prosecuted for once trials begin.<sup>114</sup>

### **Top Khmer Rouge Leaders**

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.<sup>115</sup> Stephen Heder and Ben Kiernan are two scholars who support this statement. Both scholars argue that the trials should consist of only top Khmer Rouge leaders, such as Pol Pot, Ieng Sary, Khieu Samphan, Nuon Chen, Ta Mok, and Kaing Kek Ieu, although it is important to note that Pol Pot has since passed away. Heder and Kiernan 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.<sup>116</sup> Furthermore, Craig Etcheson 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.<sup>117</sup>

### **All Khmer Rouge Participants**

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, Tom Fawthrop and Helen Jarvis argue that the trials should include a broad range of Khmer Rouge associates, extending well

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<sup>114</sup> McCargo, 104.

<sup>115</sup> Law on the Establishment of the Extraordinary Chambers, *Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the period of Democratic Kampuchea*, October 27, 2004, Article I.

<sup>116</sup> Stephen Heder, "Dealing with Crimes Against Humanity: Illusion or Progress?" *Southeast Asian Affairs* 2001 (2002): 129.

<sup>117</sup> Etcheson, 184.

beyond known leaders.<sup>118</sup> 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. Only those who gave the final orders will be facing the reality of what they did, which is not fair to the Cambodian people.<sup>119</sup> However, despite disagreements over how to structure the tribunals and who should be tried, there is a general consensus among scholars that some type of tribunal must be put in place because it is absolutely necessary that justice be served.

### **The Current Situation**

In 2001, the Cambodian National Assembly passed a law to create the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, better known as ECCC. The purpose of the ECCC was to preside over the trials of Khmer Rouge leaders. Then in June 2003, after many years of disagreements, Cambodia and the United Nations finally agreed to proceed with the trials using a hybrid/mixed tribunal, which incorporated both Cambodian and United Nations officials. The United Nations still was not overly satisfied though, because Cambodian officials would hold a five to four majority over international judges, essentially having the final say in all verdicts. As I previously stated, the government of Cambodia is still infiltrated with many Khmer Rouge associates and sympathizers, and therefore it is believed that the Cambodian majority will “likely spare the most major figures.”<sup>120</sup> It has been reported that many Cambodians are unhappy with

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<sup>118</sup> Tom Fawthrop and Helen Jarvis, *Getting Away with Genocide? Elusive Justice and the Khmer Rouge Tribunal* (UNSW Press, 2005), 151.

<sup>119</sup> *Ibid.*, 214.

<sup>120</sup> Seth Mydans, “Khmer Rouge Trials Won’t Be Fair, Critics Say,” *New York Times*, February 10, 2002.



this outcome, mainly because the Cambodian majority influence will not allow the trial to “meet international standards of fairness and impartiality.”<sup>121</sup>

In conclusion, Cambodia’s situation can be attributed to numerous different factors throughout the country’s history. Since the eighteenth century, Cambodia has been constantly fought over and sometimes even occupied by the countries of Vietnam, Thailand, France, and Japan. Although Cambodia finally gained their independence, the need for a new government led to the rise of Communism, and ultimately the rise of Pol Pot. When Pol Pot officially took power in 1975, he began a four-year torture and killing rampage, killing nearly two million people and affecting the lives of millions more. During and after this period, scholars began forming conclusions about the intentions, motives, and appropriate process of justice to condemn the actions of the Khmer Rouge. These conclusions were often based on the evidence in which the scholar chose to use. For example, scholars using first-hand accounts of survivors and witnesses generally denounce the Khmer Rouge, while those using documents created by the Khmer Rouge often defend the regime. Many of these scholars continue to agree and disagree with one another, forming an academic environment that is hostile and often contradictory. Despite these disagreements, it has largely been agreed on that atrocities did occur at the hands of the Khmer Rouge. Most importantly, trials are finally underway to give justice to the people of Cambodia.

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<sup>121</sup> Ibid.

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