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"Auto-Genocide" and the Cambodian Reign of Terror

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On April 17, 1975, a wave of armed communist insurgents, dressed in simple black cotton, and adorned with the traditional red-and-white headscarves of the Khmer countryside, swept into Phnom Penh. These revolutionaries, often labeled the *Khmers Rouges* to signify their Marxist/Leninist ideological roots,[1] announced the dramatic 'liberation' of Phnom Penh from civil war and the repressive regime of General Lon Nol. Indeed, the Khmer Rouge takeover of the capital city marked the culmination of a five-year civil war pitting various communist and royalist factions against Lon Nol's right-wing republican regime, which had seized power through a 1970 military coup against Prince Norodom Sihanouk, leader of Cambodia's preceding royalist regime. Initially, cheers and public celebration greeted the Khmers Rouges as their tanks began to roll into the city, with banner-waving young cadres crowded atop them. Within hours, however, those sounds of jubilation were muffled, and near silence descended upon the city. With little forewarning, the Khmer Rouge began to evacuate Phnom Penh, round up foreigners and officers of the Lon Nol, shoot suspected "enemies of the revolution" at point-blank range, and initiate one of the most brutal and abhorrent periods in history.

The atrocities of the Khmers Rouges, from the April 17 evacuation of Phnom Penh to the infamous "Killing Fields" of Choeung Ek, have made the Pol Pot regime notorious throughout the world. In less than four years, the leaders and cadres of Democratic Kampuchea (DK) subjected countless Cambodians and resident foreigners to grave human rights abuses, ranging from killing and torture to forced labor and daily persecution. In so doing, the Khmers Rouges, who would later identify themselves as the Communist Party of Kampuchea (CPK), implemented what is frequently called a "genocidal" regime. In fact, the Pol

Pot era is often publicly considered one of the most egregious cases of "genocide" in the 20th century.[2] From a legal standpoint, however, the question of whether the Khmers Rouges committed genocide is far from settled. This chapter discusses the extent to which CPK leaders can rightly be held liable for genocide under applicable criminal law.[3]

The core issues addressed herein relate to the legal definition of the crime – to what extent did the infamous abuses of the CPK amount to genocide under the law? The standard legal formulation of genocide, set forth in the 1948 Genocide

Convention, is somewhat narrower than the common usage of the term. The Convention requires not only proof of mass killing or other abusive acts, but also a demonstrated intent to physically destroy a "national, racial, ethnical, or religious" group "in whole or in part."[4] While the mass atrocities of the Khmers Rouges have become subjects of worldwide infamy, establishing the genocidal intent of individual leaders can be challenging. Furthermore, in Cambodia, where most of the victims of the Pol Pot era were members of the ethnic Khmer majority, the Convention's limited universe of protected groups creates a legal quandary. Is "auto-genocide" – where a regime kills members of its own national, racial, ethnic, and religious group – a punishable offense? As elaborated below, the Pol Pot period involved many crimes near the substantive border between genocide and other punishable offenses. The Cambodian case study thus provides a good vehicle for exploring some of the nuances of genocide law and some of the consequent challenges in proving the crime to a legal standard.

A Brief Background on the Pol Pot Regime

The debate regarding the "genocidal" nature of the CPK begins with the very origins of communism in Cambodia, traceable to the years when the country was a French protectorate. The communist movement in Cambodia began essentially as a branch of the Indochinese Communist Party (ICP), formed in 1930 and dominated by Vietnamese radicals such as Ho Chih Minh. Until 1954, when the historic Vietnamese victory at Dien Bien Phu secured France's withdrawal from the region, Indochina's communists shared an overriding goal of expelling the French. Thus, even after the ICP disbanded in 1951, most Cambodian communists remained understudies of the Vietnamese Communist Party (VCP).[5]

At the Geneva Conference of 1954, the VCP achieved its primary aim of establishing a communist state in North Vietnam, but it failed to win recognition for the Khmer People's Party (KPP), the surviving Cambodian splinter of the defunct ICP. Most KPP officers fled to Hanoi, and Cambodia became a non-aligned state under the rule of Prince Norodom Sihanouk. His royalist regime actively suppressed the remaining members of the KPP, who came to regard their near destruction as a product of Vietnamese betrayal. By the late 1950s, a group of radical Paris-educated communists including Pol Pot (then Saloth Sar), Nuon Chea, Ieng Sary, Khieu Samphan, and Son Sen began to break from Vietnam, convinced that its brand of "revisionist" Marxism/Leninism was a thin cover for imperial expansion into Cambodia. This "Pol Pot clique" formed a Worker's Party of Kampuchea in 1960, renaming it the CPK in 1963. By that time, two trends were apparent – the Pol Pot clique had replaced the old KPP officials as the leaders of Cambodia's communist movement, and the movement had begun a decided turn toward more covert forms of revolutionary struggle.[6]

The Rise of the Khmers Rouges, 1963–1975

After 1963, the fledgling CPK continued to face repression from the Sihanouk government. Most historical accounts characterize the years between 1963 and 1968 as a mix of overt political struggle with covert preparation for armed struggle.[7] During that period, increasing disparities in wealth and rapid population growth strained an ailing economy that had never properly adjusted from French colonial rule.[8] Decreases in the acreage of arable land and takeover of small plots by large landowners left a class of uprooted and disillusioned peasants, some of whom became attracted to the revolutionary zeal of the Khmers Rouges.[9]

The mounting frustration of rural Khmer peasants came to a head in early 1967, when disenfranchised farmers launched a rebellion near the northwestern town of Samlaut that soon spread to towns and villages across the country. The government in Phnom Penh reacted with a harsh crackdown in which an estimated 10,000 people were killed and many others driven into hiding in the jungle. The crackdowns radicalized many members of the peasantry and increased the public appeal of the revolutionary CPK. By January 1968, the Khmers Rouges began their seven-year campaign of armed struggle. The expanding Ho Chih Minh Trail and increasing numbers of unwanted Viet Cong bases in Cambodia only added to their resentment of both the royalist government and intrusive foreign powers. Living in the jungle, eating the bark from trees, and waging guerilla war, the Khmers Rouges became increasingly radical, utopian, and xenophobic.

Between 1968 and 1975, as Cambodia spun into the vortex of the Vietnam War, civil conflict intensified throughout the country. Lon Nol's 1970 overthrow of Sihanouk was a watershed, pushing the royalists, the VCP, and China into tacit alignment against his Republican regime. Massive U.S. bombardment of Cambodia from 1969 to 1973 – punctuated by the U.S-led "incursions" of 1970 – had a radicalizing and unifying effect on Cambodia's communists, which came to regard the "U.S. imperialists" as a common foe.[10] The repressive measures of the Lon Nol regime magnified rural resentment and added to drastic increases in the revolutionary ranks. By 1973, the tide of war had turned decisively in favor of the revolutionary forces. The corrupt and repressive Lon Nol regime, enjoying only narrow bases of military power and popular support, lost control of the countryside. As the Khmers Rouges pushed toward victory, they began systematically to reduce their dependence on the VCP and to marginalize Prince Sihanouk, who had played an important political role in winning the support of the peasantry. Eventually the makeshift Khmer Rouge forces, wearing their simple black clothes and sandals cut from rubber tires, surrounded Lon Nol's army and toppled his Republican regime with their decisive westward stroke against Phnom Penh in April 1975.[11]

The Years of Terror, 1975–79

The Khmer Rouge seizure of Phnom Penh ushered in a cascade of revolutionary changes in Cambodia, beginning with the creation of a new state called "Democratic Kampuchea." The stated objects of the revolution were to establish a pure Maoist agrarian society that would be self-sustaining and immune to the foreign depredations that had plagued Cambodia for centuries. The Khmers Rouges set out to achieve a "Super Great Leap Forward" that would exceed even Mao Zedong's ambitions and swiftly replace the status quo with a pure Communist society. At the center of the CPK was a clique of shadowy and secretive leaders – including the infamous Pol Pot, Nuon Chea, Ieng Sary, Mok, and Khieu Samphan – who believed that achieving their goals first required a return to "Year Zero."[12] That process of "cleansing" Cambodian society would include the elimination of history, foreign influence, and religion in Cambodia, the destruction of the Lon Nol regime, and the delegation of all social authority and political power to the Revolutionary Organization, *Angkar*.

The "cleansing" of Democratic Kampuchea began with the evacuation of an estimated two million people from Phnom Penh. The CPK saw city dwellers as members of a bourgeois-dominated urban population with strong foreign and capitalist influence. Many of the evacuated residents of the capital were ethnic Chinese or Vietnamese, and many others were affiliated with the old landholding classes or the right-wing Lon Nol regime. As the city was evacuated, Khmer Rouge cadres established checkpoints along the major roads out of the city, where hundreds of thousands of people walked toward unknown destinations. Thousands of former Lon Nol officers were screened from the departing files, sent to secret locations around the city, and summarily executed.[13]

To break down old structures and patterns of life, the Khmers Rouges scattered the city people throughout the countryside, where they became part of rigidly controlled agricultural communes. The city evacuees were labeled "new people" to denote their perceived distance from the ideal of simple Khmer peasants with the "blank hearts and minds" necessary to carry out a complete Maoist revolution. "New people" were singled out for special "re-education" in the communes. Intellectuals, members of wealthy families, and those who spoke foreign languages were often treated with special contempt. Ethnic minorities became targets of extensive pogroms. Many civilians were summarily executed for minor infractions, such as stealing food to avoid starvation, and many others suspected of "counter-revolutionary" activities were sent to prisons to await an uncertain fate without legal recourse. The cold brutality of Khmer Rouge cadres could be summed up in their slogan that "to keep you is no gain, to lose you is no loss."[14]

Most of those who survived the terror of the CPK were assigned to forced labor in agricultural communes. Many were separated from their families deliberately to ensure that *Angkar* would be their primary focus of loyalty. Monks were defrocked, almost all rights of religious practice ceased, and money was abolished, intensifying an economic crisis that resulted in mass starvation and untreated disease. Only limited foreign assistance was forthcoming, as the Khmers Rouges had virtually isolated Democratic Kampuchea from the world by mid-1975, expelling nearly all foreigners from the country. While CPK propaganda continued to tout the successes of the regime, hundreds of thousands of civilians died of malnutrition, disease, or arbitrary execution in the fields.[15]

Within the ranks of the CPK, life was hardly more secure. Internally, the central spoken objective of the Pol Pot regime was to root out perceived opponents of the revolution. These "enemies" or "no-good elements" were often associated or equated with the "Yuon" (Vietnamese), "American imperialists and their lackeys," or the Soviet KGB.[16] A series of brutal Party purges between late 1975 and 1978 filled CPK prisons with alleged Party 'traitors' to be tortured and executed. Some of the most harrowing accounts come from forced confessions authored at the infamous Tuol Sleng Prison, also known as "S-21," the headquarters of the Khmer Rouge internal security organization, the *Santebal*. Many thousands of CPK officers and cadres came through S-21 on their perilous way to the Killing Fields.[17]

The Disputed Death Toll

Together, the crimes committed against common civilians and Party members add up to a staggering legacy of abuses. The total number of people killed in Democratic Kampuchea remains disputed, however, with scholarly estimates ranging widely. Michael Vickery offers one of the lowest estimates. He puts the number at roughly 750,000 and attributes a similar number of deaths to U.S. carpet-bombing and civil conflict between 1970 and 1975.[18] Ben Kiernan, Stephen Heder, Judith Banister and Paige Johnson all approximate that the DK regime was responsible for between 1.5 and 1.8 million deaths.[19] Preliminary estimates from the Documentation Center of Cambodia (DC-Cam) – based on analysis of mass graves, documentary evidence, and well over 1,000 field interviews – suggest a significantly higher figure. The largest scholarly estimates to date come from Craig Etcheson, who has drawn evidence from a number of scholars to conclude that over 3 million people died in Cambodia between the spring of 1975 and winter of 1979.[20]

None of these estimates should diminish the moral and legal severity of the CPK's offenses. However, the disputed death toll of Democratic Kampuchea is noteworthy for two reasons. First, it demonstrates how hotly contested the history of the DK era has been. The intense political and ideological interests surrounding the Indochina Wars has only added to a furious academic debate about the nature

of the atrocities committed by the Pol Pot regime.[21] Second, the disputed body count of the Pol Pot regime reveals how difficult it has been to obtain accurate and corroborated information about the DK period. The CPK made a major effort to distance Cambodia from the world and (particularly) to close it off from Western, Soviet, and Vietnamese influence. The regime was also highly secretive and denied the emergence of independent sources of public information.[22] The shrouded nature of the Pol Pot regime – combined with the intense ideological, moral, and geopolitical interests surrounding Cambodia – have made its history a veritable battleground of competing interpretations. Those differing interpretations have extremely important implications when considering the alleged genocide of the CPK.

Interpretations of the Pol Pot Era

Both the pre-revolutionary development of the CPK and the behavior of the Khmers Rouges after 1975 suggest a number of core reasons why the DK regime carried out their atrocities. Some historians have emphasized the racial, religious, ethnic, and national motives of the party leadership. Kiernan is perhaps the most noteworthy proponent of this historical approach, arguing that "Khmer Rouge conceptions of race overshadowed those of class."[23] He emphasizes that the leaders of the regime were mostly from the French-educated middle class. They had little peasant experience and purged most of the non-Khmers in the party leadership. Kiernan also stresses the regime's desire to cleanse the country of Cham Muslims, Buddhist monks, ethnic Vietnamese, and other groups protected under the 1948 Genocide Convention.[24] Like almost all experts, Kiernan concludes that most of the victims of CPK atrocities were ethnic Khmer nationals, who comprised approximately 80 percent of the population. However, he argues that the CPK sought to create a "pure" society not simply by purging political enemies, but also by destroying foreigners, minority groups, and religious communities as part of an overriding "racialist ideology" and "lust for power."[25]

A number of leading analysts agree that the Pol Pot regime committed mass atrocities but interpret those abuses quite differently. David Chandler argues that the communist and nationalist goals of the DK regime were to blame for the staggering levels of violence, rather than racially motivated or genocidal policies. He attributes much of the bloodshed to the Pol Pot group's nationalist quest for power and independence.[26] He also portrays the DK era as an extreme and ultimately misdirected Marxist-Leninist revolution: "Under the regime of Democratic Kampuchea (DK), a million Cambodians, or one in eight, died from warfare, starvation, overwork, misdiagnosed diseases, and executions. Most of these deaths, however, were never intended by DK. Instead, one Cambodian in eight fell victim to

the government's utopian program of total and rapid social transformation, which its leaders had expected would succeed at far less cost."[27]

While Chandler asserts that the "unintended" nature of many atrocities by no means absolves DK leaders from responsibility, his interpretation of the Pol Pot regime treats the acts of the CPK more as the product of a nationalist struggle and as ideologically driven crimes against humanity than as genocide.

Ponchaud offers a similar view, calling the abuses of the CPK "a perfect application of an ideology pushed to the farthest limits of its internal logic."[28] Roel Burgler takes this line of analysis even further, arguing that: "Democratic Kampuchea was not an attempt at auto-genocide by a group of lunatics. It was a conscious and rational, although very radical, attempt to create a classless and contradiction-free, modern and independent society. It was a case of a revolutionary intellectual elite which, confronted with the discrepancy between its ideals and reality, sought to achieve power to realize its ideals by any means possible."[29]

This view of the Pol Pot clique driving a tragic or misguided utopian enterprise, but not a program for genocide, is perhaps the most common retort to the "genocidal" interpretation of Democratic Kampuchea.

Vickery likewise acknowledges the Pol Pot regime as a perpetrator of mass atrocities without categorizing the crimes of the CPK as genocidal. Vickery argues that the widespread murder and abuse of the DK era was essentially the product of a peasant-based revolution against the entrenched bourgeois class. Unlike Chandler, Vickery argues that "nationalism, populism, and peasantism really won out over communism" and that the emergence of an orthodox Marxist-Leninist regime (as in Vietnam) would have brought less violence.[30] He argues: "[The] excesses of DK did not spring from the brains of Pol Pot or Khieu Samphan [...]. Nor were these excesses the result of reading, or misreading, Marx or due to Stalinist or Maoist influences. They lay in the very nature of a peasant revolution, which was the only kind of revolution possible in Cambodia."[31]

He summarizes the brutality of the Khmer Rouge era as "the victorious peasant revolutionaries doing what peasant rebels have always wanted to do to their urban enemies."[32] He also asserts that many "good areas" existed in Democratic Kampuchea, where abuses were limited, and he suggests that the worst abuses were "aberrations from policy rather than its goals," at least before 1978.[33]

A further interpretation of the violence comes from scholars such as Sorpong Peou and Serge Thion, who characterize the atrocities of the Pol Pot regime largely as part of a civil struggle to establish order in Cambodia. Thion argues that as a state, Democratic Kampuchea "never stood on its feet," continually riddled with factionalism and violent internal conflict.[34] Peou describes much of the violence as "pre-emptive" and characterizes many of the abuses of the DK regime as efforts to shore up national security and regime stability in a highly volatile and unpredictable political environment.[35] Peou disagrees with Kiernan that Cham Muslims were

targeted for destruction or other special abuses (although evidence favors Kiernan on this issue) and asserts that the Pol Pot clique "made several – unsuccessful – attempts to limit the killing."[36] Peou's interpretation of the DK era does not strictly exclude the possibility of genocide. However, he goes further than most scholars in emphasizing the security imperatives perceived by the Pol Pot regime, arguing that the Khmers Rouges governed in a "Hobbesian state of nature" and faced a constant "security problematic."[37] He thus contends that overall, genocidal motives were subordinate to concerns for self-preservation.

Most historians agree that the Pol Pot regime does not fit neatly into any of the ideal-types suggested above. A wealth of new documentary and testimonial evidence collected by researchers over the past several years offers little support for Vickery's image of a peasant revolution and only modest support for the view of Democratic Kampuchea as an "unformed state" in the midst of civil war. However, new evidence continually confirms that "racialist" (or genocidal) motives, regime paranoia, and utopian ideological extremism were all relevant in bringing about the crimes of Democratic Kampuchea.[38] That fact is unsurprising – the crimes of an abusive regime can rarely, if ever, be explained by a single overriding motivation. For the purposes of establishing genocide, it is not strictly necessary to exclude ideological zeal or regime insecurity as contributing factors in CPK leaders' desire to destroy protected groups, "in whole or in part." However, it is necessary to show that CPK leaders were motivated above all by hatred of the group. Although the rules governing the required motive for genocidal are murky, crimes are unlikely to be deemed genocide if protected groups were killed due, first and foremost, to paranoia or Maoist extremism. Guilt for genocide requires that the perpetrator sought to destroy a protected group "*as such*."[39]

Thus, although the term "genocide" is often associated with the Pol Pot regime, and the occurrence of mass killing between 1975 and 1979 is undisputed, the preceding paragraphs have shown that historical interpretations of the Pol Pot regime vary tremendously. Consequently, there is substantial scholarly disagreement regarding the extent to which CPK abuses fit the legal definition of genocide. Chandler, Vickery, and many others consider Pol Pot's reign of terror to be replete with politically motivated crimes, but not with genocide.[40] Consequently, much of the controversy about the "genocidal" nature of Democratic Kampuchea would be erased if the law protected political groups against genocide, along with national, racial, ethnic, and religious groups. However, as elaborated in the following section, the status of political communities under genocide law remains a topic of heated dispute.

The Problem of "Political Genocide"

There is no doubt that the law against genocide applied to the Khmers Roug between 1975 and 1979. Cambodia has been a party to the 1948 Genoci Convention since its inception, and the CPK leadership issued no appare reservation to the treaty.[41] The main legal controversy relates to the *customary* la of genocide applicable during the Pol Pot era. While Article II of the 19 Convention protects only four types of human collectives – national, racial, ethnic or religious groups – some scholars argue that customary international law had al established political groups as a protected class by 1975. Few scholars would de that the Khmers Rouges committed acts of "political genocide" against perceiv enemies of the regime, but as discussed above, the scope of the CPK's culpabili for "traditional" genocide – involving the targeted destruction of national, raci ethnic, and religious groups – is subject to greater dispute. Therefore, the existen of a prohibition on "political genocide" is potentially extremely important determining the extent of genocidal offenses in Democratic Kampuchea.

Arguments over the status of the customary law against genocide revol around an interpretation of the crime's development shortly after the Second Wor War. The term "genocide" was a neologism coined by the Polish jurist Rapha Lemkin, coined to describe certain Nazi atrocities in Central and Eastern Europ Lemkin initially defined genocide as "the destruction of a nation or of an ethn group"[42] but quickly expanded the concept to protect a broader array of target "human groups."[43] In December 1946, the United Nations explicitly mention political groups as one possible target for genocide, unanimously adopting Gene Assembly Resolution 96(I). That resolution defined genocide as "a denial of t right of existence of entire human groups [...] when racial, religious, political, a other groups [are] destroyed, entirely or in part" and affirmed that "genocide is crime under international law [...] whether the crime is committed on religio racial, political or any other grounds."[44]

Resolution 96(I) was the embryo for the eventual 1948 Genocide Conventic and the initial draft of the convention expressed its purpose "to prevent t destruction of racial, national, linguistic, religious, or political groups of hum beings."[45] However, the issue of protecting political groups quickly became subject of heated dispute. The Soviet bloc – apparently concerned about t implications of a "political genocide" prohibition for the Stalinist purges vehemently opposed the protection of political groups, arguing that the concept o political group was too impermanent and imprecise. Numerous delegates from La America and the Middle East also opposed the protection of political groups, fear that such a law would expose them to ideologically motivated prosecution a inhibit their ability to suppress internal disturbances.[46] The critical moment ca when the U.S. delegation, which had originally spearheaded the inclusion of

"political genocide" provision, agreed to a deletion of the language. American delegates hoped to amend the Convention at a future date but agreed to the deletion largely to win broader international support for the Convention.[47] Thus, the *travaux préparatoires* of the Genocide Convention show that political groups were intentionally and expressly excluded from protection under Article II.[48]

The remaining question is whether UN Resolution 96(I) and pre-existing customary law had already established "political genocide" as an independent crime and subject of a peremptory *jus cogens* norm trumping the treaty's narrower definition of genocide.[49] Beth Van Schaack argues that by 1948, the customary prohibition on "political genocide" had become a *jus cogens* norm, noting that numerous domestic legal systems have adopted prohibitions on the destruction of political groups or other arbitrarily defined human collectives.[50] Consequently, she concludes that the leaders of the Pol Pot regime can be held criminally liable for acts of "political genocide." Her argument is appealing and finds support in a 1951 advisory opinion by the International Court of Justice, which interpreted Resolution 96(I) as affirming that genocide violated the customary law of nations, "even without any conventional obligation."[51]

Nevertheless, most scholars have been skeptical of the argument that customary law creates a prohibition on "political genocide." William Schabas argues that the novelty of the term "genocide," the minimal record of debate surrounding the 1946 Resolution, the haste of the resolution's adoption, its omission of ethnic and national groups, and the Convention's subsequent modifications show the limited authority of Resolution 96(I) on the issue. He also notes that the vast majority of states have followed the 1948 Convention verbatim in their domestic legal prohibition of genocide.[52] To the extent that state practice does vary, argue Steven Ratner and Jason Abrams, that variance is evidence that no definite customary norm has emerged on the issue of "political genocide" apart from the 1948 Convention.[53]

Ultimately, whether "political genocide" existed as a crime during the Pol Pot period will remain unresolved until a competent court or tribunal rules on the matter. For purposes of assigning culpability to the CPK, it is therefore safest to assume that the narrower provisions of the 1948 Convention govern the crime of genocide. Should a court or tribunal hold that customary law prohibited "political genocide" during the DK era, the burden of proving genocide in Democratic Kampuchea will be easier, as virtually all experts agree that the Pol Pot regime committed politically motivated atrocities on a large scale. However, until that somewhat unlikely ruling occurs, prosecutors and legal investigators who seek to prove genocide will stand on much firmer ground by establishing that CPK atrocities violated the narrower terms of the 1948 Convention.

"Traditional" Genocide in Democratic Kampuchea

Kiernan and numerous other scholars have presented substantial evidence that th CPK committed "traditional" acts of genocide against certain of Cambodia' protected minority groups between 1975 and 1979. In Democratic Kampuchea, th largest such groups included ethnic Vietnamese, Buddhist monks, Muslim Chams northeastern hill tribes, ethnic Thais, ethnic Chinese, and arguably Kampuche Kroms.[54] Both documentary and testimonial sources reveal that CPK leader singled out those protected groups for abuse on grounds that can justly be describe as genocidal under the terms of the 1948 Convention. The Pol Pot regim manifested intent to destroy a number of protected groups, in whole or in part, on th basis of their national, religious, or ethnic identities.

There are no absolute guidelines on what constitutes a perpetrator's intent t "destroy" a particular group. Most scholars agree that the Convention requires th physical elimination of members of a group from the population.[55] However, attack on cultural, historical, linguistic, and ideational aspects of a group's existence ca also be probative of genocidal intent.[56] Under the DK regime, the three mos prominent protected groups to suffer apparent genocidal abuses were the ethni Vietnamese, Buddhist monks, and the Muslim Chams.

Destruction of the Vietnamese

Some of the most notable examples of apparent genocide in Democratic Kampuche relate to a publicly voiced CPK plan to destroy the Vietnamese people. Hen Samrin, a former CPK leader in the Eastern Zone, has described the plan. Pol Po unveiled it at a meeting of Eastern Zone officials on January 6, 1978 at Wat Taung According to Heng, Pol Pot instructed each Cambodian to kill 30 Vietnames people.[57] Heng has insisted that Pol Pot intended for Vietnamese civilians to b killed as well as troops.[58] That account is strikingly confirmed by a CPK broadcas on Phnom Penh Radio dated May 10, 1978. Part of the message asserted: "One of u must kill 30 Vietnamese [...]. So far, we have succeeded [...]. We should have tw million troops for 60 million Vietnamese. However, two million troops would b more than enough to fight the Vietnamese, because Vietnam has only fifty millio inhabitants [...]. We need only 2 million people to crush the 50 million Vietnamese and we would still have six million people left [...]."[59]

The message voices a clear intent to destroy the Vietnamese people in thei entirety. No security imperative or Communist ideological quest could require th annihilation of every Vietnamese person. This type of evidence weakens the claim of Peou, Vickery, Chandler, and other scholars who are wary to label the Pol Po regime "genocidal." Even if the CPK had multiple motives for the plan, their publi

directive can only be interpreted as one based on precisely the type criminal intent and motive that genocide is meant to address.

Moreover, Pol Pot's Eastern Zone address confirms that the plan came from the very highest authority in Democratic Kampuchea. CPK leaders who can be proved to have ordered, committed, or otherwise aided or abetted in subsequent acts of genocide bear direct responsibility for the crime. Those who knew about the likelihood of genocidal abuses and failed to take countervailing action can be held criminally liable under the doctrine of superior responsibility. The open public expression of the plan makes it quite probable that most CPK leaders were aware of a directive to destroy the Vietnamese, in whole or in part, and no credible evidence exists showing that high-level party leaders meaningfully opposed the measure.

The presence of ethnic Vietnamese within Cambodia was ruled out by Nuon Chea at a Party Congress as early as May 1975. According to multiple interviewees, Nuon asserted that "we cannot allow any Vietnamese minority" to live in Cambodia.[60] Although expulsion was one means to rid Cambodia of the Vietnamese, many sources of evidence (including the infamous radio broadcast discussed above) reveal that killing Vietnamese was also part of the CPK plan to eliminate the "despised" *Yuon*. Heng Samrin asserts that "after liberation those [ethnic Vietnamese] who remained had to go [...] those who did not go were killed [...]. [The CPK] started to kill them in 1976."[61] In 1976, Vietnamese were prevented from leaving Cambodia, and by April 1977, the CPK Center sent out a specific order instructing local officials to arrest all ethnic Vietnamese, and all Khmers who spoke Vietnamese or had Vietnamese friends and hand them over to the CPK *Santebal* security forces.[62] A U.S. State Department report asserted that in Northern Cambodia during 1977, CPK officials began arresting ethnic Vietnamese and beating them "to death with poles."[63]

Interview transcripts reveal many other incidents in which men and women were singled out for arrest and execution on the basis of their Vietnamese ethnicity.[64] Tuol Sleng prison records demonstrate that groups of ethnic Vietnamese civilians were arrested and brought to the Killing Fields.[65] Khmer Rouge propaganda contained endless references to the evils of the Vietnamese people, described as the most "noxious and acute enemies" of Democratic Kampuchea.[66] Many directives identify the Vietnamese as primary "enemies" of the revolution and proceed to assert that enemies are to be "smashed," "screened out," or otherwise eliminated.[67] After extended field research in 1979, Kiernan identified almost no ethnic Vietnamese survivors of the Pol Pot regime. According to the available evidence, approximately 100,000 ethnic Vietnamese were expelled in 1975 and 1976. Almost all of the remaining 100,000 were killed by the end of 1978.[68] Circumstantial evidence suggests that most, if not all, CPK leaders possessed culpable knowledge and superior responsibility – if not direct individual liability – for the genocidal attacks on ethnic Vietnamese.

Attacks on the Buddhist Monkhood

Khmer Rouge leaders also left strong evidence of genocidal intent against Buddhist monks. According to multiple interview accounts, at the May 1975 CPK Party Congress, Pol Pot and Nuon Chea ordered Party members to "wipe out," "defrock," or "kill" all of the Buddhist monks in Cambodia.[69] There is some dispute regarding whether the directive was to kill all monks or simply to eliminate them as a class by forcing them to abandon their religion. Heder and Brian Tittemore draw attention to a subsequent CPK document asserting that CPK policy was to ensure that "monks were gone [...] in the sense that they [...] gave up their religion [...]."[70] However, there is general consensus among attendees that Pol Pot and Nuon Chea, the top officials of *Angkar*, targeted monks for elimination. According to Heng Samrin, Nuon and Pol called monks a "special class," the most important to fight. "Pol Pot said that no monks were to be allowed, no festivals were to be allowed any more, meaning 'no more religion.'" Nuon Chea added that "*wats* [Buddhist temples] would not be allowed."[71]

The presence of all major CPK leaders at the 1975 Party Congress makes it very likely that they knew of the plan, and there is no evidence that any high-ranking CPK official took countervailing action on behalf of the monks. The regime's intent to eliminate Buddhist monks from the population was reinforced in the Constitution of Democratic Kampuchea, promulgated in early 1976. Article 20 of the Constitution asserts that "all reactionary religions that are detrimental to Democratic Kampuchea and the Kampuchean people are strictly forbidden."[72] Although the DK Constitution does not define "reactionary" religions, subsequent acts and CPK policies show that Buddhism (along with Christianity and Islam) was prohibited. Since 1970, Pol Pot had spoken about the need to "wipe out religion."[73]

Petitions and interview transcripts affirm that these high-level directives were quickly translated into brutal action throughout the country.[74] Buddhist temples were destroyed, monks were forced to defrock and work in the cooperatives, and many monks were deliberately killed. Reports from human rights agencies also reveal a massacre of 57 monks in the Ok Forest in Siem Riep province and similar abuses at the Chompulack pagoda in Kandal province.[75] The Khmer Rouge program to attack and eliminate Buddhist monks as a class was, by their own evaluation highly successful. In September 1975, a CPK document asserted that Buddhist monks "have disappeared by 90 to 95 percent," the rest being nothing to worry about.[76] Chanthou Boua's research identified that out of nearly 3,000 monks from eight selected Cambodian monasteries, only 70 survived the regime.[77] By 1978 Yun Yat, the DK Minister of Culture and Education, declared that Buddhism was incompatible with the Khmer Rouge revolution and had become "a relic of the past forgotten and surpassed."[78]

Attacks against the Cham Muslims

Direct evidence that top CPK leaders intended to destroy the Cham Muslims is relatively scarce, but circumstantial evidence is abundant. Many survivor petitions and interview transcripts allege that Chams were often targeted for special attack. Expert analysis by Kiernan and others support the claim that Chams suffered disproportionate killing.[79] Osman Ysa asserts that out of approximately 700,000 Chams living in Cambodia in 1975, fewer than 200,000 survived the regime.[80] Expert testimony may be able to establish that as a fact. However, disproportionate impact alone cannot prove that the CPK intended to destroy all or part of the Chams on the basis of their ethnicity or religion. Disproportionate impact can only suggest those motives. For example, DK survivor Srong Muhammad reported that the CPK killed approximately 1,000 Chams in early 1976 by placing them aboard sinking ships in the Mekong River.[81] That act may suggest that local officials sought to commit genocide against the Chams (destroying them at least "in part"), but it does not prove the culpability of CPK leaders.

Perhaps the strongest evidence that the CPK leadership targeted Chams comes from a pair of interviews Kiernan conducted with survivors in Ke Pauk's Northern Zone. Two interviewees, Ya Mat and Os El, give consistent reports of a "Document 163" allegedly distributed by the CPK Center in 1978. According to Ya Mat, the document included the following language: "It said we will not spare the Chams, because if spared they will resist [...]. It said that the Cham race is not to be spared, because it has a history of resisting the socialist revolution, and also in the Champa period [...]. 'So we undertake a policy of discarding them now.' They were hand in hand with the Vietnamese, so they must all be killed off [...]. The document said that, 'now, they must be smashed to pieces. Whatever department they are in, they must be smashed to pieces.'"[82]

Unfortunately, no copy of the alleged "Document 163" appears to have survived, reducing the weight it could possess in proving that CPK leaders possessed the requisite intent for genocide. The same is true for another document identified by Ya Mat, who asserts that a 1975 CPK directive told Chams "if we did not eat [pork], they would not let us 'live in the revolution.' They would abolish us. There was no Cham race or Cham country [...] there were to be no Chams, no Chinese, no nothing."[83]

The evidence provided by Ya Mat finds support from Uknha Sos Kamry, who served as a local official under the Pol Pot regime. Kamry recalls a 1977 meeting among CPK officials in the region, where the meeting chairman declared: "The enemies of *Angkar* come in many categories, but the biggest enemies are the Cham. The plan is to destroy them all before 1980."[84] Kamry asserts that he later read a CPK publication entitled *The Advanced Cooperative Plan* which stated that, "The targeted enemy are the Cham. They must all be destroyed before 1980."[85] Taken together, the evidence of this publication and "Document 163" provide significant evidence of a relatively high-level plan of genocidal attacks against the Chams.

Biographies, confessions, and interview transcripts describe many CPK practices apparently designed to destroy Islam in Cambodia and wipe out the Chams' distinct ethnic and religious identity. DK survivor Sop Kotijah added that by 1976, a new CPK policy was adopted banning the practice of Cham religion. That evidence is consistent with the promulgation of the DK Constitution discussed above, which forbade "reactionary religions." From 1975 onward, Chams throughout Cambodia were denied the right to pray and forced to eat pork and care for pigs against their Muslim convictions.[86] During Ramadan, Chams were prohibited to fast or to read the Qur'an, and CPK cadres forced Chams to use the pages of the Islamic holy text as toilet paper.[87] They were also denied the right to a separate ethnic existence, as Cham language, dress, and names were summarily banned.[88]

The banning of Islam and forced assimilation of the Chams suggests an intent to destroy them as a group, and the widespread nature of the acts committed against them.[89] There is little concrete documentary proof that top-ranking CPK officials knew about the treatment of Chams, because the orders banning Islam have not survived, and CPK correspondence seldom refer to the Chams by name. Nevertheless, circumstantial evidence of superior knowledge abounds. High-ranking members of the CPK were certainly aware of the broad prohibition of religious practice. The existence of widespread and disproportionate attacks against the life and basic rights of Chams also makes it highly probable that top leaders bore constructive (if not actual) knowledge of genocidal offenses taking place beneath them in the CPK hierarchy.

The Genocidal Dimension of the Pol Pot Regime

The offenses against ethnic Vietnamese, Buddhist monks, and Chams do not represent the entire universe of "traditional" CPK genocidal offenses. Attacks on the ethnic Chinese population, Thais, Laos, Kampuchea Kroms, and hill tribes also occurred, although those groups have received less scholarly attention and research.[90] While much historical and legal study of "traditional" genocide under the CPK remains to be done, considerable evidence exists to support the position that the Pol Pot regime had a strong "genocidal" element in its character. Many of the attacks against protected groups went far beyond the normal bounds of civil conflict or political infighting. As the DK regime solidified its control, ideological policies quickly fused with racial and religious hatred to produce a wicked frenzy of abuses against both political groups and groups protected under the 1948 Genocide Convention.

The sampling of evidence in this section reveals the weakness of arguments that the Pol Pot regime was simply not "genocidal." To the extent that scholars such

as Peou, Burgler, and Vickery have de-emphasized that dimension of the DK leadership, their theses merit some re-evaluation. It is simply impossible to describe all of the abuses of the CPK as the products of a security dilemma, ideological extremism, or political infighting. Racial, ethnic, national, and religious animosities formed important bases for many of the atrocities committed between 1975 and 1979. It is therefore appropriate to refer to the Pol Pot clique as "genocidal" to some degree. The real difficulty is to determine how far to push this characterization. Statistically, most of the victims of the Cambodian reign of terror were ethnic Khmer nationals, and deciding whether to label those offenses genocide or merely "crimes against humanity" remains very important.

The "Auto-Genocide" Paradox

Nothing in the text of the 1948 Genocide Convention excludes the majority population of a country from protection.[91] However, the application of the genocide law to the ethnic Khmer majority is unclear.[92] The *travaux préparatoires* of the treaty reveal that the crime of genocide was conceived with minority groups primarily in mind. The Nazi program to exterminate Jews was the paradigm in mind during the immediate aftermath of the Second World War. Few participants seem to have considered the possibility that a majority group – and especially a majority group in power – would turn to the mass killing of other members of the same group.[93] The "auto-genocide" perpetrated by the CPK thus constitutes something of a legal quandary.

Hurst Hannum and David Hawk assert that the CPK's "auto-genocidal" offenses against ethnic Khmer nationals meet the criteria of the Genocide Convention. They argue that the DK leadership sought to destroy the entire existing Khmer ethnic group and replace it with a "pure" population purged of its loyalty to traditional values and practices.[94] Few analysts have accepted this line of reasoning, which has been perceived as too great a stretch of DK history and genocide law to win substantial scholarly support.

Even if Hannum and Hawk's argument is not convincing, one can argue that the CPK policies demonstrated intent to destroy ethnic Khmer nationals "in part." Still, that argument rests upon a controversial reading of Article II of the Genocide Convention. No evidence exists to show that majority Khmer nationals were targeted because of their race, nationality, or ethnicity. On the contrary, the Khmers Rouges sought explicitly to purify the majority population from "corrupting" foreign influences. The primary basis for most of the crimes against the majority population indeed appears to have been political. Barring a court's acceptance of the customary prohibition on "political genocide," such offenses are not punishable under the Convention.

The argument that the CPK attempted to destroy the majority population "i part" faces a second problem as well. No firm rule exists to determine wha constitutes a sufficient "part" of a victimized group to trigger the application of th Convention, though there is general consensus that the number must be substan tial.[95] Consequently, the much-disputed DK death toll could become relevant. I killing twenty percent of the majority population sufficient to constitute a genocida "part"? Some commentators contend that genocide implies a desire by the perpetra tor to destroy virtually all members of a particular group within a particular state o territory. Other analysts take a more liberal view and suggest that any significan fraction of a human community can represent a "part" provided that the crime committed are based on racial, religious, ethnic, or national hatred.[96] However using either of these approaches, it is very difficult to shoehorn the massacres o ethnic Khmer nationals into the Convention's definition of genocide.

The safest position – and the most likely conclusion of a court of law – is tha many of the offenses of the Khmers Rouges, committed against members of th ethnic Khmer majority, did not constitute "genocide."[97] Of course, that does no mean those crimes will go unpunished. Many of the atrocities of the CPK als violate laws against homicide, torture, crimes against humanity, war crimes religious persecution, and other offenses. Evidence for some of those crimes is mucl more weighty than the evidence relating to genocide, and a fair trial of former CPK leaders would likely result in a very long list of criminal convictions. All woul likely be jailed for the remainder of their lives, the same result that would emerg from genocide convictions. Why, then, is the issue of naming those crime "genocide" so important?

Conclusion – "The Crime of Crimes"

The taxonomy of the crimes of the Khmers Rouges is much more than an interestin project for academics and lawyers. In practical and political terms, the name giver to CPK crimes matters immensely because the term "genocide" has come to b associated with the most heinous possible abuses. Schabas calls it "the crime o crimes," a fitting description for an offense that carries greater moral and politica weight than all others. Partly due to the grim legacy of the Third Reich, "genocide' has become a label that distinguishes the world's worst regimes and villains.[98] I provides a justification for outrage and a validation of the victims' position on th moral high ground. It also represents a political weapon against disfavored regimes states, and ideologies. Perhaps most importantly, however, the label of "genocide' represents justice for people who have suffered under the most grievous of abuses In Cambodia, the legacy of the Pol Pot regime has left deep wounds and demands fo accountability.

The process for seeking accountability in Cambodia is well underway, as the United Nations and Cambodian government continue to negotiate over a planned Khmer Rouge tribunal. To many observers, a finding that CPK leaders were guilty of anything short of "genocide" would seem to trivialize their agony, even if the cerebral and legal distinctions between genocide and other crimes are clear. That poses a dilemma for the prospective Khmer Rouge tribunal and any other courts faced with borderline cases of genocide. Part of the tribunal's role is to achieve justice for the victims of the CPK, but part is also to encourage the development of a sustainable rule of law in Cambodia. A rule of law requires that trials be fair to the defendants and that laws not be manipulated for public consumption. Loose colloquial and rhetorical usage of the term "genocide" for decades has created a situation in which an honest verdict may fail to quench the entire Cambodian thirst for justice.[99] The only solution is to foster increased public understanding of genocide law and thus to ensure that the "genocide" label is used responsibly, accurately, and justly.

Notes

1 The term *Khmers Rouges* was coined by Cambodian Prince Norodom Sihanouk in the 1960s to differentiate the royalist government's radical communist opponents from its right-wing, republican dissidents *(Khmers Bleus)* and [left-wing Khmer factions close to the Vietnamese Communist Party] *(Khmers Blancs)*. In this chapter, the term *Khmers Rouges* refers specifically to the members of the Communist Party of Kampuchea (CPK), which governed Cambodia between roughly April 1975 and January 1979, renaming the country "Democratic Kampuchea" (DK).

2 Duffy, Terence, "Toward a Culture of Human Rights in Cambodia," *Human Rights Quarterly* 16 (1994), pp. 82–83. The U.S. government has called the Pol Pot period "one of the clearest examples of genocide in recent history." U.S. Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No. 100–204, §906. See also the U.S. Cambodian Genocide Justice Act, Pub. L. No. 103–236, 108 Stat. 486–7 (1994).

3 According to the universally accepted principle of *nullem crimen, nullem poena sine lege* ("no crime, no punishment without law"), an individual may only be tried and convicted for a crime that existed at the time of the act in question. Paust, Jordan J. et al., *International Criminal Law: Cases and Materials*, Durham, NC: Carolina Academic Press, 2000, p. 8. Thus, with respect to the Pol Pot regime, the relevant legal definition of genocide is that which prevailed between April 1975 and January 1979.

4 Convention on the Prevention and Punishment of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, 280 (entered into force Jan. 12, 1951).

5 For an excellent discussion of the evolution of Cambodian communism and the Khmers Rouges, see generally Kiernan, Ben, *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930–1975*, London: Verso, 1985.

6 For a more detailed account of the factors giving rise to the CPK, see Etcheson, Craig, *The Rise and Demise of Democratic Kampuchea*, Boulder, CO: Westview, 1985, pp. 40–41, 45–52, 55–61.

7 Kirk, Donald, "Revolution and Political Violence in Cambodia, 1970–1974," in: Joseph J. Zasloff & MacAlister Brown (eds.), *Communism in Indochina: New Perspectives*, Lexington, MA: Lexington Books, 1975, p. 220.

8 Etcheson (cf. note 6), pp. 14–22.

9 Kiernan, Ben and Boua, Chanthou (eds.), *Peasants and Politics in Kampuchea, 1942–1981* London: Zed Press, 1982, p. 7.

10 For one leading account of the effect of U.S. attacks on the Cambodian civil war, see Shawcross William, *Sideshow: Nixon, Kissinger, and the Destruction of Cambodia*, New York: Simon an Schuster, 1979. Sihanouk would later declare: "with his bombs [Nixon] performed the miracl of turning our people into revolutionaries within weeks." Wilfred Burchett (ed.), *My War wit the CIA: The Memoirs of Prince Norodom Sihanouk*, London: Penguin, 1973, p. 178. See als Kiernan (cf. note 5).

11 See generally Etcheson (cf. note 6), ch. 6.

12 A classic account of the return to "Year Zero" was written by a French Jesuit priest who live through the opening phases of the DK regime. See François Ponchaud, *Cambodge Année Zéro* Paris: Juillard, 1977.

13 For an early account of the evacuation, see Hamel, Bernard, *De Sang et De Larmes: La Grand Déportation du Cambodge*, Paris: Albin Michel, 1977.

14 For the most detailed historical account of the period, see generally Kiernan, Ben, *The Pol Po Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975–1979*, New Haven & London: Yale University Press, 1996. For a good overview of political and social lif under the Khmer Rouge, see also Becker, Elizabeth, *When the War was Over: Cambodia an the Khmer Rouge Revolution*: New York: Public Affairs, 1986, chs. 5–10.

15 See, e.g., Gheddo, Piero, *Cambogia: Rivoluzione Senza Amore*, Torino: Società Editric Internazionale, 1976, chs. 3 and 4.

16 Many examples of CPK directives to purge "enemies," "traitors," and "no-good elements" car be found in surviving copies of the party's propaganda magazines, such as *Tung Padev* ("Revolutionary Flag"). See Heder, Stephen (trans.), *Revolutionary Flag and Revolutiona Youth: Translated Excerpts*, unpublished manuscript on file with DC-Cam.

17 For the leading history of Tuol Sleng Prison, see Chandler, David P., *Voices from S-21: Terro and History in Pol Pot's Secret Prison*, Berkeley: University of California Press, 1999.

18 Vickery, Michael, *Cambodia: 1975–1982*, Boston: South End Press, 1984, p. 187. This approximates the estimates from Pol Pot and Khieu Samphan. U.S. Central Intelligence Agency, "Kampuchea: A Demographic Catastrophe," March 1980 report, cited in: Etcheson (cf. note 6), p. 148.

19 See, e.g., Banister, Judith and Johnson, Paige, "After the Nightmare," in: Kiernan, Ben (ed.), *Genocide and Democracy in Cambodia: The Khmer Rouge, the United Nations, and the International Community*, New Haven: Yale University Southeast Asia Studies, 1993, p. 90.

20 Etcheson, Craig, "3.3 Million Dead and Still Counting," *Phnom Penh Post*, April 14–27, 2000. This figure approximates the total declared in 1983 by Cambodian authorities on the basis of over one million survivor petitions. *See* General Council of the Front for National Construction, Salvation, and Defense of the Kampuchean Motherland, *The Crimes of the Peking Hegemonists and Their Servants Pol Pot, Ieng Sary and Khieu Samphan During 1975–1979* (1983 government document on file with the Documentation Center of Cambodia).

21 For one influential work focusing on the ideological biases surrounding the body-count of the Pol Pot regime, see Chomsky, Noam and Herman, Edward S., *After the Cataclysm: Postwar Indochina and the Reconstruction of Imperial Ideology*, Boston: South End Press, 1979.

22 See Nuon Chea, "Statement of the Communist Party of Kampuchea to the Communist Workers' Party of Denmark," July 1978 (on file with the Documentation Center of Cambodia). Nuon describes the many taken by the CPK to ensure secrecy and asserting that "secret work is fundamental in all that we do [...] we base everything on secrecy."

23 Kiernan, *The Pol Pot Regime* (cf. note 14), p. 26.

24 Kiernan does state, however, that "the term *genocide* does not apply to the regime's treatment of all Cambodia's ethnic groups." Ibid., p. 463.

25 Ibid., p. 465.

26 Chandler, David P., *Brother Number One: A Political Biography of Pol Pot*, Boulder, CO: Westview, 1992, pp. 4, 147.

27 Chandler, David P., *The Tragedy of Cambodian History: Politics, War, and Revolution since 1945*, New Haven: Yale University Press, 1991, p. 1.
28 Ponchaud (cf. note 12), p. 214.
29 Burgler, Roel A., *The Eyes of the Pineapple: Revolutionary Intellectuals and Terror in Democratic Kampuchea*, Saarbrücken & Fort Lauderdale: Verlag Breitenbach Publishers, 1990, p. 281.
30 Vickery (cf. note 18), pp. 289–90.
31 Ibid., pp. 286–87.
32 Vickery, Michael, "Violence in Democratic Kampuchea," paper distributed at Michigan State University, November 1988, cited in: Kiernan, Ben, "Bringing the Khmer Rouge to Justice," *Human Rights Review* 1:3 (2000), p. 97.
33 Vickery, Michael, "Democratic Kampuchea: Theme and Variations," in: Chandler, David and Kiernan, Ben (eds.), *Revolution and its Aftermath: Eight Essays*, New Haven: Yale University Southeast Asia Studies, 1988, pp. 130–31.
34 Thion, Serge, "The Cambodia Idea of Revolution," in: Chandler and Kiernan (cf. note 33), pp. 28–29. Peou arrives at a similar conclusion. Peou, Sorpong, *Intervention and Change in Cambodia: Towards Democracy?* Singapore: Institute of Southeast Asian Studies, 2000, pp. 102–106. For contrary views, see Barron, John and Paul, Anthony, *Peace with Honor: The Untold Story of Communist Genocide in Cambodia*, London: Hodder and Stoughton, 1977, p. 60; Barnett, Anthony, "Democratic Kampuchea: A Highly Centralized Dictatorship," in: Chandler and Kiernan (cf. note 33), pp. 214–16.
35 Peou, Sorpong, "Book Reviews," *Holocaust & Genocide Studies* 11 (1997), pp. 413, 420–25.
36 Ibid., p. 415; Peou, *Intervention and Change* (cf. note 34), pp. 104–06. See also Burgler (cf. note 29), pp. 88–90.
37 Ibid., pp. 420, 424.
38 The findings of researchers at the Documentation Center of Cambodia are particularly illustrative. See *Searching for the Truth* magazine, Issues 1–33, available at http://www.welcome.to/dccam/.
39 Schabas, William A., *Genocide in International Law: The Crime of Crimes*, New York: Cambridge University Press, 2000, pp. 254–56.
40 Stephen Marks calls the DK atrocities "political genocide." Stephen P. Marks, "Forgetting 'The Policies and Practices of the Past': Impunity in Cambodia," *Fletcher Forum of World Affairs* 18 (Summer/Fall 1994), pp. 17, 25.
41 Ratner, Steven R.; Abrams, Jason S., *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, New York: Oxford University Press, 1997, pp. 243–44.
42 Lemkin, Raphael, *Axis Rule in Occupied Europe*, Washington: Carnegie Endowment for International Peace, 1944, pp. xi, 79.
43 Lemkin, Raphael, "Genocide as a Crime under International Law," *American Journal of International Law* 41 (1947) pp. 145, 147–48.
44 G.A. Res. 96, 1 GAOR, 1st Sess., 55th mtg. at 188–89, U.N. Doc. A/64/Add. 1 (1947).
45 Draft Convention on Genocide, U.N. GAOR 6th Comm., 2d Sess., Annex 3, at 214–215, U.N. Doc. A/362.
46 See UN GAOR 6th Comm., 3d Sess., 74th, 75th, and 128th mtgs. At 98–121, 659–64; Robinson, Nehemiah, *The Genocide Convention: A Commentary*, New York: Institute of Jewish Affairs, 1960, p. 59; Kuper, Leo, *The Prevention of Genocide*, New Haven: Yale University Press, 1985, pp. 15–16.
47 Schabas (cf. note 39), pp. 134–45.
48 Many scholars have criticized this omission. Before the Balkan crises, Frank Chalk and Kurt Jonassohn wryly declared that the Convention's language is "so restrictive that not one of the genocidal killings committed since its adoption is covered by it." Chalk, Frank and Jonassohn, Kurt, *The History and Sociology of Genocide: Analyses and Case Studies*, New Haven: Yale

University Press, 1990, p. 11. See also Kuper (cf. note 46), pp. 15–16. For a contrary argume see LeBlanc, Lawrence J., "The United Nations Genocide Convention and Political Grou Should the United States Propose an Amendment?" *Yale Journal of International Law* (1988), pp. 268, 274–75.
49 *Jus cogens* norms are principles deemed so fundamental to international law that they permit derogation. To the extent that a treaty provision conflicts with a *jus cogens* norm, it is held to void. Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 331, 34 See also Case Concerning Military and Paramilitary Activities in and Against Nicarag (Nicaragua v. United States (Merits)), 1986 I.C.J. 14, 100.
50 Van Schaack, Beth, "The Crime of Political Genocide: Repairing the Genocide Convention Blind Spot," *Yale Law Journal* 106 (1997), pp. 2259–91. For a similar argument, *see also* Bere Louis René, "Genocide and Genocide-Like Crimes," *International Criminal Law* 1 (198 pp. 271–272.
51 Reservations to The Convention on The Prevention and Punishment of the Crime of Genocid 1951 I.C.J. 15, 23.
52 Schabas (cf. note 39), pp. 134, 141–42.
53 Ratner & Abrams (cf. note 41), pp. 41, 246.
54 The "Kampuchea Kroms" are people of Khmer ancestry whose geographic roots lie in the sou of modern-day Vietnam. Their status as protected minorities requires a demonstration that t Khmer Rouge considered and treated them as ethnic minorities. Kiernan argues that they d receive treatment as a minority ethnic group. Kiernan, *The Pol Pot Regime* (cf. note 14), pp. 298–300.
55 Schabas (cf. note 39), p. 229.
56 Matthew Lippmann, "The 1948 Convention on the Prevention and Punishment of the Crime Genocide: Forty-Five Years Later," *Temple International & Comparative Law Journal* (1994), pp. 7–9.
57 High-level CPK officials including Eastern Zone Secretary Sao Phim, Northern Zone Secreta Ke Pauk, and Minister of Defense Son Sen were also present at the meeting, demonstrating th broad knowledge of the plan existed within the Party leadership. Kiernan, *The Pol Pot Regin* (cf. note 14), at 387.
58 Ben Kiernan's second interview with Heng Samrin, Dec. 7, 1992, cited in Kiernan, *The Pol P Regime* (cf. note 14), p. 387, n. 3.
59 "Phnom Penh Radio broadcast, May 10, 1978, BBC, FE/5813/A3/2, May 15, 1978," DC-Ca File Number D14789.
60 Ben Kiernan's Interview with Sin Song, Phnom Penh, Apr. 1980 and Ben Kiernan's intervie with Heng Samrin, Phnom Penh, Dec. 1991, cited in Kiernan, *The Pol Pot Regime* (cf. note 1 pp. 55–57.
61 Heng Samrin Interview (cf. note 60), p. 109, n. 39.
62 "Directive from 870 (the Party Center)," document cited in Kiernan, *The Pol Pot Regin* (cf. note 14), p. 297.
63 U.S. State Department, "Interview with Cambodian Refugee in Buriram, Thailand: Rep Number 10," June 1978.
64 Interview transcripts include accounts of a massacre of about 420 ethnic Vietnamese civilians Kampong Cham during May 1977. See FBIS, IV, Sept. 2, 1977, from *The Bangkok Po* Sept. 1, 1977, p. H1. See also Ben Kiernan's interview with Sing Y, Alencon, Oct. 1979, cited Kiernan, *The Pol Pot Regime* (cf. note 14), p. 297.
65 See, e.g., "List of the Names of Prisoners Who Entered in the Year 1976, S-21 Record DC-Cam File Number D21897.
66 "Learning from Important Experiences in the fulfillment of the Party's First Semester 19 Political Tasks," *Tung Padevat*, May-June 1978, DC-Cam Document Number 21428. Accor ing to another article in *Tung Padevat*, "the *Yuon* stink to high heaven and are degrading despised as nothing." "The National Duties of All of Us," *Tung Padevat*, July 1978, DC-Ca

Document Number 21429. See also Chandler, David P., "Seeing Red: Perceptions of Cambodian History in Democratic Kampuchea," in: Chandler and Kiernan (cf. note 33), pp. 49–51.

67 For a discussion of coded CPK terms such as "smash" (to kill) or "screen out" (to remove or purge), see Stephen Heder, "Documentary Evidence Linking Surviving Senior and Other Leaders of the Communist Party of Kampuchea to Crimes Against Humanity in Cambodia, 1975–79: A Preliminary Sampling of Documentary Evidence at the Documentation Center of Cambodia and Other Sources," unpublished 1999 manuscript on file with DC-Cam. See also Kiernan, *The Pol Pot Regime* (cf. note 14), p. 57.

68 Kiernan, Ben, "The Cambodian Genocide: Issues and Responses," in: Andreopolous, George J., *Genocide: Conceptual and Historical Dimensions*, Philadelphia: University of Pennsylvania Press, 1997, pp. 197–202.

69 Ben Kiernan's interview with Kun Chhay, Kompong Svay, Oct. 1980 and Jeremy Stone and Gregory Stanton's interview with Mat Ly, July 1991, cited in Kiernan, *The Pol Pot* Regime (cf. note 14), pp. 55–56.

70 Heder, Stephen with Tittemore, Brian, *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge*, Washington: War Crimes Research Office, Washington College of Law, 2001, p. 33, n. 119, citing "On Grasping and Implementing the Party's Political Line of Gathering National-Democratic Front Forces," Sept. 22, 1975.

71 Heng Samrin Interview (cf. note 60), pp. 55–57.

72 Article 20 of the Constitution of Democratic Kampuchea, promulgated Jan. 5, 1976, DC-Cam Document Number D21447, reprinted in: Jennar, Raoul M., (ed.), *The Cambodian Constitutions (1953–1993)*, Bangkok: White Lotus, 1995, p. 81.

73 Ben Kiernan's interview with On Bun Phan, 1986, cited in Kiernan, *The Pol Pot Regime* (cf. note 14), p. 83.

74 For one good example, see "Petition of Unn Tep," *Renakse* Collection, Siem Riep file (petition on file with DC-Cam.)

75 See UN Doc. A/34/569, 12 Oct. 1979, document on file at DC-Cam.

76 "On the Control and Implementation of the Political Line to Gather Forces for the Party's National Democratic Front: Document Number 6," document dated 22 Sept. 1975, cited in Kiernan, *The Pol Pot Regime* (cf. note 14), p. 100.

77 Boua, Chanthou, "Genocide of a Religious Group: Pol Pot and Cambodia's Buddhist Monks," in: Schlapentokh, V. et al (eds.), *State-Organized Terror: The Case of Violent Repression*, Boulder, CO: Westview, 1991.

78 "BBC Survey of World Broadcasts," FE/5773/B/5. 25 Mar. 1978, in "Analysis prepared on behalf of the Sub-Commission by its Chairman of materials submitted to it and the Commission on Human Rights under Decision 9(XXXIV) of the Commission on Human Rights," UN Doc. E/CN.4/1335, 1978.

79 See Kiernan, *The Pol Pot Regime* (cf. note 14), p. 461. Kiernan also presents a good discussion of reported crimes committed against the Chams on the basis of their religion and ethnicity, drawing on a number of interview transcripts. Ibid., pp. 252–88. It includes reports of families killed because they refused to eat pork or spoke the forbidden Cham language, among other atrocities.

80 Osman Ysa, *Oukoubah: Justice for the Cham Muslims under the Democratic Kampuchea Regime*, Phnom Penh: Documentation Center of Cambodia, 2002, pp. 2–3.

81 Nate Thayer's interview with Srong Muhhamad, Nong Samet, Aug. 1984 (transcript on file with DC-Cam). DK survivor Sles Ly also reported the existence of a large number of mass graves containing Cham remains. Nate Thayer's interview with Sles Ly, Aug. 1984 (transcript on file with DC-Cam). Again, this is not enough to prove a high-level plan for genocide, even if the mass graves strongly suggest such a plan.

82 Ben Kiernan's interview with Ya Mat, cited in Kiernan, *The Pol Pot Regime* (cf. note 14), p. 280.

83 Ya Mat Interview (cf. note 82), p. 279. This evidence is consistent with a broad CPK decree that effectively eliminated the right to existence of all minority groups, asserting: "There is one

Kampuchean revolution. In Kampuchea there is one nation, and one language, the Khm language. From now on the various nationalities [...] do not exist any longer in Kampuchea See Becker (cf. note 14), p. 253. It does not appear that a surviving copy of this decree exist

84 Osman Ysa's interview with Uknha Sos Kamry, Phnom Penh, Oct. 1999 (transcript on file wi DC-Cam), cited in Ysa (cf. note 80), p. 6.

85 Ibid.

86 Nate Thayer's interview with Kob Math, Sop Kotijah (Psa Baktouk), and Van Math, Aug. 19 (transcripts on file with DC-Cam).

87 Nate Thayer's interview with Sop Kotijah, Nong Samet, Aug. 1984 (transcript on file wi DC-Cam).

88 Ysa (cf. note 80), pp. 4–5.

89 For a discussion of such practices based on a large number of interview transcripts, see Y (cf. note 80), pp. 1–8. See also Sorya Sim, "The Chams Under Pol Pot: Kampong Cha Province," DC-Cam Research Paper (on file at DC-Cam).

90 For some discussion of the treatment of these other protected minority groups under Dem cratic Kampuchea, see Kiernan, *The Pol Pot Regime* (cf. note 14), pp. 288–309.

91 Revised and updated report on the question of the prevention and punishment of the crime genocide, prepared by B. Whitaker, July 2, 1985, UN Doc. E/CN.4/Sub.2/1985/6, at 1 Hannum, Hurst, "International Law and Cambodian Genocide: The Sounds of Silence," *Huma Rights Quarterly* 11 (1989), pp. 82, 104–07.

92 Ratner & Abrams (cf. note 41), pp. 33, 245–46.

93 Ibid., p. 246.

94 Hannum, Hurst and Hawk, David, *The Case Against the Standing Committee of the Communi Party of Kampuchea*, New York: Cambodia Documentation Commission, 1986. See als Hannum (cf. note 91), pp. 82–138.

95 See, e.g., Robinson (cf. note 46), pp. 62–63; LeBlanc, Lawrence J., "The Intent to Destro Groups in the Genocide Convention: The Proposed U.S. Understanding," *American Journal International Law* 78 (1984), pp. 370–72. See also Whitaker, B., "Revised and Updated Repo on the Question of the Prevention and Punishment of the Crime of Genocide," UN Doc. E CN.4/Sub.2/1985/6, p. 16.

96 Schabas (cf. note 39), pp. 230–40; Ratner and Abrams (cf. note 41), p. 37.

97 See, e.g., Ratner and Abrams (cf. note 41), pp. 245–46; Chalk, Frank, "Redefining Genocide, in: Andreopolous (cf. note 68), p. 50. See also "Comments and Observations of Government on the Draft Code of Crimes Against the Peace and Security of Mankind Adopted on Fir Reading by the international Law Commission at its Forty-Third Session," UN Doc. A/CN. 448, pp. 35–36.

98 Fein, Helen, "Genocide, Terror, Life Integrity and War Crimes," in: Andreopolous (cf. note 68 p. 95; Charny, Israel W., "Toward a Generic Definition of Genocide," ibid., pp. 66–74.

99 For more on the problem of loose definitions of genocide, see Ratner and Abrams (cf. note 41 pp. 42–43, 247; Charny (cf. note 98), pp. 90–92.