

## CAMBODIAN GENOCIDE CONTROVERSY FILE 1.0

17/ Thion discusses concept of genocide as applied to Cambodia

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### DOES THE CAMBODIAN CASE FIT THE REQUIREMENTS OF THE GENOCIDE CONVENTION?

If we understand genocide, as most people do, as the killing of people purely on ethnic grounds, or the attempt to do so, then Cambodia does not fit in. Even cases of indiscriminate killings based on purely ethnic, or tribal discrimination, as we have seen taking place, for instance, in Burundi, or elsewhere in Africa, Sabra and Chatila, the Sumgait pogrom against Armenians, the killings of Tibetans in Eastern Tibet, the destruction of a third of the population of East Timor by the Indonesian army, the destruction of Brazilian or other Amerindian tribes, and many other similar massacres which have taken place since the Genocide Convention has been \$active\$ (1951), show that the international community cannot handle this notion because too many of its members are or have been guilty of barbaric acts of this kind. Big powers not only close their eyes when it is committed by one of their allies but they usually help them to commit and cover up the crime. (Footnote 1: The case of Indonesia, for instance, is heavily loaded, with the massacre of more than 500,000 communist affiliates in 1965, the violent oppression exercised in Irian Jaya since 1969 when the international community approved the forceful take-over of Western New Guinea, and the invasion of Portuguese Timor in 1975, followed by massacres equalling those of Pol Pot. But Indonesia is a trustful ally of the West which generously provides the weapons to carry the mass murders. In which press would it be possible to call Suharto \$perpetrator of genocide\$ ? On Irian Jaya, see Robin Osborne, <Indonesia's Secret War.End> footnote)The press and the judicial powers are usually accomplices, either by silently approving or by directing selective blame on the enemy's misdeeds.

Amid growing speculation in the West on these questions concerning Cambodia, few writers address the Cambodian reaction. The concept of genocide is of course a complete novelty in this country. But in general Khmer ideas about law may look rather confused. It would take a long time to try to show that two entirely different schools of thought - the first

one inherited from Theravada Buddhism mixed with traditional wisdom, the second one painstakingly brought into the country by the colonial administration - lived side by side without really blending together. The Cambodian Codes; were mostly a matter of oral tradition and justice was administered by political authorities on the basis of wise judgement rather than on any fixed set of abstract principles, even if some crimes had established penalties. (Footnote 2: See Adh=E9mar Lecl=E8re, <Recherches sur= le droit public des Cambodgiens>.End footnote) Colonial; administration needed a body of logically related notions as a framework into which its power and activities, entirely new in the country, could be regulated. The Cambodians could not care less and the new legal system remained largely restricted to the French sphere of action. For instance, there were repeated attempts, from the start, to involve the Cambodians in establishing a land ownership system - which they found entirely alien. (Footnote 3: See A. Boudillon, <La R=E9forme du r=E9gime=8A>; Roger Kleinpeter, <Le Probl=E8me foncier au Cambodge.> End footnote) Later, notions of Roman law; were incorporated in state laws. There were written laws, voted by an elected Assembly, a system of courts and even a Faculty of Law. But this alien system affected the population only slightly and never put down intellectual roots in it. The arbitrary decisions of a mostly corrupt administration, the violence of the state power and the unlimited greed of the commercial class anyway made a mockery of any pretence of a rule of law.

In this <Ancien regime> mentality, there is no justice to be expected from a system entirely devoted to the interests of the mighty and the wealthy. This does not mean Cambodia is a lawless society. On the contrary. A complicated set of implicit moral rules regulates everyday life and very clear standards of good conduct are taught to the young. If circumstances of war, famine and political crises allow massive ruptures and if the necessities of survival throw individuals beyond the normal rules, they reappear afterwards. But they are not, in themselves, strong enough to impose order on what we could be tempted to call the \$natural anarchy\$ of the Khmers. So far, only some form of terror has succeeded in doing this because the law is not deeply rooted in the peoples' consciences.

The concept of a particularly defined concept of \$genocide\$ and of the trial of a political chief would seem rather ludicrous to most Cambodians. Revenge is understandable but retribution belongs to future lives. Trust in an independent judiciary just does not exist, and for good reason. A trial held by foreigners would be just one more foreigners' business. With the exception of a tiny number of intellectuals and politicians acquainted with Western mores, everyone would see in the

complicated procedures of a court the useless prelude to a retaliatory killing. And, anyway, such a trial has taken place already. In the summer of 1979, an international tribunal was convened in Phnom Penh to try Pol Pot and Ieng Sary <in absentia>. Documents, testimonies, witnesses were produced. I believe that around 1,000 pages of documentation were presented. A summary was later published. (Footnote 4: People's Revolutionary Tribunal=8A, Phnom Penh, 1988, 311 p.) As it was obviously organized by the Vietnamese, the Western press ignored it. Ten years passed before this same press started toying with the idea of a genocide trial, while Cambodia had all along been submitted to an economic embargo the criminal nature of which could also be tested in court. May I submit this idea to our interested lawyers?

Pol Pot is no longer a real person in Cambodia. It has become a common word : \$Twelve pol pot entered village so and so.\$ It certainly focuses feelings of hatred and resentment. (The word Pol Pot is never used in Khmer Rouge usage, where the man is usually referred to as \$number 87\$.) Any form of violence would seem legitimate. When a crowd surrounded the house of Khieu Samphan in Phnom Penh in November 1991, the rumour was that \$Pol Pot\$ was there. And even more than blood, what the people wanted to see was the <face> of the man, a face they have never seen, a face they probably thought of as inhuman. The man never really exposed himself and his name is nothing but a symbol.

We must start from the fact that Cambodians were never in a position to know the reasons for this bloody mess. In these ill-clad wild boys, they could only recognize the naked figure of power, doing what power has always done in this country : humiliate or eliminate. (This goes a long way towards explaining what some would describe as suicidal tendencies, in individuals as well as in society.) Renouncement is the only narrow escape from the alternative but this time even monks and hermits were trapped. Would then a trial be a great educational move, providing at last an opportunity for the new generation to reconcile remembrance and understanding ? It probably could. Although historians usually pass severe judgement on this kind of great political trial, these staged dramas may have a cathartic effet, reorder collective thought and provide new bridges for the legitimization of emerging powers. But we should remain lucid : the law is built with concepts and politics with symbols. A political trial is a hybrid exercise where lawyers do their intellectual trick while the audience at large watches a symbolic play. (Footnote 5: For an Asian context, see Paul Mus, \$=ABCosmodrame=BB et politique en Asie du Sud-Est\$, reprinted in <L'Angle de l'Asie.> End footnote)

Today, Cambodians both remember and forget. The pains they suffered, as individuals, as members of crushed families, are deeply

ingrained and the wounds will probably never heal. But the catastrophe seems to remain circumscribed in personal history. Paradoxically, this period of totally collective life developed into an individualistic struggle for life, aimed at surviving and, later, at re-establishing some normalcy. The global dimension was just an added burden and, for many, the sense of a collective drama seems to be waning.

In the West, the paradigm of genocide is still very much centred on Auschwitz. So true is this that, in an effort to attract part of the sinister charisma of Auschwitz, the masters of the new Cambodian regime, in early 1979, commissioned some Vietnamese experts, trained in Poland, to refurbish the interrogation centre called Tuol Sleng. (Footnote 6: The analogy is always tempting. See, for instance, what a distinguished Khmer senior economist with the Asian Development Bank, Mr Someth Suos, said recently in Penang : \$The killing field was a world major historical event that surpassed Hitler's killing of the Jews.\$ (<Workshop on Reconstruction and Development>, p. 37). He later adds: \$The Khmer Rouge cadre should be accorded a role in the society.\$ The parallel with Nazi Germany is nothing but laziness of thought. End footnote) Very few people saw it in its original state. But this paradigm plays also in another field, called in a vague manner : memory. As opposed to \$history\$ (reconstruction of the past based on documents and material evidence), \$memory\$ would be a tale of the past based on personal remembrance, subjective feelings, nostalgic attachment to \$roots\$. Some even think that \$memory\$ has more truth in it than the cold reasoning of \$history\$. Genocide and the \$memory\$ of it (basically, a reconstruction made by the <descendants> of the survivors) are linked with a refusal to mourn (and an acceptance of the passing away) of those who died an unnatural death. Psychoanalysis has a lot to say about this. (Footnote 7: See the numerous references to \$Mourning\$ in <The Complete Psychological Works> of Sigmund Freud and, in particular, \$Mourning and Melancholia\$ and \$Thoughts for the Times on War and Death\$ (written in 1915), in vol. 14, Standard Edition. For the Cambodian context, see James K. Boehlein, \$Clinical Relevance of Grief and Mourning among Cambodian Refugees\$. I am grateful to Lane Gerber who provided me with a copy of this article. End footnote) Jews and Khmers do not mourn and bury the dead in the same way and there is the risk that our Western concept of \$memory\$ could be entirely irrelevant to the Khmers who obviously have their own. I wish we may not succumb to the temptation to force our views on them, as we already do in so many other fields.

When we compare the Cambodian experience with the legacy of fascism - and we have no doubt as to the legitimacy of this comparison - we should note that, in the case of Europe, there was a struggle against it. Later, people could identify with that struggle, whatever had been the reality of

their own commitment, and build a memory, somewhat selective, around these notions of refusal, the struggle of Good against Evil, and victory. But in Cambodia, there was no such struggle. The level of terror was too high. There was not even a victory since Mr Pol Pot is still alive and kicking. =46foreigners did the struggle and, with them, a handful of Khmers who were later largely rewarded by the gift of exclusive state power. So, Cambodians have nothing positive to rely on, except an association with a foreign power that most of them would not want. If there is a political memory, it is a rather shameful one of abject submission, fear, passivity, inability to protect one's own family, of helpless dying children, of stealing bits of despicable food. It is difficult to build even hatred on these bases. And when the government, in the 1980s, organized a yearly Day of Hatred, which would have delighted Orwell's sarcastic mind, people performed it casually.

When the crowd rioted in the front of Khieu Samphan's house, an old lady came with her kitchen knife in order to chop the guy into pieces. The striking fact was she was alone of her kind. When the people saw the event on television and watched this white-haired man with blood dripping down his face, there was a general feeling of disapproval, a fear, stronger than anger, that bringing back this memory would endanger the present. There is a will to forget. The idea that the Khmers Rouges have changed, which they try so hard to disseminate, could come as an anxiety-killer pill for many people.

Because the government established by the Vietnamese made large use of a rather simplified view of the recent past to justify its policies and its temporary dependence on foreign troops, it was perceived as government propaganda and, as such, it obliterated the survivors' ability to build up their own retrospective understanding. On the Coalition side, it was worse. The victims were coerced into working closely with their killers. Echoing =46ather Ponchaud, they had to fabricate the myth that the Vietnamese were even more \$genocidal\$ than the DK. Even now Pol Pot refers constantly to the \$genocidal and aggressive <yuon> enemy\$. And Sihanouk went to great lengths, on American television, to explain that the Khmers Rouges were \$no more criminals\$.

If we understand genocide in a broad sense as meaning unjustified mass murder, then Cambodia, as well as many other states, is a case, and its leaders may be brought to an international court - which, by the way, does not currently exist. If, on the other hand, we consider the notion has a very specific meaning, then we have to expand its significance considerably in order to include Cambodia. This is what I tried to convey, many years ago, when I wrote that \$if words have a meaning, there was certainly no genocide in Cambodia\$. I understand that some Cambodians took

exception to this sentence, but then is not their use of the word a kind of substitute for a victory over Pol Pot they could not win in the battlefield, and even less by being his political ally?

If we could catch Pol Pot and give him a fair trial, he would certainly claim he was not the worst killer in Cambodia: (Footnote 8: Ieng Sary recently answered this question in a talk with two journalists (<Le Nouvel Observateur>, 17-23 Nov. 1991) : Genocide ? \$A lie [...]. I am human. I never thought I committed acts of genocide, I shall never recognize that.\$ Any regrets ? \$Yes, I regret I could not efficiently oppose erroneous points of views which prevailed at certain times, I regret I had not the courage [...] to directly oppose some people.[...] Maybe I could not have stayed alive until now.\$ End footnote) he would point out that many victims of starvation suffered the consequences of the aerial destructions of the Cambodian countryside. He would remind us that Messrs Nixon and Kissinger concentrated US air power on his country and destroyed around 600,000 lives in the process. Would they sit in the same dock? Would they also face the charge of genocide in Cambodia, for having killed Khmer peasants \$as such\$?

Who fought for months and months to include in the future Peace Agreement on Cambodia a reference to the \$genocidal practices of the past\$, in order to provide a ground for the political elimination of the Pol Pot group, at the risk of jeopardizing the whole diplomatic process ? It was the Phnom Penh government, led by people who had been very junior leaders in the Khmers Rouges movement and knew, better than most, its true nature. And what happened ? The American government gave its full support to the Chinese; scrapping of this infamous label. The final version of the Agreements does not mention genocide at all and this is in order to reincorporate the Khmers Rouges into Cambodian public life, very much against the will of the huge majority of the people here. The hypocrisy of American officials explaining that they did everything possible to prevent the return of Pol Pot to Phnom Penh is revolting, particularly when one remembers that at the UN Geneva Conference, in 1981, they voted down the ASEAN proposal to look for a political solution based on a disarmament of the Khmers Rouges.

In fact, there are two entirely different concepts of genocide : the one we all know and use on occasions, as a kind of historical category, and the one used by the lawyers, based on the widely unread UN Convention, which could make the murder of two people fall technically into the \$genocide\$ category, according to the motive for this crime. The discrepancy between the two is so wide that confusion is unavoidable. The reality is that genocide, massacres, wiping out entire peoples or cultures, and other inhuman atrocities, torture, massive corruption, and

so on, are part and parcel of government policies, most usually applied to foreign countries. There is no other law than the law of the jungle. If we want to change this situation, we must reform our own laws first, strip the authorities of their political immunity, abolish the \$Reason of State\$ and the system of official secrecy which covers up all these crimes. If we could reach a stage in which any official would be tried according to the same rules that apply to you and me, to any other ordinary human being, we would not need all these extraordinary concepts because common law is quite enough.

Just after the Algerian war, the French government passed a law of amnesty: the thousands of crimes committed by the troops in this seven-year long conflict were abolished. They reputedly never existed. Nobody was punished and nobody may publicly be named in connection with those crimes. As for the USA, checking the name of the My Lai village in a Viet Cong list of villages wiped out by the US ground forces, I found out it was one among several hundreds, recorded long before My Lai became a public affair. Was there any enquiry into the destruction of those villages? Were even those responsible for the slaughter in My Lai really punished? Who are we to give moral lessons to others?

I of course fully agree that Pol Pot should be prevented by any means from returning to power. I find it a bit paradoxical that so much blame was poured on the Vietnamese, who did just that, prevent Pol Pot from coming back, by people who did so much to promote the same Pol Pot and insisted he kept his seat in the United Nations. I am also fully in favour of a trial of Pol Pot and of his accomplices and his foreign associates, including American, Thai and Chinese officials who conspired to support him when he was in power and after his fall. I suggest the application of the ordinary Cambodian law for events which took place in Cambodia.

Genocide is nothing else but a political label aiming at the exclusion of a political leader or party beyond the bonds of humanity. It leads us to believe we are good, that we have nothing to do with these monsters. This is entirely misleading. Pol Pot has been produced by our political world, is part of it, is using it and is getting strong from it.

Before saying he is dirty - which is what he is without a doubt - we should clean our own house first.