

## **Wolfgang Meyer: The Khmer Rouge Tribunal – Cambodia in the Shadow of History**

It was not until thirty years after the end of its rule that the Extraordinary Chambers in the Courts of Cambodia (ECCC) prepared to come to terms with the state terrorism of the Khmer Rouge in 2006. Under the leadership of Pol Pot, from April 1975 to January 1979, about 1.7 million people were executed or died from hunger, exhaustion, or disease. Under the stone-age communism of the Khmer Rouge, religion, education, leisure, money, private property, and the family were abolished. Instead, labour camps, collective canteens, forced marriages, violent relocations, denunciations, and mortal fear were part of everyday life.

In the beginning, the target of the Khmer Rouge, who distinguished between the old rural people that had been subjugated by them at a very early point in time and the new urban people, was not apparent. At first, the movement only attacked collaborators of the old regime and educated people; later, it persecuted dissenters of all kinds. Now, its terror between 1975 and 1975 is to be examined. The purpose of the Tribunal is to bring those responsible for the crimes in 'Democratic Kampuchea' to court.

The ECCC took up its work in July 2006, and in 2007, five prime subjects were arrested: Pol Pot's chief ideologist, Nuon Chea; the former president, Khieu Samphan; the former vice prime minister and foreign secretary, Ieng Sary; his wife, Ieng Thirith; and a prison director, Kaing Guek Eav. The declared objective is to establish and prove their, and possibly other people's, personal responsibility for the atrocities committed.

The disaster which Cambodia suffered when the Khmer Rouge seized power is inconceivable without the Cold War whose logic was determined by two front lines – that between communism and capitalism and that between the Soviet Union and China in their struggle for the leading role within the 'socialist world system'. Cambodia was caught between the two fronts. However, the roots of the tragedy lie much deeper. Until the 14<sup>th</sup> century, Cambodia's Angkor Empire was one of Asia's great powers whose achievements may be mentioned in one breath with ancient Rome or the Mayan Empire and may have fostered the Khmer Rouge's mania. After 1431, the Empire's territorial integrity was threatened by the rise of its neighbours until it became part of French Indochina in 1863. After independence, Cambodia was ruled from 1954 to 1970 by King Sihanouk who strove for neutrality, especially because of the escalating conflict in Vietnam. King Sihanouk's rule was brutal. Opposition was dangerous, and numerous communists fled to North Vietnam to live in exile. What is more, an anti-Vietnam and pro-China group gained influence within Cambodia's CP after 1962, forming the core of the later Khmer Rouge. When the Communist Party led by Saloth Sar began to wage war against him in the rural areas in 1967, King Sihanouk hit back. This resulted in a militarisation of the communists, an increase in the strength of the radicals who later became the Khmer Rouge and initiated state terrorism, and the appearance of Soviets and Chinese on the country's political stage.

In 1964/65, Cambodia became part of the scene of the escalating war in Vietnam. While the Ho Chi Minh trail leading through Cambodia's mountainous region became North Vietnam's infiltration and supply route, Sihanoukville became one of the supply ports for the US and South Vietnam. When King Sihanouk was overthrown by General Lon Nol in 1970, the Kingdom of Cambodia turned into the Khmer Republic. Mr Sihanouk fled to Beijing where he joined forces with exactly those communists he had persecuted before. Due not only to the resultant increase in the strength of the communists but also to the bombing of Cambodia by the US, the Khmer Rouge gained strength in the country, while Mr Lon Nol was in control of the cities, particularly Phnom Penh which had been spared from bombing. However, the

General was not able to hold his ground in the expanding civil war. In April 1975, the Khmer Rouge won and immediately started establishing their reign of terror: Forced evacuations, liquidation of exile communists, and pogroms against Vietnamese, Thai, and Muslim residents became part of everyday life in Democratic Kampuchea, mostly unchallenged by the international community.

When the Vietnamese army invaded the country three years later, at the end of 1978, the situation changed again. Vietnam-friendly communists and former Khmer Rouge members from the east took over the helm. The new People's Republic of Kampuchea was supported by Vietnam and the Warsaw Pact, while the USA, the West, and China refused to recognise the state.

For Cambodia's population, who stood between all fronts of the Cold War, the 1980s are indeed a lost decade. With the downfall of the Soviet Union which began in the late 1980s, the People's Republic of Kampuchea became Cambodia State, although the Hun Sen government remained in office. As early as 1987, there had been talks between the civil war parties. However, as all sides feared that they could be held accountable for their involvement in atrocities the talks remained almost fruitless.

A new start was made in October 1991, when four of Cambodia's civil-war parties and 18 states signed the Paris Agreement which granted the Khmer Rouge the right to participate in the government but demanded that a UN peace mission be deployed, elections held, and a democratic constitution drafted. In 1992, a military and civilian mission came to the country, elections were held in 1993, and a constitution was adopted that defined the country as a constitutional monarchy. King Sihanouk returned to the throne. A demobilisation of the war parties was not achieved. The Khmer Rouge escaped disarmament, but from 1996 onwards, they lost their influence, partly because of internal conflicts. Pol Pot killed Son Sen, one of his former henchmen, and was himself arrested by Ta Mok. He died in 1998. Parts of the Khmer Rouge were integrated in the armed forces. Ieng Sary was granted amnesty; Ta Mok died in 2006.

The country was threatened by another crisis in 1998 when the UN sent a commission, having passed a resolution on the situation of human rights in Cambodia one year before. The commission's report criticised the human-rights situation in the country and called for establishing an international tribunal. However, this demand was refused by Cambodia's government. The question of how to finance such a court also gave rise to conflicts, as Cambodia was supposed to pay 13.3 million of the estimated cost of 56.3 million US dollars. The UN intended to contribute 43 and Japan 21.6 million. Sihanouk and Hun Sen called it a waste of money and demanded development aid instead of a court. The discontent prevailing in Phnom Penh caused the US to make an offer: When the already tight cost estimate for the tribunal was raised to a total of 170 million US dollars and Washington offered to contribute, the US attached to it the condition that Cambodia should agree to a special US adviser who would watch over compliance with international standards. As the UN also intended to send an adviser, Phnom Penh rejected the project.

In July 2006, the ECCC began work as a 'hybrid' tribunal consisting of Cambodian and international judges. Both sides had to make compromises. The court operates at two levels and with mixed chambers. The judges were chosen by Cambodia's Supreme Court of Magistracy, the UN having presented a list of international judges for selection.

Proceedings are to be concerned only with crimes committed by senior leaders and the most responsible persons among the Khmer Rouge. In concrete terms, we are looking at genocide, crimes against humanity, and war crimes – all classical crimes under international law. Homicide, torture, and religious persecution are additional charges from Cambodia's criminal code.

Even after the judges were sworn in, the disputes continued. Mutual trust was strained considerably by a conflict revolving around the rules of procedure. Furthermore, the question of whether or not to admit foreign lawyers caused trouble. On the other hand, it was agreed that not only judges, public prosecutors, and attorneys but also representatives of the victims should be allowed to participate in the tribunal.

The hybrid character of the court certainly is a challenge. The fact that its national and international staff are rooted in diverse cultures with different legal traditions makes it difficult for them to critically address crimes committed in Cambodia. The ECCC is guided by democratic Western legal standards, which also apply in Cambodia. This is an opportunity for Cambodia's population who is responsible for making sure that the already strained coexistence is not threatened by the process of coming to terms with the past, in a country where offenders and victims live next door to each other. After all, Cambodia's fragile stability could only be achieved because the country's history was never addressed honestly and critically, and offenders were never persecuted.

The court's work is confined to a small circle of offenders and a limited period of time in which the crime was committed. The compromise is unsatisfactory but it forms the basis of a result which possibly is the best for both Cambodia and the international community, for international criminal law, and for an honest and critical analysis of history.