



มหาวิทยาลัยบูรพา
 วิทยาเขตจันทบุรี

การดำเนินคดีผู้นำเขมรแดง : มุมมองเชิงกฎหมายและจริยธรรม

สรุปความโดย ไทวัลย์ นิลเขต*

หลังจากทำการยึดอำนาจการปกครองประเทศได้อย่างสิ้นเชิงแล้ว พรรคคอมมิวนิสต์กัมพูชา (เขมรแดง) โดย การนำของพอล พต ได้นำระบบเผด็จการแบบเหมาเจ๋อตุง มาใช้บริหารประเทศ ซึ่งนำความทายนะมาสู่ประชาชน ชาวกัมพูชาจนยากที่จะลืมเลือน เพราะเป็นการปฏิบัติตาม ตัวอักษรของหลักการแบบสุดโต่ง โดยกำจัดบุคคลากรและ อิทธิพลของระบบเก่าอย่างสิ้นเชิง ตลอดจนทำลาย โครงสร้างและระบบเดิมของสังคมชาวกัมพูชาให้กลับกลายเป็น สังคมเกษตรกรรม อย่างเต็มรูปแบบตามหลักการ ของเหมาเจ๋อตุง พร้อมกันนี้ก็ได้สร้างสถานการณ์อัน นำหวาดกลัวต่างๆ รวมทั้งทำการยุยงส่งเสริมให้แต่ละ คนขาดความไว้นือเชื่อใจกันและกัน เพื่อให้ประชาชน กัมพูชาไม่สามารถรวมตัวกันเป็นกลุ่มก้อนเพื่อต่อต้าน ระบบการปกครองแนวใหม่ได้ ยิ่งกว่านั้นในสภาพความเป็นจริง ความวุ่นวายต่างๆ ตลอดจนการหวาดระแวง ระหว่างบุคคลซึ่งพรรคคอมมิวนิสต์กัมพูชาได้ริเริ่มไว้ไม่ได้เกิดขึ้นเฉพาะในสังคมทั่วไปของประเทศเท่านั้น แต่ได้เกิดขึ้นภายในสมาชิกของพรรคเองด้วย ผลที่ตามมาก็คือ ได้มีสงครามทำลายชีวิตประชาชนมากมาย โดยพรรคคอมมิวนิสต์กัมพูชาเป็นผู้ก่อการ จนกระทั่งได้รับ

สมญาว่า “อาชญากรรมล้างเผ่าพันธุ์” ดังนั้นจึงสามารถกล่าวได้ว่า คณะผู้นำพรรคคอมมิวนิสต์ได้ละเมิดกฎหมายระหว่างประเทศว่าด้วยอาชญากรรมสงคราม การทำลายล้างเผ่าพันธุ์ และอาชญากรรมทำลายมนุษยชาติ ในกรณี ที่พรรคทำการปราบปรามผู้ที่ไม่ให้ความร่วมมือ ตลอดจน ผู้ที่ทำตัวเป็นศัตรูของพรรคอย่างรุนแรงและโหดร้าย ในรูปแบบการทำลายล้างเผ่าพันธุ์

บทความนี้ได้นำเสนอประเด็นที่ว่ามีความจำเป็นหรือไม่เพียงใดที่จะดำเนินคดีกับบรรดาผู้นำพรรคคอมมิวนิสต์ กัมพูชา ซึ่งต้องรับผิดชอบต่อการกระทำต่างๆ ของพวกเขา ระหว่างการยึดครองอำนาจในช่วง พ.ศ. 2518 - 2522 ในกรณีที่จะต้องมีการดำเนินคดี ผู้เขียนนำเสนอว่าควรให้ศาลโลกทำการพิจารณาคดีนี้จึงจะเหมาะสม

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***ABOUT THE TRAIL OF THE KHMER ROUGE (K.R.) LEADERS
AN ETHICAL AND LEGAL POINT OF VIEW***

*By Chou NORINDR**

INTRODUCTION

It is no more a secrecy that during the rule of the KR headed by the Pol Pot clan (Pol Pot alias Saloth Sar was Secretary of the Communist Party of Cambodia, a Maoist Party) there were "killing fields" in Cambodia. In other words from 1975 to 1978 the Pol Pot clan transformed Cambodia into a gigantic field experimenting its agrarian revolution and classes and ethnic purification by means of Maoist dictatorship (in this respect one must not forget that Maoism has always inspired the Polpotian revolution and without the all-round assistance of the Maoist clique in China it is unthinkable to have

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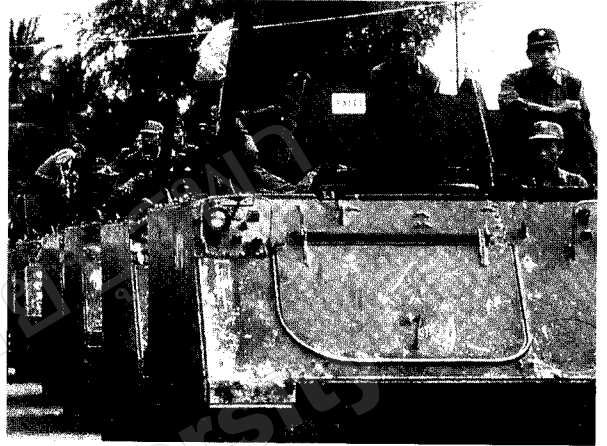
the Polpotian dictatorship in Cambodia). As its characteristics were primarily relevant to the ultra-leftism or “communist infantilism” if we follow the Marxist-Leninist process of the revolution the Polpotian revolution, by some of its aspects, is close to the French Thermidorian revolution, the Bolshevik revolution in its early stage of 1919-1924, the Maoist Red Guard revolution, with its excesses, its extreme violence in conformity with the Marxist expression according to which “the Revolution devours its own children”.

Why in the frame of the Journal of Philosophy and religious studies we have chosen to treat this political problem? The reason is that this political problem recovers the problem of human rights and the ethics governing the politics and politician of all over the world. Therefore this is a philosophical approach of a very serious human problem viz. war crimes, crimes against humanity and crimes of genocide committed by the KR leaders, through a double point of view : a legal and an ethical aspect.

THE MURDEROUS MADNESS

Drunk by their victory in April 1975 the Khmer Rouge (K.R.) committed many excesses like in most of the revolutions in the world. However psychologically their excesses were incomparable with any other revolutionary excesses in the world because no expert in communism could foresee such sad events which far away surpassed the human imagination. For nobody can guess the appearance of such abominations against humanity in a Buddhist country. Indeed crimes committed by the

KR should give a bad consciousness to those governments who for some particular reason or tactics, backed and helped the KR from their beginnings to their accession to the power in Cambodia. Ethically one must raise the question to



know whether one has the right to use the evil for suppressing the evil. Otherwise one must know whether it is ethically right to use the criminals viz. the KR like in the past, for containing and combating the Vietnamese communists from 1979 to 1989, as the latter appeared to be the tools of the Soviet in Indochina. In global politics sometimes the “end cannot justify the means” because of the ethical problem. But as the world politics is Machiavellian ethics has hardly its place in the brain of world rulers and rarely we can find human politics among the Great Powers. For that small people in the world have to suffer such brinkmanship of Great Powers. Nevertheless sometimes if not generally Great Powers’ brinkmanship is self contradictory and harmful to the small people’s interests. As regards the contradictory and machiavellian policy of Great Powers in Cambodia obviously it was useful to them but harmful for the Cambodia people. Therefore the consequences of



this contradictory and machiavellian policy of Great Powers are the atrocities and monstrosities committed by the KR. that only Freud could understand and explain.

A PATHOLOGICAL CASE.

All the KR organization was transformed into a military and police one. All Angkar (Communist Party Organization) members have the duty to denounce and kill all opponents and enemies of the KR regime. Even children were trained to be vanguards in eradicating their class enemies. That is why during the KR rule children transformed into soldiers played their role in the mass killings. And these well brain-washed children and trained to become killers once armed became blood-thirsty killers of innocent people. While adult KR soldiers enjoyed more powers and could put to death everyone did not please them.



Therefore, the KR leaders used these murderers for establishing their power based on terror, fear, repression and killings. And they settled their internal rivalries or rifts by torturing and killing each other. But paradoxically the Pol Pot clan although minority in the whole Cambodia could

keep their power and carry out their dictatorship with the massive help and assistance of the Chinese Communist Party through its Chinese advisors. It is noteworthy to observe that during the resistance of the Cambodian revolutionaries against the Lon Nol regime from 1970 to 1976 - 77 the Vietnamese Communist Party backed and helped also the Communist Party of Cambodia headed by Pol Pot. Therefore strengthened by the Chinese and Vietnamese support the Pol Pot clan could carry out its blood-thirsty rule with its abominable crimes that we will try to analyze.

THE MONOLITHIC POL POT CLAN

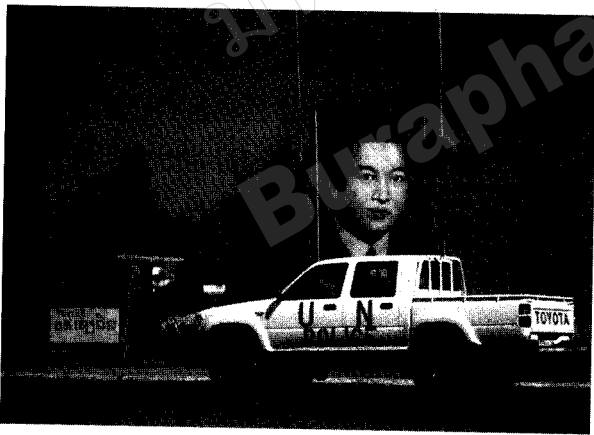
Like in the early Bolshevik Revolution within the KR leadership there were rivalries between different KR leaders having different background such as social-class belonging, cultural level, setting up of clans such as the Pol Pot clan consisting of Pol Pot's relatives or brothers and sisters-in-law (Pol Pot, Secretary of the Communist Party Kampuchea (C.P.K.) and Prime Minister of the so-called Democratic Kampuchea, and Iang Sary, C.P.K. Politburo member and Deputy Prime Minister and Minister of Foreign affairs of Democratic Kampuchea, were two brother-in-law because the wife of Pol Pot called Iang Thirith was Iang Sary's sister, and Iang Sary himself is a brother-in-law of Khieu Samphan because his wife Khieu Ponnary is a sister of Khieu Samphan).

Similarly the Pol Pot clan was allied to the Thiounn clan composed of many brothers and sisters among them we can cite the three brothers Thiounn Prasith, Thiounn Theunn, Thiounn Mum, also

C.P.K. Central Committee members and ministers of the Democratic Kampuchea Government. The same pattern of familial relationship can be applied to other KR leaders such as Nuon Chea, a C.P.K. Politburo member in charge of ideology and former President of the Democratic Kampuchea National Assembly, Son Sen, a C.P.K. Politburo member in charge of the Defense and Democratic Kampuchea Minister of Defense, ect...

Thus the cohesiveness within the KR leaders existed only among relatives and familial members. Therefore struggles for power within the inner circle of the Pol Pot clan seems to be non-existent.

On the contrary they existed between the Pol Pot clan and others KR leaders belonging to other KR obedience. And these latters were not united and solidary. That was their main weakness.



Therefore when the Pol Pot clan decided to get rid of them it could do it easily. In doing so Pol Pot used the tactics of sowing division and rift between his opponents or enemies in order to weaken them and creating among them suspicion. This is conform with the sacred principle consisting of dividing for ruling. Generally most of the opponents of Pol Pot fell in his trap and used to

charge each other under torture. And Pol Pot proceeded by eliminating his opponents or enemies one by one until the last.

Therefore bloody purges and eradication stroke only potential opponents to this inner circle.



That is why victims of Pol Pot purges existed within and outside the KR ranks. One can affirm now that the whole Khmer Vietminh members including people like Pen Sovan, Heng Samrin, Chea Sim, Hun Sen, Keo Rosmay, Tea Banh, Say Phouthang, Hor Nam

Long, ect...those of KR who defected to Vietnamese communists after the Vietnamese - Cambodian conflict burst out and constituted with the help of the Vietnamese Communist Party in 1978 their Front of National Salvation of Kampuchean People (F.N.S.K.P.).

After having annihilated its internal opponents the Pol Pot clan stroke other people belonging to the former United National Front of Kampuchea (U.N.F.K.) and the United National Revolutionary Government of Kampuchea (U.N.R.G.K.). That is to say people opposed to the Lon Nol regime without being communists but just patriots. These people victims of Pol Pot were numerous starting with Huot Sambat, Chharin Chhak, Chau Seng, Keo An, Toch Kham Doeuan, Hu Nim, Hu Yuon, ect... who were representatives of the Cambodian intelligentsia.

Added to other victims of the KR regime who were simple people without any political motivation or obedience they formed the number



of 1, 7 to 2 million Cambodians killed, tortured, mutilated, starved, handicapped for life. On the other hand the KR massacred also Buddhist monks, and worshippers of other religions including the Muslims, ethnic minorities such as : Chams, Rhades, Djarai, Phnong (or montagnards of Hauts Plateaux). Otherwise one fourth of the Cambodian people (8 millions) were exterminated by the KR.

FORCED LABOUR

However the atrocities of the KR cannot be summarized in few pages because they were innumerable. The most prominent of them is undoubtedly the forced labour to which were compelled most of valid Cambodians in the agrarian sites and building sites. The other aspect of the KR atrocities was the mistreatment of these forced labourers and prisoners. That is to say the KR guards had the right of life and death vis-a-vis any people of whom they were in charge. Therefore most of ill prisoners and forced labourers died massively when they were not killed by them by beatings and stabs. If any prisoner or forced labourer is sick he did not benefit any medical care from the KR organization. Therefore a huge number of forced labourers deceased of various diseases such as malaria, cholera, dysentery, typhus, typhoid, ect... because of lack of medicalcare.

MASS KILLINGS

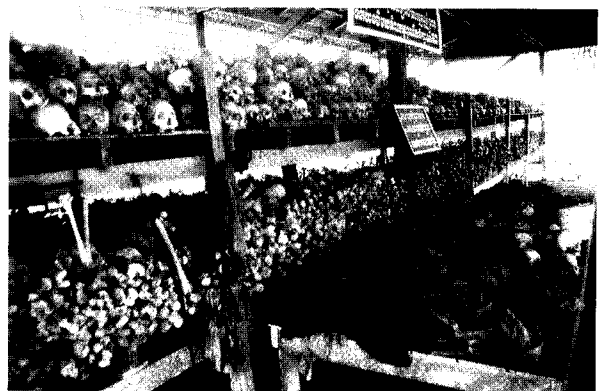
Mass killings occurring in the so-called Democratic Kampuchea have been worldwide known.

There are many alive witnesses of these sorrow events. There is also abundant literature relevant to the KR atrocities during 4 years rule of the KR.

Many Cambodian survivors have witnessed the KR "mass killings". One of them a Cambodian engineer Pin Yathay has abundantly described the atrocities of the KR in the his book "*La folie meurtrière*" published in Paris.

Another Cambodian expert in Cambodian affairs, Prince Thomico Sisowath who had an insight view of the Khmer Rouge, gave us a onest view of the Khmer Rouge Organization in his study "*Norodom Sihanouk and the Khmer factions*" in Indochina Report No 9, October-December 1986.

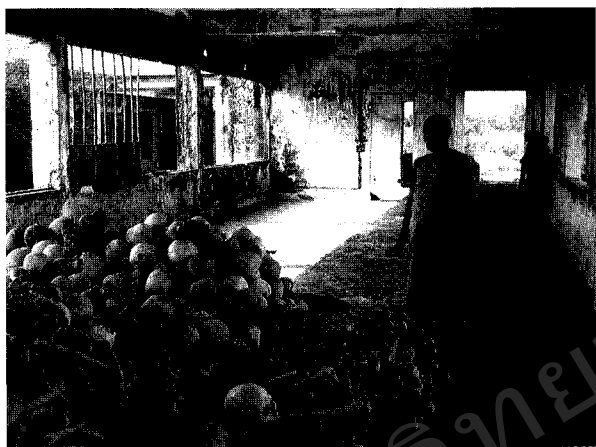
It is noteworthy that the Cambodian physician Dith Pran has also interpreted a role of a Cambodian survivor of the KR atrocities in the American film "*Killing Fields*". "*Killing Fields*" is a title of a book relating the atrocities of the KR organization written by the journalist Hudson Christopher.



Moreover the KR atrocities have been treated in the academic field by many authors both European, American and Australian who carried out their field researches immediately in the aftermath of the fall of the KR regime.

A French academic Pierre Ponchot has

analyzed in his book “*Cambodge annee zero*”, the history of the taking over of the KR in Cambodia in April 1975 and the nature of the KR regime with its errors, shortcomings, murdering drift, then its collapse in January 1979 due to the invasion of the Vietnamese communist troops.



To these abundant documents on the KR atrocities we need to cite valuable books written by two Australian scholars :

Ben Kiernan and his Cambodian wife Chanthou Bua, wrote the history of Democratic Kampuchea under the title “*Peasants and politics in Kampuchea 1942-1981*”, published in London in 1982, in which they emphasized on the history of the accession of the Maoist Cambodian communists into power in Cambodia with their fatal errors, their excesses and their fall.

As for another Australian scholar David P. Chandler, he analyzed the sinister Cambodia communist revolution in his books entitled “*Revolution and its aftermath in Cambodia : Eight essays*”, published in New Haven, Yale University in 1983 and a “*History of Cambodia*”, published in Boulder, Colorado in 1983.

Michael Vickery wrote his book entitled

“*Cambodia 1975-1982*”, published in Boston in 1984. This book went inside the KR organization, history and method. Furthermore Michael Vickery emphasized the internal rivalries of the KR leaders and tried to explain the murdering drift of the KR leaders emanating from these rivalries.

In spite of the detraction of the KR survivor leaders the KR atrocities constituted serious crimes against humanity and crimes of genocide. And the sinister KR prison Tuol Sleng is there in Phompenh for witnessing the abominable crimes of the KR leaders. Now this prison becomes a KR atrocities museum. So as the notorious “S-21” interrogation and torture center and the Ministry of Foreign Affairs of Iang Sary¹.

CRIMES PUNISHED BY INTERNATIONAL LAW

Nevertheless according to the International law serious crimes committed by the KR leaders are relevant to three categories of crimes punished by the International Law : war crimes, crimes against humanity and crimes of genocide.

War crimes :

According to the article 6 of the Charter of August 8, 1945 setting up the International Military Tribunal of Nuremberg empowered to judge and punish Nazi war criminals, war crimes are defined as : “*Notably violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war or persons on*



the seas, killing of hostages, plunder or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.”²

However the current International Law gives a new definition of war crimes which, according to the provisions of the article 5 of the Statute of the International Tribunal, established by the Security Council acting under Chapter VII of the Charter of the United Nations, in order to prosecute persons responsible for serious violations of International Humanitarian Law committed in the territory of the former Yugoslavia since 1991, are called “Violations of the laws or customs of war”³.

Thus according to the new definition, the Violations of the laws or customs of war are concerned with :

- a- employment of poisonous weapons or other weapons calculated to cause unnecessary suffering ;
- b- wanton destruction of cities, towns or villages, or devastation not justified by military necessity ;
- c- attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings ;
- d- seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science ;
- e- plunder of public or private property⁴.

It is to observe that the same Agreement of August 8, 1945 between USA, USSR, UK, and France, for the prosecution of Major War Criminals of the European Axis, set up also the International Military Tribunal for the Far East seated in Tokyo



empowered to prosecute and judge the Japanese War Criminals⁵.

During the border conflicts between Cambodian and Vietnamese communists occurring in the areas of Rach Gia, Baria, Tay Ninh (Southern South Vietnam) the KR troops assisted by Chinese counsellors carried out a border war against Vietnam during the crucial years 1975-1978 during which the KR practiced the burnt land against Vietnamese civilians. For while penetrating in the Vietnamese territory they looted, abducted, raped, killed, burnt everything including people and animals so that after the intrusion of KR troops there is no more alive people and animals in it. Regarding the atrocities or war crimes committed by the KR troops against Vietnamese civilians many White Books were published and diffused by the Vietnamese Foreign Ministry to the attention of world opinion during this crucial period of Cambodian-Vietnamese conflict. This conflict reached its apex in December 1978 when Vietnamese communist leadership decided to retaliate the Polpotian aggressions by invading Cambodia and toppling at the same time the Pol Pot regime and setting up a pro-Vietnamese Cambodian regime incarnated by Pen Sovan, Heng

Samrin and Hun sen, the three former KR middle-rank leaders. In this respect one must bear in mind the fact that ever since the KR leaders nurtured their irredentism and their secret scheme to recover the Southern Vietnam they called in Khmer Krom (land) in Cambodian and that the border conflict between two communist parties and countries was the result of their respective exacerbated nationalism. As regards the Khmer Krom land or now the South Vietnam, the irredentist KR considered it like their Khmer cradle occupied by the Vietnamese. Therefore it is their sacred duty



to reconquer it and to unify it with the actual Cambodia they continue to call Khmer Loe land.

Due to their exacerbated nationalism the KR leaders carried out against Vietnamese a racial war for satisfying their racial hate. That is why during the Cambodian-Vietnamese conflict the KR called the Vietnamese with a pejorative name : the Yuons instead of Vietnam.

Crimes against humanity

According to the definition given by the article 6 of the Charter defining the jurisdiction of the International Military Tribunal of Nuremberg

crimes against humanity means “*namely murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population, (before or during the war), or persecutions on political, racial, or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crimes*”⁶.

The continuation of the definition must be adjoined with the following sentence “*in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated*”⁷.

The International Law prohibits and punishes torture and other cruel, inhuman or degrading treatment or punishment by a Convention of 1984. As regards the torture, according to the definition given by the above-mentioned Convention, torture means “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession punishing him for an act he or third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or*





*incidental to lawful sanctions*⁸. The torture is subjected to be prevented by the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (1987) for this Convention sets out that “*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*”⁹. In this respect it is very well-known that many prisoners of the KR were tortured physically and psychologically. Now it is clear that the two former members of the U.N.F.K. and U.N.R.G.K, Hu Nim and Hu Yuon were tortured before being killed by their gaolers in the sinister prison Tuol Sleng. Treason as main accusation was alleged against them. But in fact they were killed because they opposed the Pol Pot clan like the other Cambodian patriots. The KR gaolers resorted to physical and psychological



torture for compelling their prisoners to confess supposed crimes and to self-accuse. This is a current method used by communist political police in the world : Soviet KGB, Vietnamese Mat Vu, Chinese Secret Police, ect... in order to extort confessions from accused peoples. In this respect it is noteworthy to mention the Stalinist trials in Moscow in which the defendants accused themselves

of supposed crimes dictated by their prosecutors after being tortured by the Soviet Political Police N.K.V.D.

Crimes of genocide

As a mankind's scourge Crimes of genocide are also subjected to be punished by the International Law. According to the definition given by the “*Convention on the prevention and punishment of the crime of genocide*” (1948) in its article II “*genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such :*

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

And the Convention in its article III enumerates genocidal acts to be punishable. “*The following acts shall be punishable :*

- a) *Genocide ;*
- b) *Conspiracy to commit genocide ;*
- c) *Direct and public incitement to commit genocide ;*
- d) *Attempt to commit genocide ;*
- e) *Complicity in genocide*¹⁰.

Then in its article IV the Convention forecasts persons committing genocide to be punished. “*Persons committing genocide or any of the*



*other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”*¹¹.

Moreover by virtue of the article 6 of its Statute “*the International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute*”¹².

On the other hand by virtue of the article 7 of its Statute it has the competence to determine and to prosecute the individual criminal responsibility. It is said in this article that “*A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in article 2 to 5 of the present Statute, shall be individually responsible for the crime*”¹³.

And the individual criminal responsibility is concerned with both superiors including Head of State or Government or as responsible Government official and subordinates¹⁴.

As regards the crimes of genocide the KR leaders committed during their 4 years-rule monstrous crimes against the Cambodian people by killing from 1, 7 to 2 million people out of 8 million inhabitants of Cambodia, this cipher is enormous for a small country like Cambodia. The cruelty of the KR leaders has been overpassed only by that of Staline and Mao Ze Dong. It has been resulted in mass killings equivalent to genocide like in Bosnia Herzegovina, Rwanda. Therefore crimes against humanity and crimes of genocide committed by the KR leaders should be collectively punished and an International Penal Tribunal similar to that existing for former Yugoslavia should be set up for judging the remnants of KR leaders, in relation with monstrous crimes they have

committed during their rule. And there should be no exception for such criminals. The international community should not take into consideration such or such reasons evoked by KR leaders or former KR accomplices. Obviously the accomplices of the KR leaders are against the prosecution of the latter by an International Penal Tribunal of the pattern of the actual International Tribunal seated in The



Hague in Netherlands because they fear to be personally prosecuted. In this respect the actual Cambodian Prime minister Hun Sen (as former Khmer Rouge official) declared in Tokyo that he does not “*want to keep peace and political stability. We can't take and prosecute the former president of the national Assembly (Nuon Chea) and the former prime minister (Khieu Samphan) who surrendered and put them on trial*”¹⁵. Peace and security of the world can be insured only when such criminals are punished for having committed monstrous crimes.

Since the end of the Second World War the International Law prevents and protects the human rights in all over the world. Therefore crimes of war, crimes against humanity, crimes of genocide, are subjected to be punished by the International Law because since the Second World War there is



a new international order of the civilized world materialized by the existence of the Organization of the United Nations with its Security Council, its General Assembly and an International Court of Justice. All these international institutions have the duty to watch over the keeping of security, peace and order of the world. Furthermore in the age of globalization the UN Security Council is very dynamic and active in the matter of preserving and keeping peace and security in the world. Therefore



there are no more threats to peace and security of the world which can occur without the knowledge of the UN Security Council. Once acknowledged facts and events threatening peace and security of the world such as violence, atrocities, crimes in wherever in the world the UN Security Council has to take prompt action aiming at stopping the cause of threatening the peace and security of the world and at insuring peace and security.

Regarding this matter of preserving and keeping peace and security in the world the UN Security Council can, as events in Yugoslavia, Rwanda, proved it, take either preventive measures by military means, that is to say, to dispatch UN Forces of keeping peace to main focus of turmoil and threat to security and peace, or after having

successfully eradicated the cause of turmoil and threat to security and peace, to punish the authors and accomplices of crimes against humanity and of genocide by establishing an International Penal Court of Justice by following the pattern of the International Military Penal Tribunal of Nuremberg.

As for the case of Yugoslavia it is now known that the international community has a solid legal ground for carrying out action against the authors of crimes against humanity and of genocide in Yugoslavia (Bosnia Herzegovina). Thus by Resolution 827 (1993) of 25 May 1993, the Security Council laid legal ground for establishing an International Tribunal for the prosecution of persons responsible for serious violations of International humanitarian Law committed in the territory of the former Yugoslavia since 1991. Thus violations of international humanitarian law constituted many categories of crimes aforementioned and caused grave concern to the Security Council who expressed the following provisions.

“Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports





of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory".

Therefore, in order to punish the authors of these grave crimes the Security Council "*decided hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report*"¹⁶.

This International Penal Tribunal has been established in accordance with the Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993) with a precise Statute called Statute of the International Tribunal¹⁷. Its competence is defined by the provisions of the article 1 of its Statute "*The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute*"¹⁸.

This Tribunal is seated in The Hague (Netherlands) and composed of judges and attorneys originated from many countries. It continues to try the criminal Serbs and Croats breaching the International humanitarian Law but still fails to try main criminal Serb leaders such as Karadzic, Mladic, ect...

CONCLUSION

Therefore while the KR leaders committed against the Cambodian people such monstrous atrocities equivalent to the three categories of crimes punished by the International Law, can they escape the punishment by the international community? As the international community has decided to punish the authors of crimes of war, crimes against humanity and crimes of genocide in former Yugoslavia and Rwanda, the logic and the good sense must incite the international community to act likewise for defending his honor, his equity and his sense of justice according to the common belief that there is only one justice for all criminals and their accomplices whatever their race and the color of their skin. Thus the protection and the defense of the human rights in all over the world implies the prosecution of the KR leaders. And no other considerations political or tactical must be taken into account. Therefore, the international community must abide by political ethics and International Law. It should prove to the whole civilized world that there is no place in the world for such criminals and the criminals cannot escape their punishment by the International Law. That is the ethical and legal viewpoint regarding the trial and the prosecution of the Khmer Rouge leaders by an International Penal Tribunal.



NOTES

1. According to Stephen Heder an American expert in Cambodian affairs who interviewed Iang Sary in Pailin, CNN Interactive, January 7, 1999.
2. H. Lauterpacht : *Oppenheim's International Law*, Longmans, London 1963, 578.
3. Malcolm D. Evans : *International Law Documents*, 392.
4. *Ibid.*
5. Thomas R. Van Dervort : *International Law Organization*, Sage publications, London, 1998, 268.
6. Principles of international law recognized in the Charter and Judgment of the Nuremberg Tribunal Report of the International Law Commission, 2nd Session, 1950 in Thomas R. Van Dervort : *International Law and Organization*, 268 - 269.
7. Lauterpacht : *Oppenheim's International Law*, Vol. II., 578
8. Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984) in Malcolm D. Evans : *International Law documents*, 354 - 355.
9. Malcolm D. Evans : *Ibid.* 364.
10. Convention on the prevention and punishment of the crime of genocide (1948) in Malcolm D. Evans : *International Law documents*, 36 - 37.
11. Malcolm D. Evans : *International Law documents*, 37.
12. *Ibid.*, 393.
13. *Ibid.*, 393.
14. *Ibid.*, 393.
15. *The Nation*, 25 February 1999 : War risk too great for KR trial, says P.M., p. A7.
16. Malcolm D. Evans . *International Law documents*, 391.
17. Malcolm D. Evans . *International Law documents*, 392.
18. *Ibid.* 392.

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4. Ben Kiernan & Chanthou Boua (Eds), *Peasants and politics in Kampuchea 1942 - 1981*. London, Zed Press 1982.
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13. Nayan Chanda, *Brother enemy : The war after the war*. San Diego, Westview Press 1983.