

Peace through Democracy and Justice? Legacies and Lessons from the Case of Cambodia

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The pursuit of retributive justice in war-torn countries with extremely weak state institutions may not necessarily advance the causes of peace, democracy, and the rule of law. Win-lose electoral competition and judicial retribution may not necessarily be a recipe for peace and security. The case of Cambodia and others show that the pursuit of retributive justice has not proved to be the immediate or direct cause of peace, democratic, and rule-of-law institution building.

Keywords liberal peacebuilding, democratization, marketization, criminalization, retributive justice, Extraordinary Chambers in the Court of Cambodia

Introduction

As a concept, peacebuilding is a complex process that begins when armed conflict ends and is based on the liberal assumption that peace can be built and sustained when warring factions not only agree to turn from the battlefield toward a ballot-box, but also continue to engage in the democratic process of electoral competition. The question is whether former warring factions stay engaged in electoral politics after their peace agreement. Some argue that peaceful electoral competition may not last because the democratic process encourages former enemies to compete with one another in a win-lose way, especially when the winner takes all and the loser is put in a dangerous situation. As a result, the loser returns to the battlefield or both end up getting bogged down in a struggle for power, and this may give rise to armed conflict or authoritarianism.

This article examines the complex twin processes of democratization and judicial intervention as part of the peacebuilding process, using Cambodia as the main case study; but it also relies on evidence from other cases to test the liberal proposition presented here. The argument advanced here is as follows: liberal

democracy can help transform the battlefield into a ballot-box, thus contributing to peacebuilding, if and when the process of democratization is carefully managed. However, the pursuit of retributive justice may hinder this process.

To advance the argument, this paper is divided into three parts. The first part critically examines the liberal proposition based on the idea of peace through justice. It then proceeds to advance the argument that peacebuilding can be effective if it begins after successful peacekeeping operations, but that win-lose electoral competition and retributive justice are not a recipe for peace. The second part focuses on the process of peacekeeping and peacebuilding in Cambodia. Evidence shows that the process has been successful to the extent that the warring factions have not returned to the battlefield, especially after 1998 when the Khmer Rouge's armed rebellion ended with its leaders' surrender. Since the 1998 election, the party system has become hegemonic. This is a case of peace through strength and political reconciliation, rather than through judicial retribution. The third part shows that the international pursuit of justice against former Khmer Rouge leaders was successful only after they had already defected to the government through formal and informal amnesties, but the judicial process itself has done little to advance the causes of democracy, human rights, and the rule of law.

Peacebuilding through Democratization and Justice

Peacebuilding is not a new concept, and its liberal form emerged after the end of the Cold War based on the promise that peace can be built and sustained. In 1992, then-United Nations (UN) Secretary-General Boutros Boutros-Ghali introduced the term peacebuilding in addition to peacemaking and peacekeeping. Peacebuilding is defined as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict" (Boutros-Ghali 1992, 11). The term has since become a growth industry (Peou 2014a).

Contemporary peacebuilding has been known as part of the post-Cold War liberal peace project (Newman, Paris, and Richmond 2009; Doyle and Sambanis 2006). The end of the Cold War saw the decline of communism and the rise of liberalism, especially commercial and democratic liberalism. In general, liberals of various persuasions view peacebuilding as the process of armed conflict prevention in post-war and conflict-prone societies through various policy instruments. Beyond its liberal roots, however, peacebuilding means different things to different people (Heathershaw 2008, 597-621). For some scholars, peacebuilding begins when armed conflict is over and aims to prevent a relapse into violent conflict. For others, peacebuilding largely means taking preventive action before armed conflict or civil war breaks out. Still for peace researchers, peace means more than the absence of armed conflict or war. Peace is defined in

positive terms based on justice (Barnett et al. 2007, 37-44).

Liberal peacebuilding is a “triune or triple process” involving democratization, marketization, and criminalization. Most scholars such as Roland Paris (2006, 425-440) observe that liberal peacebuilding concentrates on only the two most fundamental forms of liberalization: democratization and marketization. Western democratic states and NGOs see themselves as “democracy promoters” and providers of international democracy assistance (Feher 2000, 32; Carothers 2000, 185-186). Barnett and others think that “when the Bush administration thinks of peacebuilding it imagines building market-oriented democracies, while the UNDP imagines creating economic development and strong civil societies committed to a culture of nonviolent dispute resolution” (Barnett et al. 2007, 44). For liberals, democratic and economic development can be achieved through multilateral intervention, not only by states but also by international organizations and civil society actors operating at the global and local levels.

This article focuses on democratization and criminalization. Political liberalization in the form of democratization in post-conflict societies through the holding of free and fair elections remains the key aspect of liberal peacebuilding. In general, free and fair elections mean that citizens are allowed to vote and form political parties armed with the individual right to compete in the electoral process without facing political repression or intimidation. Electoral laws are designed to ensure that all political parties enjoy the same rights and national election commissions are usually established as independent bodies to ensure that political parties comply with the electoral laws. In short, democratization as part of liberal peacebuilding is the process of democratic institution building that involves more than just holding elections. There are a host of activities evolving around the idea of making elections free and fair and are thus based on liberal norms, rules, and rule-enforcement processes.

Intergovernmental organizations like the European Union, the Organization of African States, the Inter-Parliamentary Union, and the Commonwealth Secretariat have also become actively involved in democracy promotion and building. The UN has made similar efforts to promote democracy. The UN Peacebuilding Commission in particular advances the liberal agenda, normatively armed with the core mandate of aiming to prevent conflict in countries emerging from civil war. As one writer puts it, “In general...liberal democracy and the rule of law, plus macroeconomic stability, deregulated markets and security of property, are the standards to which the international community is at least nominally committed, and these are reflected in the [Peacebuilding Commission]’s work” (Jenkins 2008, 13).

This type of assistance means “aid specifically designed to foster a democratic opening in a nondemocratic country or to further a democratic transition in a country that has experienced a democratic opening” (Carothers 1999, 6). As Krishna Kumar and Jeroen de Zeeuw (2006, 5) observe, “international donors

believe—with considerable justification—that democracy offers the best chance to promote peace and heal the wounds of war in post-conflict societies.”

Liberal scholars and policymakers assume that the process of democratization allows warring parties to turn their battlefields into ballot-boxes. Factions or parties begin with an agreement to stop fighting and agree to compete with each other for power through peaceful means, namely electoral competition. The process of democratization begins when war or armed conflict ends, often after a successful peacekeeping operation, which involves a cease-fire and disarmament or troop demobilization. Embedded within peace agreements is the expectation that former warring factions or groups will turn themselves into political parties, which will then compete in free and fair elections on a regular basis, the results of which they must accept. Free and fair elections further mean that citizens enjoy their political right to choose their leaders and influence the direction of their government. According to Democracy Web: Comparative Studies in Freedom (2016), “Such equality requires the ability of political parties and candidates to register for office without unreasonable requirements, balanced access to the media for all candidates, the absence of campaign finance abuse, and an independent process.” The regularity of election holdings (every four or five years, depending on the political system) is the expectation that all parties will not return to the battlefield or dictatorship. Nor are they expected to resort to means of violence should they lose an election.

For proponents of regular, free and fair elections, democracy can prevent war or armed conflict if its institutions are strong. “Where democratic institutions are weak, elections are easily used by violent and dictatorial political groups to manipulate the will of the people and seize control of the government” (*ibid.*). In other words, peace is built and sustained if democratic institutions are strong, and thus democratic institution building is an essential process. Democratic institution building involves building and sustaining a multiparty system underpinned by a politically independent election commission. Elections must not be subject to political manipulation by any political party. The election commission has the responsibility to implement the election laws agreed to by all political parties registered to compete in elections.

Democratic institution building further means building and strengthening a system of checks and balances among the executive, legislative, and judicial branches of government. One indicator of democratization is that the judiciary becomes more and more politically independent of the executive branch, but together these three government branches have the responsibility to protect the people’s political rights, as well as civil liberties and rights. Civil liberties are freedoms which include freedom of religion, freedom of speech or expression, freedom of the press, and freedom of peaceful assembly. Civil rights are those that protect people from discrimination regardless of race, religion, sex, age, disability and so on.

In short, peacebuilding in the context of democratization is a complex process that involves the holding of regular, free and fair elections, as well as democratic institution building. Liberal scholars thus generally assume that peace within and among states exists when national democratic governance is established and sustained. As one scholar ably puts it, “Although there is no consensus on the definition of and the best practices for achieving peacebuilding, it is in practice a *liberal* project.” He emphasizes that “peacebuilding is broadly constituted on the premise that democratic institutions and market mechanisms will ultimately provide the stable foundation for peace, both internally and externally” (Biersteker 2007, 39).

From my perspective, post-Cold War peacebuilding has evolved beyond both democratization and marketization, expanding to include criminalization is the process of making political violence a criminal act. The primary aim is to help deter mass atrocities and this has been regarded as “part of an integrated peacebuilding”—a dual process aimed at *preventing* armed conflict or atrocities from recurring and promoting peace and security (international and human) in post-war countries (Kerr 2001, 129; 2007). Central to criminalization is the idea of transitional justice, which also includes retributive justice. Retributive justice has been considered an effective method for terminating armed conflict (Shinoda 2002, 41-58).

Numerous scholars make positive claims about the role of international criminal tribunals in ending intrastate wars. The International Criminal Tribunal for the former Yugoslavia (ICTY), for instance, was meant to end a real war—a case of war termination (Feher 2000, 85). War ends when criminal leaders are arrested, convicted, sentenced, and put in jail. Threats of judicial punishment also help rational perpetrators adopt policy measures that will help *deescalate* various forms of direct physical violence against individual humans, such as armed conflict and mass atrocities (Akhavan 2009, 636). Proponents of retributive justice further assume that judicial punishment, or the threat thereof, is effective in terms of ending atrocity crimes (Helfer 2014; Shany 2014a, 2014b; Tochilovsky 2003). Social activists, international lawyers and political theorists remain optimistic about the work of international criminal courts/tribunals (Alter 2014; Romano, Alter, and Shany 2014; Shany 2014a, 2014b). Their legal institutionalist assumption is that retributive justice is positively impactful (Helfer 2014; Shany 2014a, 2014b; Tochilovsky 2003).

Reconciliation is part of the international judicial process, which advocates think would help victims see that justice is done, establish the truth about crimes committed based on factual and forensic evidence, and individualize guilt (Clark 2006). Punishing individual criminal leaders to satisfy their victims’ desire for justice brings them a sense of closure and, thus, is a source of reconciliation among former hostile communities. Other academic works further contend that the work of international tribunals in general can alter politics (Alter 2014), help

move forward the political process of democratization, improve human rights situations in post-war societies (Kim and Sikkink 2012/2013), have a positive impact on national/domestic criminal proceedings (Shany 2014a, 2014b), and support judicial and legal institution building (Stromseth 2009).

The overall record of this liberal peacebuilding process shows that the results are mixed. Even pro-liberal peacebuilding scholars have acknowledged the limits of this process. Some cases were relatively successful, but others were not (Doyle and Sambanis 2006; Paris 2004, 2006). According to some scholars, the picture “is very mixed...nearly 50 percent of all countries receiving assistance slide back into conflict within five years, and 72 percent of peacebuilding operations leave in place authoritarian regimes” (Barnett et al. 2007, 35).

While these studies show the limits of liberal peacebuilding, the findings also reveal a number of points and raise some useful questions. First, the other half of the countries that receive international assistance did not fall back into conflict within five years. Peacebuilding still works in some countries and should thus be pursued. Second, at least 30 percent of peacebuilding operations succeeded in establishing democratic regimes. Third, the findings raise useful questions: why are some peacebuilding operations more successful than others? What lessons can be learned to ensure that peacebuilding operations can help prevent countries from sliding back into conflict, consolidate democracy, and strengthen the rule of law?

This article does not seek to answer all these questions, but aims to demonstrate whether peacebuilding requires not only the holding of free and fair elections but also the pursuit of retributive justice. There are reasons to be cautious about the impact of retributive justice in post-war countries where state institutions are weak and insecurity persists. Much of the academic literature rightly emphasizes the insecurity of civilians and makes normative judgments about what must be done to ensure their security, but some scholars launch personal attacks on those with whom they disagree and ignore the persistence of insecurity that warring factions face.

Liberal peacebuilding based on the idea of peace through democracy and retributive justice is harmful as often charged, but this article highlights the fact that aggressive pushes for democracy and retributive justice in institutionally fragile states may intensify the insecurity dilemma (Peou 1997). I am now not alone in making this argument (Paris 2004, 2006; Ainley 2011). As someone who barely survived the Khmer Rouge killing fields, I believe that perpetrators of mass atrocities deserve harsh punishment, but formal trials may subvert the process of democratization or “may run directly counter to the development of a democratic legal order” (Kritz 1995, xxxii). Other scholars like Snyder and Vinjamuri (2003/2004, 43) argue that, “Trials...are not highly correlated with the consolidation of peaceful democracy.” On legal and judicial institution building, they argue that, “When a country’s political institutions are weak, when forces

of reform have not won a decisive victory, and when peace spoilers are strong, attempts to put perpetrators of atrocities on trial are likely to increase the risk of violent conflict and further abuses, and therefore hinder the institutionalization of the rule of law” (ibid., 15).

The academic and policy debate between proponents of justice and their critics is not over and deserves closer examination. It may be helpful to adopt case studies as a method of analysis to help shed light on the relative success and failure of peacebuilding. Cambodia is a particularly useful case study because the international community has been involved in both peacekeeping and peacebuilding (Peou 1997, 2000). Since the early 1990s, members of the international community, especially bilateral and multilateral donors, have spent at least \$10 billion rebuilding the country. As of 2016, the peacebuilding operation had been ongoing on for 25 years. The big question is: to what extent has the country enjoyed peace and why?

Peace through Democracy, Strength, and Amnesty

This section shows that Cambodia, since the 1998 national election, has enjoyed negative peace, defined as the absence of armed conflict between or among political factions and parties. Although a peace agreement was signed in 1991 and the first election was held in 1992, organized by the UN, the war continued until 1998. The country has since been at peace.

The process of peacebuilding began when four major warring factions signed the peace agreement (known as the Paris Peace Agreements) on October 21, 1991. Prior to this peace agreement, the warring factions had engaged in an armed conflict whose roots can be traced back to at least the late 1970s. It is worth pointing out that Cambodia was at war during the first half of the 1970s. A civil war broke out after Prince Norodom Sihanouk, the country’s head of state, was overthrown on March 18, 1970 when his own defense minister, General Lon Nol, staged a bloodless coup against him with the support of the United States and declared a new regime known as the Khmer Republic. The country was plunged into a bloody civil war when Sihanouk joined the Khmer Rouge movement whose leaders the prince had labeled as “Red Khmer” and sought to eliminate in the late 1960s. The prince quickly formed a government-in-exile and joined forces with the Khmer Rouge revolutionary movement. On April 17, 1975, the war came to an end when the Khmer Rouge forces defeated the Khmer Republic’s armed forces and turned the country into what came to be known as the “killing fields” (Peou 2013).

The Khmer Rouge regime emerged but did not make good on its promise to build a peaceful and just society. Instead of bringing about peace and justice, the regime turned against its own people and neighboring countries, particularly

Thailand and Vietnam. Within the country, the regime emptied the cities by driving people out of their own homes and into the countryside and subjecting them to hard labor. The regime turned out to be far more murderous than anyone could have expected. The estimates on the number of people who perished range from one to two million. Scholars have argued about the causes of Khmer Rouge atrocities (*ibid.*), but the fact of the matter is that the regime waged war against its people and conducted purges against its party members. In addition, the Pol Pot regime engaged in armed conflict with Vietnam in the late 1970s by attacking Vietnamese villages and massacring Vietnamese villagers. The Khmer Rouge attacks provoked Vietnam, which later sent roughly 200,000 troops into Cambodia and successfully overthrew the Pol Pot regime (Peou 2000).

The Vietnamese invasion ended the Khmer Rouge atrocities but failed to bring about peace. The invasion was regarded as a form of unilateral intervention capable of ending mass atrocities; however, the war widened as it became internationalized. The warring Cambodian factions include, on one side, those that formed the Coalition Government of Democratic Kampuchea (CGDK; made up of the royalists led by Prince Sihanouk, the Khmer People National Liberation Front (KPNLF) led by former Prime Minister Son Sann and the Khmer Rouge remnants led by Pol Pot). Throughout the 1980s, the CGDK maintained its seat at the United Nations and received active support from the United States, China, and most member states of the Association of Southeast Asian Nations (ASEAN). On the other side of the war was the pro-Vietnam and pro-Soviet People's Republic of Kampuchea, which later changed its name to the State of Cambodia, which then became the Cambodian People's Party (CPP) (*ibid.*).

The peace process began during the second half of the 1980s, but little progress was made until after the Vietnamese withdrew its troops from Cambodia in 1989. A series of peace negotiations was conducted between leaders of the CGDK and the PRK/SOC (Acharya, Lizée, and Peou 1990), but it was not until October 23, 1991 that the two sides of the warring factions reached a peace deal in Paris and formally invited the UN to intervene.

The Paris Peace Agreement spelled out in detail how the warring factions planned to turn their battlefield into a ballot-box. Arguably the peace agreement was comprehensive in terms of scope, as it included not only peacekeeping but also peacebuilding. The UN was given the task of keeping the peace, organizing national elections, promoting human rights, and having a role in refugee repatriation and economic reconstruction. A UN mission called the United Nations Transitional Authority in Cambodia (UNTACT) was established. The largest of UNTAC's seven components was the peacekeeping force with some 15,000 military personnel when fully deployed. Prior to the arrival of international peacekeepers, the UN sent a mission known as the United Nations Advance Mission in Cambodia (UNAMIC) whose main tasks included preparations for the peacekeeping operation (in terms of facilitating

communications among the factional armed forces with regard to the agreed ceasefire), as well as peacebuilding, which involved providing training for mine-awareness and mine-clearing.

However, the ultimate task of UNTAC was to organize a national election that would allow the four warring factions to turn away from their armed conflict by competing for political power through the ballot-box. The Paris Peace Agreement laid out specific steps which the former warring factions had to take to ensure that the election would be free and fair (UN 1991). Part II of the Agreement contains rights, principles, and processes for the electoral process. Article 12 makes this clear: "The Cambodian people shall have the right to determine their own political future through the free and fair election of a constituent assembly, which will draft and approve a new Cambodian constitution."

In addition to the liberal principle of free and fair elections, the Paris Agreement contains some democratic procedures based on the liberal assumption that the transfer of power after the election results are announced must be peaceful. Article 14 states the following: "All Signatories commit themselves to respect the results of these elections once certified as free and fair by the United Nations" (ibid.). Moreover, UNTAC was given the task of building basic democratic institutions such as designing and implementing a system of voter registration, a system of registering political parties, ensuring fair access to the media, and adopting and implementing measures to monitor and facilitate voter participation in the electoral process, the election campaign, and the balloting procedures.

UNTAC's ultimate objective was based on the basic liberal assumption that the armed factions and political parties would comply with the peace agreement by competing for power peacefully through democratic means. This also meant that the Cambodian signatories agreed to stop fighting, respect the ceasefire, disarm, and stop relying on foreign powers for arms supplies.

The Paris Peace Agreement and the initial peacebuilding role played by UNTAC proved to be more useful than what critics had anticipated. For some, the peace agreement was a recipe for disaster because it included the Khmer Rouge who they believed were bent on destroying or spoiling the peace process. For others, political factionalism ran so deep in Cambodia's political tradition that it was naïve to think the Cambodian parties to the peace agreement would compete for power peacefully. To some extent these critics were right, as will be shown next, but they painted gloomy pictures with a broad brush. Various critical perspectives on UNTAC have been discussed elsewhere (Peou 1997, 2000) and thus there is no need to repeat them here, but it is suffice to say that the warring factions did not fully comply with their peace agreement. The utmost failure in the peace process was their unwillingness and their refusal to disarm. Although the four factions did not disarm, the Khmer Rouge was the first to refuse to do

so, thus allowing the other factions to keep their weapons for the purpose of self-defense. The Khmer Rouge leadership made claims about UNTAC being unfair and pulled out of the electoral process just days before the election took place. To some extent, critics' predictions proved true.

However, we must always treat the doom-and-gloom forecasts with a grain of salt. Upon closer examination, UNTAC managed to hold the planned election despite its failure to disarm the factions. Lessons from this failed disarmament can be drawn. Without the assurance of security, no factions are likely to disarm. The Cambodian factions were no exception. The fact that the Cambodian signatories refused to disarm because the Khmer Rouge had first refused to do so shows that they were concerned about their own security and the UNTAC leadership appeared to understand the non-Khmer Rouge factions' security concerns. Nothing else explains the fact that UNTAC considered legitimate their refusal to disarm. But how about the security concerns that the Khmer Rouge had? The same argument can be made: of all the four factions, the Khmer Rouge felt the most insecure. Their top leaders, Khieu Samphan and Son Sen, were attacked upon their arrival in Phnom Penh. Having presided over the most hated, murderous regime in the country and given what they had done during their reign of terror, Khmer Rouge leaders did not deserve to be included in the peace process, nor did they deserve to play a role in democratic politics. The problem is that they were armed, and military force alone would not defeat them easily. Khmer Rouge leaders must also have expected to lose in the upcoming election, and they must have expected to be punished after their disarmament and electoral loss. It is far from clear that any party would have agreed to disarm when they knew they would lose in the upcoming election and be subject to punishment. Thus, it is easy to explain, from a security-based perspective, why the factions ended up in the situation that they did.

The biggest failure throughout the peace process was the factions' refusal to disarm and this helps explain why the war continued after the 1992 election. Although the Khmer Rouge did not disrupt the election, perhaps based on the expectation that their former CGDK allies would win, they rebelled against the new government after it became clear to them that they would not have any role within the political environment. Under pressure from the international community that the new government reject the Khmer Rouge's demand that they be given an advisory role, the Khmer Rouge saw no political future and were thus given no choice except to keep fighting.

The position taken by the international community was right to the extent that its members had truly legitimate concerns about what the Khmer Rouge would do if they were allowed to play even an advisory role within the new government. After all, their regime committed mass atrocities and they were still armed. The Khmer Rouge faction was regarded as a "peace spoiler" (Stedman 1997). While this concern was understandable, it is also easy to understand why

the Khmer Rouge refused to disarm and participate in the electoral process. My interviews with foreigners involved in the peace process from 1992 to 1993 show few, if any, were sympathetic to the Khmer Rouge's security concerns and all tended to blame the faction and, to a lesser extent, the CPP for the challenges that UNTAC faced.

When all is said and done, we can still make the argument that what UNTAC did was a qualified success, which can be defined as its ability to organize and conduct a relatively free and fair election. To be sure, incidents of political violence and intimidation, mostly carried out by the Khmer Rouge and the CPP (which still dominated the political environment), continued because of UNTAC's failure to disarm the factions and control them. Thanks to the assuring role played by the UNTAC peacekeepers and police, there was a degree of security that made it possible for Cambodian voters to turn out on election day. This does not mean that the Cambodians felt completely secure, but their desire to cast their ballots after so many years of political violence and repression was the principal factor for UNTAC's qualified success.

UNTAC's qualified success can also be assessed in terms of its legacies, one of which is the fact that Cambodia has since held national elections on a regular basis. As will be discussed, the Cambodians went to the polls in 1998, 2003, 2008, and 2013. They are also expected to cast their votes in the national election scheduled to take place in 2018. In addition, they also cast their ballots in commune elections in 2002, 2007, and 2012 and are expected to vote again in June 2017. Although the elections were far from free and fair, they allowed the Cambodian political parties to compete for power on a regular basis. In other words, they have not returned to the battlefield. Despite repeated losses, none of the opposition parties has taken up arms. The Khmer Rouge was the only exception, but the disintegration of their armed movement in 1998 shows democratic politics had some significant positive effects on the peace process.

Peace has prevailed since the late 1990s, after the armed Khmer Rouge movement began to disintegrate when its top leadership engaged in infighting. The decline of Pol Pot's personal health was a factor. In 1995, he suffered a stroke that left him unable to walk comfortably and infighting began to emerge soon after. Khmer Rouge leaders then began to turn against each other and in 1996 a top Khmer Rouge leader, former Minister of Foreign Affairs Ieng Sary who had control over 10,000 troops, agreed to defect to the government after the latter offered an informal amnesty. Ieng Sary was Pol Pot's brother-in-law, and this defection dealt a heavy blow to the extremely repressive and violent Pol Pot leadership. Another clear indicator of this infighting was the fateful event of June 13, 1997 when a group of Khmer Rouge soldiers, allegedly at the order of Pol Pot, murdered their "Defense Minister" Son Sen, his wife, along with his children and grandchildren. The massacre exacerbated the infighting when the Khmer Rouge military chief Ta Mok and other Khmer Rouge leaders moved to capture Pol Pot.

After his capture on June 20, Pol Pot was put on trial and sentenced to life in prison (Thayer 1997).

Amidst all this, the coalition government in Phnom Penh engaged in a struggle for power. The two prime ministers no longer cooperated with each other. In July 1997, Second Prime Minister Hun Sen decided to remove First Prime Minister Norodom Ranariddh from power through a violent action which was dubbed a coup. Hun Sen accused Ranariddh of secretly negotiating with the Khmer Rouge. Although Hun Sen's forces defeated the royalist forces in the capital city and killed many of them, the royalists who survived escaped and evidently formed a temporary alliance with the Khmer Rouge under the leadership of Ta Mok in their resistance to the Hun Sen government. However, the fighting did not last as the government launched an all-out offensive against the Khmer Rouge forces in Anlong Veng and Prea Vihear, forcing Khmer Rouge leaders, most notably Khieu Samphan and Nun Chea, to flee. By the end of 1998, the Khmer Rouge movement was put to an end when these top leaders defected to the government.

The death of Pol Pot on April 15, 1998 signified the complete and celebratory end of the murderous Khmer Rouge era. There is no doubt that the Khmer Rouge's armed rebellion posed a security threat to the newly elected government led by Norodom Ranariddh and Hun Sen of the CPP, but the disintegration of the rebels began with the coalition government's willingness to assure Ieng Sary of amnesty when the two prime ministers agreed to do so on August 23, 1996. Hun Sen made it clear that his government would support "the leaders, armed forces and people and w[ould] assure [their] safety and security, including that of Ieng Sary" (Mydans 1996). As a result, the Khmer Rouge leadership began to fragment and disintegrate, leaving its leadership extremely weak and vulnerable to the government's military and political pressure.

Unfortunately, the politics of peace with the Khmer Rouge came at a cost. By and large through secret peace deals, the Khmer Rouge defectors were left to run their zones, with their armed forces left intact (Nem 2012). In spite of his earlier argument that Khmer Rouge leaders must be brought to justice, Hun Sen said he would not support the idea of trying them at an international tribunal. In fact, he made it clear that trying those who had defected to the government would "not benefit the nation" and would "only mean a return to civil war." He added that, "We should dig a hole and bury the past and look toward the future" (Fontaine 1996).

But Hun Sen changed his mind after top Khmer Rouge leaders defected to his government. In an agreement with the UN, a hybrid tribunal (Extraordinary Chambers in the Court of Cambodia or ECCC) was set up in 2003 to try surviving top Khmer Rouge leaders. By 2016, several top Khmer Rouge leaders, most notably Ieng Sary, Khieu Samphan, and Noun Chea, had been brought to justice (with the latter two now sentenced to life in prison for crimes against humanity). Overall, the pursuit of justice against former Khmer Rouge leaders

was possible, largely because of peace through strength and amnesty-based defections.

Peace through Democracy & Retributive Justice?

To what extent the new democratic politics have contributed to the peace process is not totally clear, but evidence shows that peace emerged after the Khmer Rouge's armed rebellion was ending just weeks before the national election took place in 1998. The Khmer Rouge did not agree to join the electoral process, but their disintegration was caused by a number of factors.

First, the new democratic process largely discredited the Khmer Rouge movement. Although the Paris Peace Agreement included the Khmer Rouge (thus giving rise to the criticism that its inclusion would ruin the peace process), the process of democratization worked in favor of peace. The peace agreement ended the CGDK and its seat at the UN, thus leaving the Khmer Rouge delegitimized and marginalized. The Vietnamese invasion of Cambodia had made it possible for the CGDK to form and have its seat at the UN with the support of major powers like China and the United States. After the peace agreement, the Khmer Rouge was more or less on its own and its leadership knew full well that its chances of winning the upcoming election were nil. Its refusal to disarm must have also been part of the rational calculation that its security would be at risk in the post-election era. Because they did not participate in the 1992 election, the leadership also knew the movement could not win future elections. The reason that the faction asked for an advisory role within the post-UNTAC government had much to do with the realization that it could not expect to gain any significant role in politics.

Second, the death of Pol Pot in April 1998 and the defection of other top Khmer Rouge leaders in December of that year appeared to show that the Khmer Rouge movement had ran out of luck before and after the 1998 election. The democratic process helped further weaken the Khmer Rouge, especially when the CPP-dominated government agreed to let the royalists compete in the 1998 election and allowed Prince Norodom Ranariddh to return to Cambodia in March 1998, just before the election in July. As a result, the Khmer Rouge no longer had FUNCINPEC as its politico-military ally and was thus increasingly vulnerable to factional politics. Now with the CPP running the government after the 1998 election, Khmer Rouge leaders like Khieu Samphan and Noun Chea had no choice but to defect to the government. The fact that Hun Sen welcomed them by inviting them to his house did not mean that he liked them. As a political pragmatist, Hun Sen saw the benefit of ending their political and military challenge to his political power and bringing peace to Cambodia (Johnson and Kimsan 1997).

Third, the democratization process worked for peace when the Cambodian government chose not to pursue judicial politics. The government agreed to give a series of formal and informal amnesties to several Khmer Rouge leaders, but never promised to share power with them in any shape or form. All this suggests that the process of democratization contributed to the peace process because the government leadership was willing to rely on negotiations that ensured the security of Khmer Rouge leaders, instead of relying solely on the use of force to destroy them. Although attempts by the international community to try Khmer Rouge defectors were premised on the assumption that formal trials would bring peace to Cambodia, evidence shows peaceful negotiations and amnesties helped achieve the objective (Nem 2012).

In short, there are a number of insights that can be observed to help us shed light on how democratization can help end war and achieve peace. First, democratization as a process of holding regular, even if unfree and unfair, elections discredits and thus weakens political parties unwilling to take part in electoral competition. Peace agreements that include potential peace spoilers do not necessarily strengthen them or allow them to fight their way to power if they are disarmed or if other political parties are capable of defending themselves. Second, democratization is a process that encourages political parties to continue competing in elections, especially when they know that non-participation may delegitimize them. One observable fact that tends to be forgotten is that elections, even if unfree and unfair, are a form of political legitimization. Third, the process of democratization works best when political parties feel secure even if they do not expect to win in elections. What this means is that retributive justice as a form of punishment has the potential to work against democracy.

The Khmer Rouge trials seem to validate the proposition that formal trials or retributive justice pursued by the ECCC have been ineffective in the context of peacebuilding. First, it is easy to observe that peace was achieved when the Khmer Rouge's armed rebellion ended in 1998. In other words, peace took place before the ECCC was established and began to operate in 2006. As noted, the Khmer Rouge disintegration began when infighting intensified after the government agreed to offer Ieng Sary and his troops amnesty. Second, peace was achieved because the government did not push for punishment for all those who had already defected to its side. Security and safety for the defectors were part of the deal (*ibid.*).

Proponents of the trials have presented little evidence to show that the trials have contributed to democratic development through regular, free and fair elections, as well as the strengthening of legal and judicial institutions. Closer examination of the democratic process shows that Cambodian democracy is far from consolidated despite the trials. Interestingly, the comparatively weaker pursuit of criminal justice in Timor-Leste and Indonesia, where no high-ranking officials were brought to justice, has not made them less democratic or more

lawless than Cambodia (Peou 2016b). None of the Indonesians involved in political violence in East Timor were punished. Yet Timor-Leste and Indonesia have become the most democratic states in Southeast Asia, despite the fact that the quality of their democracy is low. The Economist Intelligence Unit's "Democracy Index 2015" (2016) ranks Timor-Leste higher than any other ASEAN country, except Brunei which was not ranked. While Timor-Leste ranks forty-fourth out of 167 countries, Indonesia ranks forty-ninth and Cambodia ranks 113th.

No clear evidence shows that the CPP government is prepared to lose elections in the foreseeable future and to transfer power peacefully. Democratic institutions in Cambodia remain highly underdeveloped or fragile despite institution building efforts over the past few decades (Peou 2014b). Since the 2013 elections, Hun Sen has done his best to consolidate and personalize power. In 2013, the CPP-run government used repressive violence to put down any form of resistance or challenge to its authority. Mass protests against the results of the elections in July 2013 were suppressed. The main opposition party, the Cambodian National Rescue Party (CNRP), was forced to accept the election results it considered to be deeply flawed. One year after the election, the CNRP ended its boycott of the National Assembly, but the CPP did not stop repressing members of the opposition. Observers of Cambodian politics had little to celebrate when writing on the post-2013 election political developments. Charlie Campbell (2014) writes: "six months after disputed elections, the situation remains grave, featuring the lethal suppression of peaceful protests and extra-judicial detentions." According to Human Rights Watch (2015), "The past year [2014] saw determined and often-violent efforts by the government of Prime Minister Hun Sen and his... (CPP) to suppress mass protests against the deeply flawed July 2013 parliamentary elections, and force the CNRP to accept the election results, and end its boycott of the National Assembly. The government imposed bans on peaceful protests, including strikes by trade unions campaigning for increased wages. In some cases, protesters engaged in attacks in response to security force repression." The same report goes on to state that "killings by security forces, arrests of activists and opposition politicians, summary trials, and crackdowns on peaceful protest characterized the human rights situation in Cambodia in 2014," and described 2014 as "a year of worsening rights" (ibid.).

Between 2015 and 2016, a number of opposition party members and critics were under threat, arrested, prosecuted, and jailed. The year 2015 saw more violent repression. In July, for instance, eleven activists were put in jail on charges of "insurrection." In August, an opposition senator was charged with treason for posting online a diplomatic document related to the Vietnamese-Cambodian border. A number of CNRP members of parliament were also arrested on trumped-up charges. Other top CNRP leaders were subject to threats and criminal charges brought against them. CNRP President Sam Rainsy

and his Vice-President Kem Sokha were among the targets. Sam was ordered to appear in court on December 4, after a string of events worked against him and his party, including the issuance of a warrant for his arrest on November 13 and the National Assembly's removal of his parliamentary immunity on November 16. Prior to this new wave of political repression, on October 30, Kem Sokha's position as First Vice-President of the National Assembly was removed. On October 26, two other CNRP parliamentarians were assaulted at a pro-government protest outside the National Assembly. This wave of repressive violence against members of the main opposition party marked the end of what the CPP and CNRP leaders had agreed to: namely, a "culture of dialogue."

Paul Chambers (2015) makes a persuasive argument about civil-military relations in terms of Hun Sen's ability to subject the armed forces to his personal control. In 2009, Hun Sen took additional steps to consolidate his power over the military and police. Not only did he succeed in removing General Ke Kimya (who belonged to an anti-Hun Sen CPP faction) from the position of Commander-in-Chief of the Armed Forces, but he also succeeded in getting more of his loyal friends and family members appointed to top positions in the armed forces. Hun Sen appointed one of his most trusted generals, Pol Saroeun, as the new military chief and appointed seven others as new deputy commanders-in-chief, all of whom were his close allies. In addition, the Prime Minister elevated several of his close family members to senior military and security positions. His eldest son Hun Manet, who graduated from the U.S. Military Academy at West Point but had no military experience, was appointed to top positions within the armed forces: Vice-Chairman of the RCAF Joint General Staff, Deputy Commander of the Army, Commander of the 911 Airborne Brigade's Counter-Terrorism Unit and Deputy Commander of Hun Sen's Bodyguard Unit. Hun Manith, Hun Sen's second son, was also appointed Deputy Head of the Military Intelligence Unit. His third son, Hun Many, is a CPP lawmaker and leader of the CPP-Aligned Union of Youth Federations of Cambodia. Together they help protect Hun Sen and consolidate his power. When National Police Chief General Hok Lundy (also one of Hun Sen's in-laws) died in 2008, Hun Sen quickly appointed his nephew-in-law, the deputy police chief, to the top post. The post-UNTAC multiparty system has become hegemonic, with the Hun Sen-dominated CPP emerging as Cambodia's dominant party. My recent fieldwork in Cambodia, based on numerous elite interviews from September to mid-December 2016, reveals that the CPP will not give up power even if it loses the national election in 2018.

Cambodia has not become more democratic than when it was early in the 1990s, nor has the rule of law since been strengthened. After the 1998 national election, a hegemonic-party system emerged, and the country has now become less democratic than Timor-Leste and Indonesia, where formal trials of political criminals largely failed. Even proponents of justice have now acknowledged that "the ECCC's broader effect on the Cambodian judiciary or rule of law is

much less apparent. Major change in the domestic legal system in the near term is unlikely..." (Ciorciari and Heindel 2014, 274). In fact, one can easily make the case that the rule of law has weakened further in recent years. According to Cristina Maza (2016), Cambodia is the "worst in the region" in terms of rule of law, based on data provided by the World Justice Project (2016), which ranks Cambodia last out of fifteen countries in the East Asia and Pacific region (with New Zealand scoring highest). World Justice Projects' rule-of-law index (2016) ranks Cambodia 112th out of 113 countries, worse than Indonesia which ranks sixty-first.

One reason for democratic and judicial erosion is simple: the CPP has kept the judicial system extremely politicized, using courts as its political instrument to prevent opposition party members from effectively mounting challenges to its power (Peou 2007). Hun Sen is a former Khmer Rouge commander who might not face justice, but many CPP members such as Chea Sim (former CPP president who died in 2015), Heng Samrin (still President of the National Assembly who refuses to appear in court despite summons from the ECCC), Hor Namhong (a CPP member and former Minister of Foreign Affairs who also refuses to appear for questioning at the ECCC) and others think they might if the ECCC chose to pursue justice against them. This helps explain why the CPP has resisted the ECCC's investigation into a number of other former Khmer Rouge officials known as Cases 003 and 004 (Open Society Justice Initiative 2012).

Hun Sen meant business when he said that the ECCC "had almost gone beyond the limit" (Kuch 2015). Although his warning about a civil war (if more former Khmer Rouge leaders were brought to justice) should not be taken seriously, the CPP government would have difficulty maintaining loyalty to him if he were to support the tribunal's efforts to prosecute more members of his government, many of whom were former Khmer Rouge officials. Former Khmer Rouge soldiers also proved helpful to the government when Cambodia and Thailand had border clashes in recent years. Before the 2013 national election, Hun Sen had already warned against the opposition's threat to bring more unnamed Khmer Rouge officials to justice for the crimes they had committed when still in power from 1975 to 1978, saying that he would not allow them to "arrest" him "easily" (*Radio Free Asia* 2013). Hun Sen knew full well that anything could happen to him if he lost power. In a country where state institutions are extremely weak and where personal politics remains strong, betrayal often follows trust. It should come as no surprise that some 6,000 bodyguards are employed to protect the Prime Minister, who have so far managed to keep top generals in line and are ready to defend him and his family.

In short, proponents of retributive justice have good intentions in that they would like to see Cambodia transformed into a country governed by democracy and the rule of law; however, they fail to grasp the simple reality of political insecurity that some CPP members and Khmer Rouge remnants have faced.

The politics of justice has become a real source of threat to them. Still insecure, CPP leaders are expected to consolidate power and legitimize their political rule through electoral politics without allowing opposition parties to win enough seats during elections to form a new government. This is not to say that insecurity explains all political problems in post-war countries like Cambodia, but it is important that we take more seriously the persisting problem of insecurity as central to the process of liberal peacebuilding.

Since the establishment of ad hoc, hybrid, and permanent international tribunals and courts throughout the 1990s, the world has not become more democratic; geopolitics has returned and humanitarian crises continue unabated. *The Economist* (2014) contends that democracy seems to have “run into trouble,” although it “was the most successful political idea of the twentieth century.” *The Economist* adds the following: “Between 1980 and 2000 democracy experienced a few setbacks, but since 2000 there have been many.” A more recent article in *Foreign Policy* makes this remark: “Liberal democracy and market capitalism are taken for granted as the best form of government. That bubble may be about to burst” (Karabell 2017). Rivalries between nuclear states and the global war on terrorism have intensified; the world is also faced with the possibility of a global war (Kagan 2017; Mead 2014). The critical issue here is not that justice is the problem, but that its pursuit before security (through democracy, diplomacy, and political reconciliation) is first established may be an obstacle to peace.

Conclusion

Peacebuilding through liberal democracy and retributive justice is a promising process, but it is not without serious challenges. The Cambodia case and others show that the process of electoral competition in the context of liberal democracy that began with the peace agreement signed in 1991 has contributed to peace despite the initial failure of disarmament and armed conflict that lasted until 1998. Peace has since prevailed, but it is the kind of peace achieved through strength and political reconciliation rather than through judicial retribution. While elections have been held on a regular basis, the multiparty party system has been transformed into a hegemonic-party system. The CPP has emerged as the dominant party capable of using political intimidation and judicial means to keep opposition parties at bay. Liberals and international legalists alike tend to blame Cambodian leaders for all the social and political ills that still exist in the country, but they tend to forget that the politics of survival still remain intense. The international pursuit of retributive justice has, at best, made little positive impact on the peace process or democratic and rule-of-law institution building. Countries like Timor-Leste and Indonesia, where the global pursuit of retributive justice largely failed, have turned out to be more democratic than Cambodia and

managed to develop rule-of-law institutions stronger than those of the latter. One of the three recent miracles in Asia is the disappearing of mass atrocities, but this miracle did not happen because of formal trials. Democratization and economic development have made it difficult for any potential criminals to commit the most serious crimes.

Thus, the pursuit of retributive justice in war-torn countries that still suffer from extremely weak state institutions may not necessarily advance the causes of peace, democracy, and the rule of law. Win-lose electoral competition and judicial retribution may not be a recipe for peace and security, as well as democratic and economic development. The point being made here is not that formal trials against perpetrators of the most serious crimes should never be carried out under all circumstances, but that the liberal proposition (that peace and democracy in war-torn, institutionally weak states cannot be achieved if justice is denied) receives little empirical support. Formal trials may, at times, need to be tamed with political reality.

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