
Jamie Frederic Metzl
Harvard Law School

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On 3 March 1978, Evan Luard, the British Under-Secretary of State for the Foreign and Commonwealth Office, stepped to the podium to address the U.N. Commission on Human Rights regarding the situation in Cambodia. Luard, a United Nations scholar and proponent of furthering human rights principles through foreign policy, was not one to take such violations lightly. After referring to "reports of systematic and arbitrary executions, and of other gross violations of human rights, involving many thousands of deaths within Democratic Kampuchea," Luard asserted that,

The facts which I have described - and they are facts confirmed by innumerable witnesses - represent a challenge to this Commission. The need for the allegations to be investigated and clarified if this Commission is to do its job is clear . . .

It is for the Commission on Human Rights to take the initiative in instituting such an investigation. There is no other body that can do so . . . The Commission is the organ of the United Nations concerned with such matters and as such bears a unique responsibility. The United Kingdom therefore proposes that the Commission should make a thorough study of the human rights situation in . . .


1 See EVAN LUARD, HUMAN RIGHTS AND FOREIGN POLICY (1981).
In many ways, Luard's statement in Geneva represented the high point of Western human rights response to the mass abuses committed under the Democratic Kampuchea regime (1975-1978).

Such responses had only slowly and gradually developed. Immediately following the full American withdrawal from Vietnam and Cambodia and the communist takeovers in Indochina in April 1975, America and its Western allies had largely turned their backs to Indochina. One State Department official described a common attitude of his colleagues at this time as "who cares what those f-ing Gooks are doing." As an observer of United States opinion noted in 1976, "Americans have somehow blocked [the Vietnam experience] out of their consciousness."

Despite such "Vietnam fatigue" and the extreme isolation of Pol Pot's Cambodia, allegations of mass killings in Cambodia gradually became more accepted by the Western media and concerned observers in the West in the years following the war. This process had begun with François Ponchaud's February 1976 articles in Le Monde describing the human costs of the April 1975 Khmer Rouge evacuation of Phnom Penh and the other cities of Cambodia. In 1977, publication of Ponchaud's Cambodge Année Zero and John Barron and

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Anthony Paul's *Peace with Horror*, both of which estimated that 1.2 million people had died since the communist victory, increased awareness of alleged atrocities in Cambodia. Jean Lacouture's influential review of Ponchaud's study in the March 1977 *New York Review of Books* furthered this process. Lacouture asserted that: After Auschwitz and the Gulag, we might have thought this century had produced the ultimate in horror, but we are now seeing the suicide of a people in the name of revolution, worse in the name of Socialism.  

Barron and Paul's work reached an enormous audience by its partial serialization in *Reader's Digest*, where it was stated that villages had turned to "charnel houses where unburied corpses lie putrefying in the sun." Although the version of a nightmarish Cambodia put forward by Ponchaud, Lacouture, Barron, and Paul was questioned by the likes of Noam Chomsky, Hildebrand and Porter, and Malcolm Caldwell, the views of such people became increasingly marginalized as more information regarding Cambodian horrors became available.

By 1977, one French journalist after discussing the disputed claims as to the number of Cambodians who had died since the Communist takeover asserted that, even taking into account the disparities in the figures and the differences of opinion over what deaths are to be blamed on the Khmer Rouge, the reality of the Cambodian nightmare can no longer be questioned.

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A similar statement was made by Martin Woollacott of the *Guardian*, who had previously doubted the veracity of the atrocity reports. "Even if the figures are wildly wrong," Woollacott wrote, "by as much as 50 or 75 per cent, what remains still constitutes one of the worst atrocities in this most brutal of centuries."\(^{14}\)

Although Cambodia never became a major issue of concern to Western governments during the 1975-1978 period, this emerging consensus did pressure governments to act. In Britain, the Cambodia issue was first broached in May 1976 by MP Patrick Wall, who cited media reports that half a million people had been condemned to death and "everyone over the age of twelve and educated has been or will be liquidated." Responding to Wall's call for Britain to raise the Cambodian "genocide" in the U.N. as a threat to world peace, Minister of State for the Foreign and Commonwealth Office Ted Rowlands replied, While I, too, have read with great concern the recent reports of events in Cambodia, I do not think they constitute a threat to world peace. Nor, I should add, have I any means of verifying the truth of allegations that have been made.\(^{15}\)

Two months later, however, when the same MP brought up the same issue, the U.K. Minister of State asserted that, It is clear from the considerable amount of information and evidence that has become available that abuses and atrocities have occurred, although we cannot accurately assess the scale of the abuses and atrocities.\(^{16}\)

Given the limitations of British intelligence capabilities regarding Indochina,\(^{17}\) the difference between these two statements suggests the important role played by press accounts.

Through 1977, a number of British MPs claimed made claims similar to Wall's.\(^{18}\) In March of that year, Under-Secretary Luard

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\(^{14}\) *Guardian*, Sept. 6, 1977.

\(^{15}\) *Hansard*, 908 PARL. DEB., H.C. (5th ser.) 1398-1399 (1976).

\(^{16}\) *Id.*, 914 PARL. DEB., H.C. (5th ser.) 1355-1356 (1976).

\(^{17}\) Letter from former senior official of British Foreign Office to author, name withheld upon request, (May 3, 1994) (on file with author).

responded in parliament that the official policy of the British government was that Cambodia's actions were "primarily a domestic matter and not a matter for the United Nations." Luard asserted, however, that "if anything, it is a question for the United Nations Commission on Human Rights, and I would be glad to see that body discuss the matter." In November, Luard stated that the British government was considering whether it could raise the matter at the next meeting of the Commission. By December, as popular pressure in the United Kingdom grew and all of the main churches of England began to prepare a joint call to the government to aid the Cambodian people, the Foreign Office announced that Britain would bring the matter to the attention of the U.N. Commission on Human Rights in February 1978.

A similar process took place across the Atlantic. Although the Cambodia issue was only brought to the attention of the United States Congress five times in 1976, each time, members of Congress added press accounts of atrocities to the record. Senator Pell asserted that,

I have been shocked to read the recent press accounts of mass killings, forced evacuations from urban areas, and generally brutal treatment of the Cambodian population by the new regime... [If estimates of 1 million killed are] true, approximately one fifth of the Cambodian population has been annihilated - a record of barbarous butchery which is surpassed in recent history only by the Nazi atrocities against the Jews during World War II... I am amazed that so little has been done to investigate and condemn what is happening in Cambodia. The U.N. Human Rights Commission has so far ignored the situation in that

20 Id., at 651-652.
In the executive branch as well, officials were beginning to take note of the atrocity reports. In May 1976, National Security Adviser Brent Scowcroft prepared for a congressman a long report on the Cambodia situation, made up of what he called "authoritative journalistic accounts of this period," including accounts from the New York Times, Washington Post, and Time, as well as a translation of Ponchaud's article from Le Monde.

The U.S. Department of State was also gathering information, particularly through its Bangkok embassy. State Department policy was expressed in a confidential policy paper on human rights in Cambodia from the Secretary of State. The Document stated that,

Department has taken following position regarding growing numbers of press reports that large numbers of Cambodians have died due to illness, starvation, or execution since the present government took power a year ago.

We share the concern about reported conditions in Cambodia. The Secretary has spoken out publicly on the suffering there. We are prepared to support any effective action that might be taken to inquire further into the question of violations of human rights in Cambodia.

The Cambodian authorities have almost completely cut off access by foreigners to their country, and reports of conditions in Cambodia are therefore difficult to verify.

23 Id., June 16, 1976, at 18617-18618.
Information available to the [United States Government] is not significantly different from that obtained by journalists and comes primarily from refugees. Nevertheless, these reports are too numerous to ignore and sufficient information certainly exists for further inquiry by appropriate international or private humanitarian organizations.26

As the first paragraph makes clear, the State Department was formulating its policy at least in part in response to press accounts. The directive stated that "[s]hould any effort be undertaken by an international organization, by a number of countries, or by non-governmental organizations, we would be prepared to consider what useful role we could play," and mentioned by name Amnesty International and the International Commission of Jurists as such organizations, as well as the U.N. Commission on Human Rights.

Special congressional hearings on the Cambodia situation were held in 1977.27 Twenty-six statements on Cambodia were made in congress the same year, many of which compared the Cambodia situation to the Holocaust.28 Richard Holbrooke, the Assistant Secretary of State for East Asian and Pacific Affairs, asserted in the July 1977 hearing that,

We have concluded that the Cambodian authorities have flagrantly and systematically violated the most basic human rights. They have ordered or permitted extensive

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26 Secretary of State to All East Asian and Pacific Diplomatic Posts, Paris, London, New York, Bonn, Copenhagen, Geneva, Moscow, Brussels, Department of State Telegram, June 8, 1976, FOIA No. 10015, released June 24, 1992. The Secretary's statements refer to Kissinger's condemnation of the Cambodian communists immediately following the takeover in April 1975.


killings; forcibly (sic) relocated the urban population; brutally treated supporters of the previous government; and suppressed personal and political freedoms.\textsuperscript{29}

At the end of the second hearing, Representative Stephen Solarz sponsored a House resolution which referred to refugee accounts of "countless killings and other barbaric brutalities by the Government of Cambodia." Most significantly, it called upon the President, to cooperate with other nations, through appropriate international forums such as the United Nations, in an effort to bring the flagrant violations of internationally recognized human rights now taking place in Cambodia to an end.\textsuperscript{30}

A resolution containing virtually the same text passed the Senate in November of the same year.\textsuperscript{31}

This growing pressure to act corresponded with a dramatic change in the American political landscape. Whereas the Ford Administration had made the promotion of human rights abroad a rather low priority,\textsuperscript{32} Jimmy Carter now spoke of "America's commitment to human rights as a fundamental tenet of our foreign policy,"\textsuperscript{33} and asserted that "[h]uman rights is the soul of our foreign policy -

\textsuperscript{29} Department of State Telegram, June 8, 1976, FOIA No. I0015, released June 24, 1992, \textit{supra} note 26.
\textsuperscript{31} \textit{Id.}, Nov. 4, 1977, at 37093.
because human rights is the very soul of our sense of nationhood. Patricia Derian, appointed to fill the newly created post of Assistant Secretary of State for Human Rights and Humanitarian Affairs, reaffirmed Carter's activist approach to human rights in her claim that "it is our obligation to work to obliterate human rights abuses wherever they occur."

For Carter, the traditional claim that countries were free to do as they wished within their own borders was no longer entirely legitimate. Carter asserted in a 1977 speech to the United Nations that "no member of the United Nations can claim that mistreatment of its citizens is solely its own business." The following year, he claimed that,

The Universal Declaration [of Human Rights] means that no nation can draw the cloak of sovereignty over torture, disappearances, officially-sanctioned bigotry, or the destruction of freedom within its own borders.

Such claims created strong expectations of fulfillment.

Likely responding to such expectations, as well as to pressures generated by congress and the media, Deputy Secretary of State Warren Christopher stepped up U.S. official condemnations of Cambodia in May 1977. Christopher called events in Cambodia "among the most flagrant and massive abuses of human rights to be found in the world today." U.S. condemnation of the DK regime further strengthened in April 1978, when President Carter sent a statement to the Oslo Examination Commission of Cambodia Atrocity

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36 *Id.* at 57.

37 Carter, *supra* note 34, at 326.

Reports meeting in Norway. Carter asserted:

America cannot avoid the responsibility to speak out in condemnation of the Cambodian government, the worst violator of human rights in the world today [emphasis added]. Thousands of refugees from Cambodia have accused their government of inflicting death on hundreds of thousands of Cambodian people through the genocidal policies it has implemented over the past three years. Witnesses have recounted abuses that include mass killings, inhuman treatment of the supporters of the previous government, the forced deportation of urban dwellers, and the total suppression of recognized political and religious freedoms, as well as deprivation of food and health care for the general population. Summary executions continue in Cambodia today and fear of the authorities is pervasive...

The American government again condemns the abuses of human rights which have occurred in Cambodia. It is an obligation of every member of the international community to protest the policies of this or any nation which cruelly and systematically violates the right of its people to enjoy life and basic human dignities.39

This condemnation by the American president was covered widely in the press.40

If the allegations of mass killings in Cambodia were becoming ever


more believed and Western governments were increasingly condemning the DK regime, the question remained of what could be done in response. As in Britain, paths of response in the U.S. led to the U.N. Commission on Human Rights. Secretary Christopher claimed that in the process of "making human rights an important concern of American foreign policy... We are playing an active part in the work of the [UN] Human Rights Commission." Following his January 1978 comment on the Cambodian abuses, Christopher stated that the United States planned to support the British proposal to the U.N. Commission.

This policy was reflected in a State Department letter to the Chairman of the Senate Committee on Foreign Relations outlining United States action in response to human rights violations in Cambodia. The letter described American policy as,

supporting efforts in the United Nations to bring increased international attention to the Cambodian human rights situation. We worked for the adoption of a resolution by the Human Rights Commission which called upon the Phnom Penh government to respond to allegations of human rights violations. We intend to pursue efforts to promote U.N. action during the August session of the Human Rights Commission.

If three years of developing Western human rights responses to

41 Statement by Deputy Secretary of State Christopher before the Senate Subcommittee on Foreign Assistance, AMERICAN FOREIGN POLICY BASIC Doc. 159, at 407 (Mar. 7, 1977).
42 Christopher, supra note 38.
events in Cambodia were leading to the U.N. Commission on Human Rights, the U.N. body itself was wholly unprepared for the responsibility. Assessing the powers granted to the United Nations Commission on Human Rights by its parent body, representatives at the first meeting of the Commission in 1947 asserted that the Commission had "no power to take any action in regard to any complaints regarding human rights." It was not until 1967 that the Economic and Social Council gave the Human Rights Commission any way of responding to alleged human rights violations when it authorized the Commission and its Sub-Commission on the Prevention of Discrimination and Protection of Minorities to "examine information relevant to gross violations of human rights and fundamental freedoms."

The procedure for receiving such information was only outlined three years later when the "1503 procedure" allowed a working group of the sub-Commission to review,

communications, together with replies from Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms... [and] to prepare... a report containing information on violations of human rights from all available sources.

Even if, after an investigation was carried out and a report was issued confirming such a pattern, however, the most the Commission could do was to condemn the violating state and refer the matter to the Economic and Social Council. As one analyst of the United Nations system for dealing with human rights abuses has noted,

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47 Id.
The logic of this procedure . . . is clear in the context of the decentralized world legal order which is structured to permit no meaningful interference with sovereign prerogatives.48

In addition to such structural limitations, political maneuvering also played a major role in the workings of the Commission. Not only did various states use the Commission as a tool to accuse their enemies of human rights violations, but members of collective groupings of states were often able to deflect criticisms against them.49 Although the case of Uganda had been brought to the Commission in 1974, for example, consideration of the agenda item was delayed for four years due largely to Idi Amin's position as head of the Organization for African Unity.50 Similarly, Socialist bloc, third world, and non-aligned states were often able to shield themselves from criticism by similar collective means,51 particularly after geographical distribution quotas increased the representation of third world states in 1967.52 In this politicized forum, issues such as de-colonization, apartheid, and Chilean and Israeli violations had become an almost exclusive enforcement priority.53

As this process of bringing the Cambodia issue to the flawed U.N. body responsible for human rights developed, however, other events conspired to undermine even so limited a response. By the time Luard addressed the U.N. Commission in Geneva in 1978, the political

50 Id. at 149; see also Tom J. Farer and Felice Gaer, The U.N. and Human Rights: At the End Of the Beginning, in Adam Roberts and Benedict Kingsbury, eds., United Nations, Divided World 280 (Second edition, 1993).
53 Id. at 63-64.
landscape was already changing. From the time of the communist victories in Cambodia and Vietnam in April 1975, tensions between the two communist states had mounted. In later 1975, clashes occurred between the two regimes on the disputed islands of Tho Chu and Phu Quoc. By 1977, armed clashes were taking place across the Cambodian-Vietnamese border, leading to the limited Vietnamese invasion at the end of that year. At the same time, as Cambodia moved towards closer relations with China, Vietnam was moving closer to China's rival for influence in Southeast Asia, the USSR. While the United States proclaimed its neutrality in this conflict, its movement towards establishing diplomatic relations with the PRC suggested otherwise.

If the United States was establishing closer ties to China, a move perceived by the Soviet Union as hostile, then it could be implied that Washington had an interest in preferring China's ally in Indochina, Cambodia, to the USSR's regional client, Vietnam. As the Far Eastern Economic Review noted in late 1978,

Like Australia, both Japan and the US are repelled by the violations of human rights which they allege are taking place in Cambodia, but regional 'balance of power' politics oblige them to see that Cambodia is preserved as an independent state, free from Vietnamese domination.

Before the Vietnamese invasion of Cambodia of 25 December 1978, the two very different strands of Western policy towards Cambodia could exist side by side. The U.S. could seek closer relations with China on one hand and condemn the PRC's allies in Democratic Kampuchea for violations of human rights on the other.

This was so for a number of reasons. First, the U.N. Commission on Human Rights was a body recognized as ineffective. Even if it had attempted to do so, the Commission could not have weakened significantly the internationally isolated Democratic Kampuchea regime. Thus, there was little political cost to Britain and the United States in acting through the U.N. body. Second, the strategic considerations which implied support for the DK regime had not been cemented so firmly by March 1978 as to demand such support. Even though the United States was fast improving its relations with China, relations had not yet reached a level where each state would have to support the actions of the other in all cases where the Soviet Union was involved. Third, the Carter administration was itself coming to terms with the potential conflict between its stated human rights principles and the demands of America's strategic interests.

For this reason, the United States' support for Luard's March 1978 resolution in the U.N. Commission on Human Rights was not so difficult an issue. The British resolution, co-sponsored by Sweden and Austria, requested that a special rapporteur be designated to carry out a "thorough study of the human rights situation in Democratic Kampuchea." Expressing opposition to the resolution, the Soviet delegate accused the United States and its allies of presenting "biased information" and of using the slogan "protection of human rights" in its campaign to undermine "the prestige of the USSR and other Socialist states." Due to the opposition of the Soviet Union, Yugoslavia, and Syria, a compromise solution was negotiated by the Indian representative whereby a resolution calling for the rapporteur's report to be ready for the thirty-fifth session of the Commission a year

later was adopted without vote.\textsuperscript{61}

The Commission delegated the task of writing the report to its Sub-Commission on the Prevention of Discrimination and Protection of Minorities. To provide the Sub-Commission with the necessary information, the United States, Britain, Canada, Norway, Amnesty International, and the International Commission of Jurists submitted a total of 997 pages of testimony.\textsuperscript{62} The 667 page U.S. report represented the summation of information on the Cambodian abuses collected over the past three and a half years. The document included excerpts from twenty-two interviews with refugees conducted by personnel from the U.S. embassy in Bangkok, extracts from twelve earlier reports from the American Embassy in Bangkok, a copy of President Carter's statement to the participants at Oslo and Warren Christopher's January statement, transcripts of the 1977 congressional hearings and of two House resolutions condemning Cambodia, as well as full copies of Ponchaud's and Barron and Paul's books.\textsuperscript{63} Some refugee testimonies claimed that up to three million Cambodians had been killed since 1975.\textsuperscript{64} One asserted that,

\begin{quote}
I doubt that more than one third of the Cambodians are still alive... All of the new Cambodians are being eliminated, Buddhists, intellectuals, anti-Communists as well as former soldiers, students and government officials, everyone even remotely associated with the former regime [are being killed].\textsuperscript{65}
\end{quote}

The 59 page British report to the Commission included a copy of

\begin{footnotes}
\item[63]\textit{Id}. at 5.
\item[64]\textit{Id}. at Section 1.
\item[65]\textit{Id}. at 7. (Excerpts from this document were printed in the \textit{N.Y. Times} on Aug. 30, 1978).
\end{footnotes}
Evan Luard's March speech and twelve refugee accounts which examined different aspects of life in Cambodia. One refugee concluded that "millions of Cambodians" had died as a result of the revolution. Another warned that "if the world just close their eyes to all this misery, it is a certainty that the Khmer race will disappear." The report noted that the refugee accounts were "so numerous and so consistent and mutually corroborative, that it is not possible to doubt their general truth," and concluded that "the most fundamental articles of the Universal Declaration of Human Rights have been grossly violated in Democratic Kampuchea."

While the government of Democratic Kampuchea had not presented its position formally to the Commission, the sub-Commission decided to utilize as Phnom Penh's defense a U.N. general distribution document submitted by DK foreign minister Ieng Sary in April 1978. The letter claimed that since the "liberation" of Cambodia,

the propaganda machine of the imperialists, expansionists, and annexationists has raised what it calls the 'human rights' issue in its slander and denigration of Democratic Kampuchea... [and] have conducted their campaign of denigration against the people of Kampuchea ever since the latter rose up in defiance of their domination, oppression, and exploitation.

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67 Id., Annex 1, at 5.
68 Id., Introduction, at 1.
It told of the "extremely cruel, barbaric, and destructive war of aggression against Kampuchea" by "American imperialists, with the active participation of British imperialists," whose,
criminal hands are stained with the blood of several million persons, they continue their virulent calumny and denigration of the peoples and countries which fought against them. In all these crimes, the British colonialists and imperialists displayed the greatest cruelty and treachery... the British government... is at present acting as spokesman for all the imperialists, the old and new colonialists, the expansionists, annexationists and reactionaries in attacking the new society in Kampuchea, to which the people of Kampuchea is deeply attached... The British government represents the British colonialist and imperialist regime, which is known as the most infamous and abject in the history of mankind... The world is perfectly aware that, at present, in England, the British imperialists and capitalist monopolists live in opulence on the heaps of corpses of the people whom they have plundered, exploited, and oppressed for centuries... Such are 'human rights' made in England... The British government has no right to interfere in the internal affairs of Democratic Kampuchea.

This attack on Britain would stand in sharp contrast to later words of praise by representatives of Democratic Kampuchea once the changing international context found the Pol Pot regime and Western governments on the same side in the U.N.

The Democratic Kampuchea document described the new Cambodia in which all people were equal, and society was just and democratic. In response to the accusations of mass murder, the

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71 Id. at 2-4.
Kampucheans responded that,

There is no reason for the Government of Kampuchea to reduce the population or to maintain it at its current level, since today's population of 8 million is well below the potential of the country, which needs more than 20 million. Accordingly, the goal of the Government of Democratic Kampuchea is to increase the population as quickly as possible.\(^7\)

This single document from Democratic Kampuchea clearly did not constitute a substantial counterweight to the nearly thousand pages submitted to the Commission by Western governments and agencies.

When the rapporteur's report did come to the Commission the following year, however, the situation was much changed. Vietnam had ousted the Democratic Kampuchea regime and now threatened America's ally, Thailand. The Soviet Union under Brezhnev had signed a twenty-five year treaty of friendship and cooperation with Vietnam,\(^7\) and seemed to be making gains by aggressive action in Indochina, the horn of Africa, Cuba, and elsewhere.\(^7\) The U.S. and China had established official relations in January 1979, an event of wide-ranging significance.\(^7\) The Chinese had attacked Vietnam's northern border in February 1979, a move to which Washington seemed to acquiesce.\(^7\) The ousted Cambodian regime was fighting for its life along the Thai-Cambodia border and for its continued political

\(^{7}\) Id. at 7.


\(^{76}\) Id., Carter at 206, Brzezinski at 410-411; Reply by the Assistant to the President for National Security Affairs, American Foreign Policy Basic Documents 1977-1980, Doc. 597, 1109.
representation in the United Nations. In sum, the Cambodian-Vietnamese conflict had become inextricably linked to the Sino-Soviet dispute and the Cold War.

Following the invasion, the Vietnamese-installed People's Republic of Kampuchea (PRK) regime asserted its claim to be the sole, legitimate representative of Cambodia. As the DK regime was making similar claims, and, in the U.N. at least, with rather more success, the PRK moved to undermine the DK by exposing its despicable human rights record. The PRK claimed that three million people had been killed by the DK and continually reported on the unearthing of mass graves. In August 1979, a genocide tribunal met in Phnom Penh where the panel of judges found the defendants guilty of "committing mass killings... which are in some aspects more barbarous than those used by the Hitlerite fascists." The judges confirmed the estimate of three million persons killed by the "Pol Pot-Ieng Sary clique," and condemned Pol Pot and Ieng Sary to death in absentia.

In response to such allegations, and in attempt to neutralize Vietnamese/PRK accusations against it, the DK accused the new regime of sowing a genocidal famine designed to wipe out the Cambodian people. The Democratic Kampuchea representative to the U.N. responded to Eastern bloc accusations of genocide against it by claiming that by sowing famine the Vietnamese,

have committed crimes of genocide worse than those of Hitler Nazism in order to annihilate the nation and people of Kampuchea and the national identity of Kampuchea.

77 SPK, Jan. 26, 1979, FBIS, Jan. 29, 1979, at h3; SPK, Feb. 23, 1979, FBIS, Feb. 27, 1979, at h4.
79 Id. at 301.
81 P.V.100, 1724 (Vol.111.A/33/PV.77-80), May 24, 1979.
Such accusations were constantly repeated by representatives of Democratic Kampuchea. The Chinese made similar claims, accusing Vietnam of treating Cambodians in ways which could "only be compared to the genocidal atrocities perpetuated by Hitler fascism." These accusations played an important role in influencing Western perceptions of the situation in Cambodia. As the American U.N. ambassador asserted in explaining his country's vote for the continued representation of the DK,

Our position on the technical question of credentials in no way implies any degree of support or recognition of the Pol Pot regime itself, or approval of its atrocious practices... We condemn and abhor the brutal human rights violations which have taken place in Kampuchea... However, the so-called Heng Samrin regime, both because it was imposed by the Vietnamese military force on the Khmer people, and because of its treatment of the Khmer people, is also open to condemnation. One indication of the regime's cruel attitude towards the Khmer people is the serious threat of famine which affects over two million people and the obstacles which that regime continues to pose to our effective international relief effort.

If both the DK and the PRK regime were guilty of mass abuses against the Cambodian people and there was no moral difference between the two regimes, then the vote on representation could be a vote on a technical matter, not a consideration of genocide.

In this highly politicized environment, condemning the now

85 Id. at 50. (Austria, France, and Sweden abstained in the 1979 credentials vote).
deposed Democratic Kampuchea regime had an entirely different meaning than it did prior to the invasion. Before the invasion, condemning the DK abuses cost Western states little and addressed the pressures being put on governments by concerned citizens and legislators. Condemning the same regime after the invasion, however, threatened to play into the anti-DK propaganda campaign of the Vietnamese and the PRK, to undermine the policy of opposing the Vietnamese move on all levels, to antagonize the ASEAN states promoting the continued representation of the DK in the UN, and to drive a wedge between the United States and China just as relations between the two countries were improving. It was in this context that the Cambodia issue returned to the U.N. Commission on Human Rights in 1979.

The report called for at the Commission's 1978 meeting, prepared by Abdelwahab Bouhdiba, the Algerian chairman of the Commission's Sub-Commission on the Prevention of Discrimination and Protection of Minorities, was presented to the Commission in March 1979. The report, based on the thousand pages of evidence presented to the Commission in 1978, went through most of the articles of the Universal Declaration of Human Rights, describing allegations of how each had been violated by the Democratic Kampuchea authorities. It asserted, for example, that the right to life, liberty and security of person described in Article 3 of the charter had been violated as,
rest or medical care.\textsuperscript{86}

The report described the absence of any sort of judicial process or free expression and the execution of religious leaders.\textsuperscript{87}

The Democratic Kampuchean version of the human rights situation in Cambodia was expressed in a telegram from Ieng Sary to the sub-Commission dated 16 September 1978, before the Pol Pot regime had been ousted. In language characteristic of the Democratic Kampuchea authorities prior to their removal from power, Sary accused the Sub-Commission of lending its support to those,

who after committing immeasurable crimes against the people of Kampuchea... continue to defame Democratic Kampuchea to whitewash their crimes.\textsuperscript{88}

"The Government of Democratic Kampuchea," Sary declared, "does not murder, as the imperialists, expansionists and annexationists with their slander and calumny, have tried to make people believe."\textsuperscript{89}

Although sub-Commission chairman Bouhdiba had been required to present both sides in the text, he was under no such constraint in his verbal presentation to the Commission. Bouhdiba asserted that in a "systematic massacre,"

at least 100,000 persons had been executed and that at least 1 million had died as a result of lack of food or care, physical exhaustion brought about by the extremely severe labour regime that had been imposed.\textsuperscript{90}

Using Jean Lacouture's words from the \textit{New York Review of Books}, Bouhdiba described the Kampuchean actions as "constitut[ing]...
nothing less than autogenocide," and stated that the abuses described in the documents were "the most serious that had occurred anywhere in the world since Nazism."\(^9\)

Despite Bouhdiba's plea that it was "neither possible nor prudent to pass over [the allegations] in silence or simply lay the matter aside,"\(^9\) such dispassionate consideration based solely on principles of human rights was impossible in the highly politicized Commission. In spite of the opposition of the United States, France, Britain, and other Western states, a Yugoslav resolution to postpone discussion of the report for another year was accepted by a large majority which included the ASEAN representatives. This postponement on the grounds that it was impossible to discuss the atrocity reports without touching on the "broader political situation"\(^9\) (i.e. the Vietnamese invasion of Cambodia) was essentially a concession to the DK regime. Although the Soviet support for the Yugoslav proposal ran counter to its attempts elsewhere to present the Pol Pot regime in a negative light, the principle of not supporting the "interference in the internal affairs" of states in the name of human rights was likely considered paramount.\(^9\)

More surprising, however, was the willingness of the Western states to drop the issue of the report after their initial protest. The United States and Britain had referred to their submissions to the Commission during the post-invasion U.N. debates as evidence of their condemnation of Democratic Kampuchean abuses even as they supported the DK's continued representation. If this had been a meaningful point, then it seems that those governments would have made a stronger and more public argument against the shelving of the report for a further year. No public statements were made on the

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\(^9\) Id. at 7.
\(^9\) Id. at 7.
\(^9\) U.N. Doc. E/CN.4/SR.1519, 6. (It should be remembered that Western states, particularly the USA were criticizing the Soviet Union over its internal human rights record at this time. CARTER, supra, note 57, at 144-150.)
matter, nor was it brought up by either government in the Security Council or General Assembly. While bringing the issue of human rights abuses in Democratic Kampuchea to the attention of the Commission on Human Rights had been relatively painless in 1978, pushing the issue of DK abuses now pushed against to the flow of Western policies towards Cambodia. Further, such actions risked supporting a propaganda campaign by the Soviet Union, Vietnam, and the People's Republic of Kampuchea to use the DK "genocide" in Cambodia for political ends, even if this campaign was based on actual events of the past three and a half years. The ambiguities and contradictions inherent in the policies of western states were also made clear in the developing refugee situation and alleged famine in Kampuchea.

By later-1979, the outline of the border system was becoming clear. Different factions were taking control of border camps and building political, social, and military structures around the Cambodians stranded at the border. Kept alive by Western food aid and armed with Chinese weapons delivered by the Thai military, the border factions fast developed an identity of opposition. While the DK was by far the most significant of these groups, Son Sann's Khmer People's National Liberation Front, Sihanouk's Moulinaka, and other smaller Groupings developed as well. With foreign aid and arms, the myth of a legitimate resistance put forward in the 1979 U.N. representation vote was gradually transformed into a reality.

At the same time, the PRK and Vietnamese seemed to be losing the propaganda battle. Western press accounts lambasted the new regime for failing to distribute donated rice as Cambodians in the interior were allegedly starving. The Vietnamese military's threatening posture along the Thai border also caused great concern in Washington as well as Bangkok. In response, the U.S. began a

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massive shipment of arms to Thailand and many of its ASEAN allies. While arming the Thais was a defensive move, offensive measures were also taken. Western states, China, and ASEAN now had a clear interest in making the Vietnamese occupation of Cambodia as costly as possible by supporting the only truly legitimate opposition movement along the Thai-Cambodian border - the DK. Given that the DK resistance was already so weakened by its military failures, the poor health condition of its civilian base, and its negative international reputation, Western states and others now hesitated to further weaken and isolate the already vulnerable regime by harking on its human rights record. The newfound common interests of Western states and the DK regime was evidenced in a number of fora.

In the U.N. Security Council, following the 1979 vote to proceed with the DK representatives seated, in which the Western states had voted with China for the DK, the Pol Pot regime presented a different view than it had in its condemnation of the British "imperialists" the year before. In sharp contrast, DK Ambassador Thiounn Prasith now stated that,

My delegation would like to pay a sincere tribute to the United States of America, France, Norway, Portugal, and the United Kingdom of Great Britain and Northern Ireland, which have shown their deep sympathy for the struggle of the people of Kampuchea, their condemnation of the Vietnamese aggression against and invasion of Democratic Kampuchea, and their support for a democratic, independent and sovereign Kampuchea with its territorial integrity.

Clearly, divisions which had characterized relations between the Democratic Kampuchea regime and Western states during the 1975-1978 period, when human rights considerations had been of

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97 BANGKOK WORLD, June 24, 1980; N.Y. TIMES, July 1, 1980.
comparatively greater importance to Western states, were lessening as different values gained in relative stature following the Vietnamese invasion.

This shift was also clear in the 1980 session of the U.N. Commission on Human Rights. In the Security Council debates of 1979, United States officials had asserted that the representation issue should be considered separate from the human rights issue, which could be addressed elsewhere, implying the Commission on Human Rights. 99 Similarly, the British Lord Privy Seal, Sir Ian Gilmour, had responded to criticisms in the House of Commons of the British vote to seat the Democratic Kampuchea regime by asserting that,

We intend... to do anything we can to ensure that the considerations of human rights in Cambodia does not lapse in the Human Rights Commission. 100

When the Commission met in March 1980, therefore, its deliberations represented perhaps the last place where the human rights record of the Democratic Kampuchean government might have been considered in strictly human rights terms.

The proposed 1980 resolution, which Britain co-sponsored, however, almost completely ignored the Bouhdiba report and the focus of the Commission's earlier deliberations. Indeed, the only phrase which included any reference to abuses perpetrated by the DK regime asserted, somewhat disingenuously, that the Commission, "condemns all the gross and flagrant violations of human rights which have occurred in Kampuchea."

By grouping the Democratic Kampuchea abuses with those alleged to have taken place under the new regime, the Commission was relativizing the two competing sets of accusations in a manner consistent with the Chinese and DK propaganda campaign to do the

100 Hansard, PARL. DEB. H.C., Vol. 975, 723.
same. The Chinese representative to the Commission stated in the
debate that Vietnam was carrying out genocide in Kampuchea by
destroying crops, sabotaging international aid, mining rice fields, and
using poison gas and chemical weapons. The British representative
asserted similarly that the acts of the Heng Samrin regime were of a
"very similar nature" to those of the Democratic Kampuchea
regime.

The title of the 1980 resolution, "The Situation in Democratic
Kampuchea," indicated its connection to past deliberations in the
Commission on Human Rights under the same agenda title. The actual
resolution, however, seemed to have more in common with the
agenda item entitled "The Situation in Kampuchea" which had passed
the General Assembly in November 1979 in response to the
Vietnamese invasion than it did with the series of events in the
human rights Commission leading to the Bouhdiba report. The
preamble stated,

    Noting with deep concern that in January 1979
Democratic Kampuchea was invaded by foreign forces,
leading to further human suffering [italics added]
including a large-scale exodus of refugees,

    Recalling further General Assembly Resolution
34/22 of 14 November 1979 on the situation in
Kampuchea which called on the parties to the conflict to
cease all hostilities forthwith and for the immediate
withdrawal of all foreign forces from Kampuchea,

    Seriously concerned that Kampuchea is still under
foreign occupation and that the conflict continues, thus
preventing the people of Kampuchea from exercising their
right to self-determination.

102 Id. at 297.
103 Id. at 286.
105 Supra, note 101.
That the focus of the 1980 resolution was opposition to the Vietnamese invasion rather than any condemnation of the DK regime was made even more evident by the paragraphs asserting that the Commission,

Condemns further the invasion and occupation of parts of Kampuchea by foreign forces and the violations of human rights which have ensued...
Urges the parties to observe fully the fundamental principles of human rights and... [inter alia] Ensure the adequate supply and distribution of food and medical care to the civilian population, and non-interference with all activities which are essential for the survival of the civilian population.106

In an odd reversal of roles, the Soviet Union and its allies, who had in 1978 opposed the decision to commission the Bouhdiba report in the first place, now expressed their full support for the report. A Soviet bloc draft resolution asserted that it,

Notes with appreciation the... [Bouhdiba report] and condemns the revealed flagrant and mass violations of human rights and fundamental freedoms in Democratic Kampuchea.107

In the debate, the Bulgarian representative called the Western states' criticisms of the PRK "insincere and politically motivated."108 Cuba claimed that facts were being twisted to "suit certain special interests,"109 and the Soviet Union that the UK/ASEAN draft constituted interference in the internal affairs of Kampuchea.110

106 Id.
108 Supra, note 103, at 284.
109 Id. at 288.
110 Id. at 290.
Despite these strong objections of the Soviet bloc states, the UK/ASEAN resolution passed by a 20-9-6 vote, with all of the Western and ASEAN states supporting its adoption. The Soviet draft resolution was defeated by a similar margin.

The reception of this decision by the opposing parties demonstrated the complete transformation of the agenda item from a virtual indictment of the Democratic Kampuchea regime and an outgrowth of public condemnation of DK atrocities in the West to an additional lever being used to oppose the Vietnamese invasion of Cambodia. The DK observer at the Commission warmly welcomed its adoption. The PRK news agency SPK, on the other hand, quoted Nhan Dan that,

The resolution of the U.N. Commission on Human Rights does nothing but serve the interests of the imperialists, the reactionaries of Peking and the other reactionary forces, and reduces the prestige of the United Nations. It has no value.

In the large and complex struggle over the fate of Cambodia, the resolution did indeed have value. While the human rights issue had been perhaps the issue of most significance for Western states in the period after the American withdrawal from Indochina in 1975, when such concerns could be considered separate from strategic and other interests, the resolution demonstrated that this had now clearly changed. Now, the human rights issue, turned on its head, became a further tool to wage the battle against the extension of Vietnamese and, therefore, Soviet influence in Southeast Asia. Human rights was one area where the condemnation of the Vietnamese could partially neutralize the accusations being made against Democratic Kampuchea. Open support for the DK would be extremely problematic in terms of public opinion in the West if the DK was

111 Id. at 86, 101.
branded a pariah regime ousted by a more acceptable neighbor. No such consideration was necessary if the conflict was between two pariah regimes.

As was clear from the 1980 resolution, the human rights prong of the foreign policies of Western states which had existed in the 1975-1978 years had now been clearly subjugated to the strategic and geopolitical interest of opposing the Vietnamese and Soviets in every way possible. The U.N. Commission on Human Rights, designed as a forum for the promotion of human rights, had instead become a forum in which the illusory nature of such lofty principles was made abundantly clear.

As the pinnacle of U.N. structures for the promotion and protection of human rights, the Commission did indeed bear, in Luard's words, a "unique responsibility." The Commission was the body to which concerned governments went once media reports and public and legislative pressure had convinced them to act. Rather than providing a forum where such concerns could be translated into responsive action, the Commission served more as a black hole, sucking in the best energies of concerned observers and emitting little or nothing in return. While the Cambodia episode demonstrated in high relief the failure of the institution of the Commission on Human Rights, this was ultimately the failure of states.

The states which brought the DK abuses to the Commission in 1978 were the same states who had designed the Commission to have little real power. After the Vietnamese invasion, many of those same states prevented the Commission from using what little authority it had to condemn the DK abuses. This failure of states to address so wide-scale a violation as that perpetrated by the DK regime thus brings into question the oft-stated commitment of states, particularly those in the West, to human rights principles.

Perhaps it is not surprising that states act, as they always have

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114 This policy would continue, with minor adjustments, at least until 1990, when the Vietnamese had withdrawn from Cambodia and the Cold War was drawing to a close. Only then did the United States withdraw its support from the DK-led Coalition Government of Democratic Kampuchea in the U.N.
done, to promote their geo-strategic interests. What is somewhat startling, however, is the vast gulf, as seen in the case of Cambodia, between the moralistic rhetoric states use to justify their actions and the realpolitik-style decisions which complexities of world politics thrust upon them.

If states choose to hide behind the cloak of inviolable sovereignty and specific state interest and not address mass violations of human rights wherever they occur, as is their right, then failures to address such violations in places like Cambodia, Rwanda, and Bosnia will have to be accepted. If they wish to create a system in which such abuses can be addressed or even prevented, then institutions will need to be developed which allow this to happen. As the case of Cambodia shows, the U.N. Commission on Human Rights is not such an institution.