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THE NONDEMOCRATIC BENEFITS OF ELECTIONS — THE CASE OF CAMBODIA

Nhan T. Vu*

I. INTRODUCTION

WHEN ONE THINKS OF THE ADMINISTRATION of free and fair elections¹ there is a tendency to concentrate on one possible electoral benefit — democracy. Scholars have written much literature on the possibility for democracy, how to bring about democracy, and what constitutes democracy.² However, democracy is only the most obvious possible product of elections. The holding of elections may have benefits other than the

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¹ Unless otherwise stated, in this Article, the word “elections” refers to elections that are free and fair. “Free and fair” is a specialized term in international law denoting an election that substantially represents the will of the people. *See infra* text accompanying notes 287-90; *see also* 1948 Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810 (1948) art. 21, para. 1; International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368; International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360; Larry Garber, Guidelines for International Election Observing (1984); W. Michael Reisman, *International Election Observation*, 4 PACE Y.B. INT’L L. 1 (1992); David Padilla & Elizabeth Houppert, *International Election Observing: Enhancing the Principle of Free and Fair Elections*, 7 EMORY INT’L L. REV. 71 (1993); Michelle Evans & Darilyn T. Olidge, *What Can the Past Teach the Future? Lessons from Internationally Supervised Self-Determination Elections 1920-1990*, 24 N.Y.U. J. INT’L L. & POL. 1711 (1992); Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT’L L. 539 (1992); David Stoelting, *The Challenge of U.N.-Monitored Elections in Independent Nations*, 28 STAN. J. INT’L L. 371 (1992).

² *See generally* ROBERT A. DAHL, POLYARCHY: PARTICIPATION AND OPPOSITION (1971); SAMUEL P. HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY (1991); BARRINGTON MOORE, JR., SOCIAL ORIGINS OF DEMOCRACY AND DICTATORSHIP (1966); GUILLERMO O’DONNELL & PHILIPPE C. SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES (1986); ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA (J. P. Mayer ed. & George Lawrence trans., 1988).

creation of a democratic political system.³

The elections held in Cambodia from May 23-28, 1993, under the auspices of the United Nations provide a good example. As Cambodia entered the 1990s, the likelihood that a stable democratic government⁴ could be formed was minuscule according to any theory of democracy formation.⁵ The economy was in a shambles, the people of Cambodia had no experience with democracy, and the major parties in Cambodia all had the means to ignore the call for democracy and continue their armed conflict.

The economy, which had never been well-developed in the first place, took a step backward due to the fighting and the forced agrarianization of the urban centers by the Khmer Rouge during their four-year rule. The economy was largely agrarian with little industry other than resource-stripping activities such as lumber cutting and gem mining. It seemed unlikely that the people of Cambodia had achieved the standard

³ For an opposing opinion, see Richard D. Fisher, *Averting A Failure of U.N. Peacekeeping in Cambodia*, HERT. FOUND. REP., Dec. 15, 1992, at 1, asking President Clinton "[n]ot [to] equate UNTAC's success with merely holding elections. The U.N.'s success must be judged on Cambodia's successful transition to democracy."

⁴ There is a difference between a democracy and a stable democracy. Technically, Cambodia is a democracy since the government in power was chosen in democratic elections and has evinced an intention to continue governing the country through democratic means. However, one way to answer the question of whether a country is democratic is to take a snapshot of the political conditions in that country. In contrast, the term "stable democracy" connotes some sort of extended time period. Although I use the term "stable democracy" to mean any democracy that has a substantial chance of remaining democratic in the near future, the term stable democracy has no inherent definition. One noted expert on democracy has suggested a two-turnover test, requiring that the party in power relinquish control of the government at least two times to the victorious opposition party before one can say that a democratic system of governance has a good chance of success. HUNTINGTON, *supra* note 2, at 266-67.

⁵ Most theories of democracy formation fit into two categories: theories which depend upon socioeconomic factors and theories which depend upon psychological factors. Those relying on socioeconomic factors link democracy to prosperity; i.e., prosperity increases leisure time, education, free press, and other commodities which increase the likelihood of democracy. See, e.g., SEYMOUR M. LIPSET, *POLITICAL MAN* (1960); Phillips Cutright, *National Political Development: Its Measurement and Social Correlates*, in *POLITICS AND SOCIAL LIFE*, 569 (Nelson W. Polsby et al. eds., 1963). Theories dependent upon psychological factors argue that expectations of and acclimation to concepts of democracy are important. Thus, they emphasize prior experience with democracy. They also look to the diversity level of a society to see if the people are accustomed to openly airing dissension or solving problems through compromise. See, e.g., ROBERT A. DAHL, *WHO GOVERNS?* (1961); VALDIMER O. KEY, JR., *PUBLIC OPINION AND AMERICAN DEMOCRACY* (1961).

of living necessary to provide them the surplus leisure time and income necessary to educate themselves about and participate in democratic processes. And to make matters worse, almost everyone with the technical, professional, and political skills necessary to bring economic improvement to Cambodia had been killed by the Khmer Rouge or had fled to other countries.

Furthermore, with one brief exception,⁶ the Cambodian people had never experienced any sort of truly democratic government. Of the four major Cambodian factions, none had any experience with democracy.⁷ Each of the factions had controlled the country at one time or another and all had used nondemocratic or sham-democratic⁸ forms of governance. Thus, it was more likely that the Cambodian leaders would subvert any democratic processes for their own purposes rather than abide by the will of the people. And even if the elites did not destroy the democratic process, there was no way to predict whether the Cambodian people would participate in elections in a meaningful and useful manner.

In fact, armed conflict had long been the standard means of resolving disputes in Cambodia. There had been over twenty years of civil war, interrupted only by four years of "peace" filled with terror and mass murder.⁹ It is estimated that in the latter period, the Khmer Rouge killed at least one million persons out of a population of approximately six to eight million.¹⁰ Although Vietnam had withdrawn all of its troops and

⁶ The elections held in 1955 after Cambodia gained its independence from the French were probably free and fair under the standards of international law. *See infra* text accompanying notes 55-59.

⁷ It is true, however, that, in the opinion of this author, all the factions currently support some sort of economic and political liberalization, at least in word.

⁸ By "sham-democratic," I mean a government that uses democratic rhetoric but does not allow its citizens true political choice in their governance.

⁹ Although the well-publicized activities of the Khmer Rouge during their reign are often referred to as "genocide," that is not technically correct. "Genocide" has traditionally referred to situations in which persons of one race or nationality have systematically killed persons of another race or nationality. If genocide merely denoted causing death on a massive scale, most major wars would be genocidal. The actions of the Khmer Rouge are, therefore, genocide when committed against ethnic Vietnamese, but are "mass murders" when committed against ethnic Cambodians.

¹⁰ The estimates of the numbers of those murdered vary greatly. The People's Republic of Kampuchea, the Cambodian government installed by the Vietnamese after they defeated the Khmer Rouge, estimated three million dead. DONALD M. SEEKINGS, *HISTORICAL SETTING IN CAMBODIA: A COUNTRY STUDY* 51 (Russell R. Ross ed., 3d ed. 1990). The U.S. Department of State lists 1.2 million persons killed. *Id.* The Khmer Rouge admit to between 800,000 and 1 million deaths during their rule. *Id.* The total population of Cambodia at the time of the Khmer Rouge takeover in April, 1975 can also only be estimated since the last census occurred in 1962. It was estimated at 7.1

the various Cambodian factions had agreed to a cease-fire and elections, the fact remained that animosity ran high among the four competing Cambodian parties and each of the factions was heavily armed. Democracy in Cambodia seemed a remote possibility. Ngeth Suphan, a Harvard-educated civil administrator for Thmar Pouk Province in Cambodia, made the point quite succinctly, "Nothing good can come out of it [democracy] . . . it is too premature for my people. The leaders do not understand about democracy. They want power."¹¹

But Mr. Ngeth may have been wrong. Holding elections may be worthwhile even in countries where the likelihood of establishing a stable democratic government is low. There may be other electoral benefits. These benefits are not unforeseen byproducts of elections, but rather stem from a primary electoral function. Quite simply, free and fair elections legitimize.¹² Those parties or politicians who participate, and especially those who do well and gain a place in the government are legitimized, even if they do not receive a majority of the votes. Those who choose not to participate are delegitimized, making them vulnerable to the loss of both domestic and foreign support. Finally, the elections may give political power to those already in possession of political legitimacy. All of these are important because they change the power structure of the country and the decision matrixes faced by elites of that country.¹³

million in 1972. *Id.*

¹¹ Lindsay Murdoch, *Khmer Rouge Lays Plans for Future in Cambodia*, THE AGE (Melbourne), May 29, 1993, at 9.

¹² To "legitimize" means to confer "legitimacy," which I will define as the recognition by others or oneself that one has the right to exert a specific type of power or otherwise take certain actions. Thus, political legitimacy is the recognition that one has the right to exert political power. One component of political legitimacy is based on ideological and political support that can be measured in terms of popularity. Those with political legitimacy domestically would be expected to do well in elections. Those with political legitimacy internationally can expect to receive signs of support from the international community (e.g., resolutions of support from the General Assembly or the Security Council of the United Nations, economic or military aid, recognition, diplomatic relations, etc.). However, this does not exclude recognition by other individuals or parties that a person or organization has the right to exert power, even if the recognizer opposes the ideology or policies of the recognized. By "political power," I mean the ability to exercise those functions usually reserved for governments (i.e., governance). In some countries, such as the United States, this may require being elected to the Presidency or Congress or being appointed to the judiciary. In other countries, it may require becoming Secretary General of the Communist Party, and in others, the highest-ranking officer of the armed forces.

¹³ By "power structure," I mean the distribution of political, military, and economic power among the factions. By "decision matrix," I mean the calculations used by entities to make decisions and the criteria factored into those calculations.

In Cambodia, there were three such legitimacy-based benefits that came about as a result of the elections. First, the Khmer Rouge lost much of its international and domestic support. Second, the other Cambodian parties have banded together into a legitimate and functioning government that has been able to administer the country. Finally, the individual in Cambodia who possessed the greatest amount of political legitimacy, Prince Norodom Sihanouk, has been given political power. Note that none of these events is directly related to the formation of a stable democratic form of government.

However, one should not despair of ever achieving the formation of a stable democracy in Cambodia. To the contrary, this Article will argue that the benefits that were described above are conducive to the continuation of democracy in Cambodia. If this is true, then free and fair elections may be more important for Cambodia than we may have originally believed. Because of the multitude of seemingly intractable problems, the odds do not favor democracy in Cambodia in the long-run. However, the nondemocratic benefits of elections that have been mentioned can increase stability and prosperity, which would help shore up Cambodia's fragile democracy. Without such advantages, it would be difficult to imagine why a country whose recent history has been so troubled would suddenly be able to govern itself by a system of governance requiring trust, restraint, and compromise. In Cambodia, Clauswitz's theory is reversed, politics is an extension of war,¹⁴ and the various factions have been fighting a brutal life or death struggle for the last half-century. However, there is reason to hope that politics in Cambodia in the years to come will not be like war in Cambodia in the years that have just passed.

II. HISTORICAL BACKGROUND

In order to understand the current situation in Cambodia, it is necessary to understand Cambodia's past. Therefore, what follows will be an abridged history of Cambodia.

At its apogee under King Jayavarman VII in the late twelfth century and early thirteenth century, the Kingdom of Kambuja (as it was then called) encompassed parts of what is today Malaysia, Thailand, Laos, Southern Vietnam, and Central Vietnam.¹⁵ Unfortunately, centuries of mismanagement and internal fighting brought about the decline of the empire. Coinciding with Cambodia's loss of power was the rise of two powerful neighbors: Thailand to the west and Vietnam to the east. The

¹⁴ CARL VON CLAUSWITZ, ON WAR 119 (Anatol Rapoport ed., 1982). "We see, therefore, that War is not merely a political act, but also a real political instrument, a continuation of political commerce, a carrying out of the same by other means." *Id.*

¹⁵ SEEKINGS, *supra* note 10, at 11.

major turning point for the Cambodian empire was the sacking of the famous temples at Angkor Wat by the Thais in 1353.¹⁶

After this point in time, Cambodia gradually ceased to be an independent player in Southeast Asia and became the puppet of its more powerful neighbors. Internal strife amongst the Cambodian royal family often led one faction to seek aid from Thailand and the other to beseech Vietnam. Of course, the price of such help would always be the ceding of provinces or counties along the border. In this way, the Vietnamese annexed the Vam Co River Basin and the Mekong Delta (including the Cambodian fishing Village of Prey Nokor — now known as Saigon or Ho Chi Minh City).¹⁷ The decline in Cambodian power also coincided with a southward migration of the Vietnamese that started when they gained independence from China in the tenth century.¹⁸ The settlers who made up the *Nam Tien* (Southward March), as the movement was called, were motivated by the population pressures in northern Vietnam and the expansionist aims of the Vietnamese emperor.¹⁹ It was this expansion that made Cambodians so suspicious of the Vietnamese. Often, the Vietnamese would settle on Cambodian land before it became Vietnamese land.²⁰

The ascension of Emperor Nguyen Anh to the Vietnamese throne in 1802 is a watershed event of Vietnamese history. Considered to be the beginning of the modern era in Vietnam,²¹ it marked the unification of power in the country at a time when Vietnam's territories were larger than ever.²² With little internal strife to hinder national development, the

¹⁶ *Id.* at 12.

¹⁷ NAYAN CHANDA, *BROTHER ENEMY* 51 (1986).

¹⁸ *Id.* at 49.

¹⁹ THU-HUONG NGUYEN-VO, *KHMER-VIET RELATIONS AND THE THIRD INDOCHINA CONFLICT* 1-3 (1992). Those moving southward left the rigid, institutionalized society of the north in search of land and opportunities in the south. *Id.*

²⁰ CHANDA, *supra* note 17, at 51.

²¹ Professor Hue-tam Ho-tai of Harvard University believes this event marks the beginning of the modern era. Professor Alexander Barton Woodside believes that the Tay Son rebellion, which occurred just before the rise of Nguyen Anh to power, "inaugurates modern Vietnamese history." ALEXANDER BARTON WOODSIDE, *VIETNAM AND THE CHINESE MODEL: A COMPARATIVE STUDY OF VIETNAMESE AND CHINESE GOVERNMENT IN THE FIRST HALF OF THE NINETEENTH CENTURY* 3 (1971).

²² Nguyen Anh defeated the Tay Son brothers, commoners who had led a successful peasant revolt lasting from 1771 to 1787 that left them in control of all of Vietnam. *Id.* at 2-3. Before that time, Vietnam was ruled by two noble families. *Id.* Although Vietnam had a nominal royal family, power was really in the hands of the Trinh in the north and the Nguyen in the south and center. *Id.* Nguyen Anh was of the Nguyen family. *Id.*

Vietnamese moved in earnest to populate the entire Mekong Delta, encompassing the southern-most part of modern-day Vietnam.

At the same time, Vietnam continued to take an active interest in Cambodia. Having learned a cultural lesson from China, Vietnam saw itself as the refined Middle Kingdom whose role it was to bring culture and education to the "barbarians" of Cambodia. Cambodia was to be the vassal state of Vietnam, paying homage to the Vietnamese emperor.²³ Many Vietnamese officials were sent to Cambodia to teach Vietnamese ways to the Cambodians.²⁴ The Cambodians' reaction to these assimilation efforts was the instigation of numerous rebellions.²⁵ The Vietnamese emperor, incensed at the "ungrateful" attitude of the Cambodians put down the rebellions ruthlessly.²⁶ Neither the attempts at assimilation nor the brutal responses to rebellion assuaged the Cambodians' fear that the Vietnamese wanted to control them if not annex Cambodia outright.

It is likely that this course of events would have continued if the French had not conquered Vietnam in the second half of the 19th Century. The French colonialists sought a trade route to China, converts to Catholicism, and ways to check the British in their colonial efforts. The French attacked and took over parts of southern Vietnam in 1862 and eventually controlled all of Vietnam by 1882.²⁷ The Cambodians were hardly in a position to resist the French. After all, they were weaker than the Vietnamese, whom the French had already defeated once. In 1863, the French and Cambodians signed an agreement under which Cambodia became a protectorate of France.²⁸

Although the French stopped outright Vietnamese expansion onto Cambodian land, their administration of the region was not always looked upon with favor by the Cambodians. French Indochina was considered one administrative unit under the French ministry of colonies and encompassed all of Laos; Cambodia; CochinChina (southern Vietnam); Annam (central Vietnam); and Tonkin (northern Vietnam).²⁹ Because CochinChina was a French colony³⁰ the French drew the CochinChina-

²³ *Id.* at 234-41.

²⁴ CHANDA, *supra* note 17, at 51-52.

²⁵ *Id.* at 52.

²⁶ *Id.* at 53.

²⁷ SEEKINGS, *supra* note 10, at 16.

²⁸ *Id.*

²⁹ STANLEY KARNOW, VIETNAM 88 (1983).

³⁰ *Id.* at 87. By comparison, Cambodia, Laos, Tonkin, and (Annam) were protectorates. This meant that they were under the nominal control of their respective national emperors. In reality, however, the French controlled the royal family, giving emperors instructions and replacing any who refused to follow orders. *Id.*

Cambodia boundary in CochinChina's favor.³¹ And because the French could not find enough Cambodians with the requisite administrative skills, many of the administrators in Cambodia were Vietnamese.³² All of these actions no doubt caused the Cambodians to feel as if the Vietnamese were still attempting to dominate them, albeit with more subtlety than in the past.

It is no wonder then, that Cambodians display such antipathy towards the Vietnamese. This animosity is a part of Cambodian life even today. Mothers caution their children to be careful of the Vietnamese, whom they call *Yvon* (a Cambodian pejorative word meaning roughly, "foreign barbarian").³³ Children may be told the story of the construction of the Vinh Te Canal — a Vietnamese project completed with forced Cambodian labor. According to the story, three Cambodians were punished by being buried up to their heads for not working hard enough. Their heads were then used to prop up a pot in which water was boiled. When they squirmed and writhed in pain, spilling the water, the Vietnamese scolded them saying "Don't spill the master's tea."³⁴ Stories like this one would later be used by the Khmer Rouge to whip up anti-Vietnamese sentiment.

Although the Thais have also meddled in Cambodian affairs and were responsible for the sacking of Angkor Wat, the Cambodians do not view them with the same suspicion with which they view the Vietnamese. First, the Thais have not encroached on Cambodian territory as much as the Vietnamese, especially in modern times.³⁵ Second, the Thais have a culture derived from India, meaning that they are ethnically and culturally more similar to the Cambodians than the sinocized Vietnamese.³⁶ Finally, the Thais did not possess the cultural evangelism of the Vietnamese.³⁷ While the Vietnamese envisioned changing the Cambodians' way of life, the Thais only wanted their loyalty and tribute.³⁸

The Cambodians' antipathy continued into the anti-colonial era. The beginnings of formal Communism in Indochina start with the creation of the Indochinese Communist Party (ICP) in 1930.³⁹ Most of this early development was driven by the Vietnamese and thus, much of the early

³¹ CHANDA, *supra* note 17, at 54.

³² *Id.* at 56.

³³ *Id.* at 52.

³⁴ NGUYEN-VO, *supra* note 19, at ix.

³⁵ GARY KLINTWORTH, VIETNAM'S INTERVENTION IN CAMBODIA IN INTERNATIONAL LAW 2 (1989) [hereinafter VIETNAM'S INTERVENTION].

³⁶ SEEKINGS, *supra* note 10, at 15.

³⁷ WOODSIDE, *supra* note 21, at 239.

³⁸ SEEKINGS, *supra* note 10, at 15; *see also id.*

³⁹ *Id.*, at 36.

membership of the ICP was Vietnamese. Aware that the overbroad geographic reach of the party might lead some to argue that the ICP was a cover for a Vietnamese takeover of Cambodia and Laos, the Communist movement split into three national components in 1951.⁴⁰ Nonetheless, the new Khmer People's Revolutionary Party (KPRP) had an executive committee composed of 1,800 Vietnamese and only 150 Cambodians.⁴¹

Throughout this period, most Cambodians were kept politically quiet by the fiction of continued monarchical rule.⁴² In 1941, King Monivong died and the Vichy French authorities chose Norodom Sihanouk to be the new king.⁴³ They passed over Monivong's son, Monireth, because they believed that the nineteen year-old Sihanouk would be less-experienced and more pliable.⁴⁴ At the end of World War II, Cambodia experienced a brief, but exhilarating spell of independence from March to October of 1945, after the Japanese occupation forces had relinquished their power, and before the return of the French and other Allied forces.⁴⁵

From 1946 to 1954, Sihanouk was forced to deal with the French authorities, his own government, and nationalistic rebels. The French gave Cambodia partial independence, what Sihanouk termed "fifty percent independence."⁴⁶ The Cambodian government was given administrative control of most state functions and the indigenous military had autonomy within Siem Riep and Battambang provinces in the northwest.⁴⁷ But the French still controlled foreign policy, the judicial system, finances, customs, and military operations outside of the autonomous provinces.⁴⁸ At the same time, Sihanouk was faced with a legislature controlled by the Democratic Party, a nationalistic party which sought independence immediately and opposed most of the King's legislation.⁴⁹ Finally, Sihanouk had to deal with the Khmer Issarak, a rebel military organization com-

⁴⁰ CHANDA, *supra* note 17, at 57.

⁴¹ *Id.*

⁴² SEEKINGS, *supra* note 10, at 20. This ploy seems to have worked better in Cambodia than it did in Vietnam. In Vietnam, the use of protectorates to give the impression that the emperor still ruled northern and central Vietnam did not seem to quell revolutionary and nationalistic fervor. Instead, by the 1920s and 1930s, the Vietnamese monarchy had been discredited and ceased to be a rallying point for independence movements to eject the French from Vietnam. HUE-TAM HO TAI, *RADICALISM AND THE ORIGINS OF THE VIETNAMESE REVOLUTION 15-20* (1992).

⁴³ SEEKINGS, *supra* note 10, at 21.

⁴⁴ *Id.*

⁴⁵ *Id.* at 22.

⁴⁶ *Id.* at 24.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 23-26 (discussing Cambodia's path toward independence).

posed of Cambodian and Vietnamese leftists; anti-monarchical nationalists; and bandits, who used violent methods to further their goal of independence from France.⁵⁰ Within the Democratic Party there were no doubt many Khmer Issarak sympathizers.

Sihanouk's response to the pressure from all sides was immensely successful and is a testament to his political skill. In 1952, he dissolved the cabinet, suspended the constitution, and assumed control of the government as Prime Minister. The next year, he suspended the National Assembly.⁵¹ Throughout this period, Sihanouk exercised direct authoritarian rule, suppressing both the Democratic Party and the Khmer Issarak. Having taken care of his domestic enemies, he left for France in 1953, ostensibly for health reasons, but in reality to lobby for Cambodia's independence.⁵² Although he was rebuffed by the French, Sihanouk remained undeterred and publicized the plight of his country in America, Canada, and Japan as he headed home. He then declared that he would not return to Cambodia until France made full assurances that independence would be granted to Cambodia. Although he initially resided in Bangkok, Sihanouk later had to move to the autonomous region of Siem Riep. This was a risky gamble since the French could have easily replaced him with a more pliable successor. But control of Cambodia had always been incidental to the colonization of Vietnam. It had never been France's main reason for colonizing Indochina and there were relatively few reasons for a continued French presence. In 1953, the war effort in Indochina was going badly for the French and public opinion in metropolitan France was calling for a withdrawal from Indochina.⁵³ With little vested interest in Cambodia and a need to concentrate on Vietnam, the French agreed to grant independence to Cambodia.⁵⁴ Sihanouk returned to Phnom Penh as a hero for having won Cambodia's independence from France. He had not only defeated the French, but quieted his domestic opponents as well. Although the opposition at home had painted Sihanouk as a pro-French puppet and themselves as nationalistic liberators, it was he who had won Cambodia's independence and the hearts of most of its citizens.

With elections to be held in 1955, Sihanouk planned his political victory. He cleverly abdicated the throne to his father so that he could

⁵⁰ *Id.* at 23.

⁵¹ *Id.*

⁵² *Id.*

⁵³ KARNOW, *supra* note 29, at 198. For example, the French were badly defeated by Vietnamese nationalists at Dien Bien Phu on May 7, 1954. *Id.*

⁵⁴ CHANDA, *supra* note 17, at 41

devote himself full-time to partisan politics.⁵⁵ Determined to defeat the Democratic Party, Sihanouk put together his own party, the Popular Socialist Community (known by its shortened Khmer name, *Sangkum*). It was composed mainly of rightists, but also included the Prince's followers and several leftists such as Hu Nim; Hou Yuon; and Khieu Samphan, all of whom later joined the Khmer Rouge.⁵⁶ Having consolidated the right, he declared the party's themes to be nationalism, loyalty to the monarchy, struggle against injustice and corruption, and protection of Buddhist ideology.⁵⁷ *Sangkum* gained the support of nationalists, royalists, leftists, and the religious sector. It won eighty-three percent of the vote and all of the seats in the National Assembly.⁵⁸

Analyses of the period 1955-1970 are at odds. Sihanouk's detractors paint a picture of repression against the left, especially the Khmer Issarak and a political intolerance comparable to that of the Khmer Rouge.⁵⁹ They point to the prevalence of crony socialism, where close friends of the Prince milked all the profits from state industries for personal use, likening it to the crony capitalism of the Philippines during the rule of Ferdinand Marcos.⁶⁰ On the other hand, Sihanouk's supporters emphasize his visits to isolated villages, where he would receive petitions from villagers, chat with peasants, pass out and receive gifts, and scold administrators for mismanagement.⁶¹ No doubt, the true picture of the Prince's administration incorporates aspects of both of these views. However, it cannot be denied that Sihanouk was and is immensely popular in Cambodia.⁶²

Despite the large right-wing contingent in his party, Sihanouk followed a centrist political policy, alternating between the right and left. Even as the war in Vietnam grew, Sihanouk attempted to remain neutral. However, he believed that the Western influence in Asia would only be temporary and did not want to provoke the North Vietnamese.⁶³ He

⁵⁵ SEEKINGS, *supra* note 10, at 28; CHANDA, *supra* note 17, at 41.

⁵⁶ SEEKINGS, *supra* note 10, at 28-29; CHANDA, *supra* note 17, at 41.

⁵⁷ SEEKINGS, *supra* note 10, at 29.

⁵⁸ *Id.*

⁵⁹ *Id.* at 26.

⁶⁰ *Id.* at 30.

⁶¹ *Id.* at 27.

⁶² In a recent poll conducted by an independent management and investment firm, Sihanouk was found to be the most popular figure in Cambodia. *Cambodian Popularity Poll Ranks King*, *Singer*, REUTERS, June 21, 1994, available in LEXIS, Asiapc Library, Cambod File.

⁶³ CHANDA, *supra* note 17, at 61. Sihanouk believed that North Vietnam would eventually win the war in Vietnam and that if he aided them, he would "put Communist Vietnam in Kampuchea's debt in such a way that it would never again dare raise

looked the other way as Hanoi used sanctuaries in Cambodia as supply bases and rest areas for its troops. Sihanouk also ignored the fact that the Vietnamese Communists were transporting supplies to South Vietnam via the Ho Chi Minh Trail, which snaked southward on the Cambodian side of the Cambodian-Vietnamese border. As a counterweight to Vietnamese and Thai pressures that had always been exerted on Cambodia, Sihanouk attempted to befriend China. The two countries signed a treaty of nonaggression and worked together to solve the issue of the treatment of Chinese Cambodians.⁶⁴

Although Cambodia had received military aid from the United States in the form of weapons and training in the mid-1950s and early 1960s, Sihanouk became more suspicious as the Cambodian military forged closer ties to the United States and moved farther to the right.⁶⁵ Sihanouk believed that the United States was planning a coup and became annoyed at U.S. violations of Cambodian airspace as well the intrusion of South Vietnamese troops into Cambodia in pursuit of the Vietnamese Communists.⁶⁶ This caused Sihanouk to improve relations with North Vietnam. He even agreed to negotiate with the National Liberation Front of South Vietnam (NLFSVN), the umbrella organization of the Vietnamese Communists of South Vietnam, also known as the Viet Cong. In 1969, Cambodia recognized the provisional government of the NLFSVN.⁶⁷ At the same time, however, he changed course. In 1967 and 1968, he signaled that he would have no problems with South Vietnamese troops entering Cambodia in hot pursuit of Viet Cong or airstrikes against Communist sanctuaries in Cambodia.⁶⁸

Sihanouk's military, which had been hurt by the loss of U.S. military assistance, had become disgruntled with his erratic neutralist path. In 1970, while Sihanouk was on a trip to Moscow and Beijing, General Lon Nol, Sihanouk's prime minister, launched a coup d'état.⁶⁹ Most middle-class, urban, educated citizens were relieved. The National Assembly, which was controlled by Lon Nol's supporters, voted unanimously to depose Sihanouk and to give Lon Nol emergency powers.⁷⁰ However, Sihanouk was immensely popular in the countryside and his broadcast appeals brought about demonstrations and riots throughout the country. At

a hand, so to speak, against our country and our people, its benefactors." *Id.*

⁶⁴ SEEKINGS, *supra* note 10, at 31-32.

⁶⁵ *Id.* at 32.

⁶⁶ *Id.* at 33.

⁶⁷ *Id.* at 34.

⁶⁸ *Id.* at 34-35; CHANDA, *supra* note 17, at 63-64.

⁶⁹ CHANDA, *supra* note 17, at 64.

⁷⁰ SEEKINGS, *supra* note 10, at 43.

one point, 40,000 peasants began to march on Phnom Penh.⁷¹ Sihanouk set up a government in exile in Beijing. At the request of the Chinese, his government in exile associated itself with the Kampuchean Communist Party (KCP).⁷² While Sihanouk was the face presented to the world, it was the KCP that did most of the fighting in Cambodia. However, the KCP had another name, the Khmer Rouge,⁷³ and they were controlled by a man named Saloth Sar, whose nom de guerre was Pol Pot.

The irony is that the rightist coup by Lon Nol gave the Khmer Rouge a second chance.⁷⁴ Up to that point, the Communist leaders of North Vietnam and other countries had shown little real support for the KCP. Although some training and weapons had been sent to the Cambodian Communists, the Vietnamese generally refrained from doing too much.⁷⁵ After all, as part of his neutralist policy, Sihanouk was fighting the KCP. The Vietnamese did not want to offend him and risk losing the use of Cambodian sanctuaries and the Ho Chi Minh trail. With a rightist government in Phnom Penh, however, Hanoi realized that it would need a strong KCP to keep the Lon Nol government from disrupting the war effort in South Vietnam. Otherwise, the Viet Cong would be squeezed from the west by Lon Nol and from the east by U.S. and South Vietnamese forces. Thus, the North Vietnamese swept out the Cambodian government forces in northeastern Cambodia, handing over this area to the Khmer Rouge to use as a base.⁷⁶ In addition, training and military supply began in earnest. The Khmer Rouge at first used their association with Sihanouk to gain support among the villagers. Later, when their power was self-sustaining, they began to denigrate Sihanouk.⁷⁷ In his words of June, 1973, when "they [the Khmer Rouge] no longer need me, they will spit me out like a cherry pit!"⁷⁸

On April 17, 1975, the Khmer Rouge defeated the Lon Nol govern-

⁷¹ *Id.*

⁷² *Id.* at 43-44.

⁷³ CHANDA, *supra* note 17, at 41. The term *Khmers Rouges* refers to two different groups. It was originally coined by Sihanouk to refer to the Khmer Issarak and his other leftist opponents. This was in contrast to his opponents on the right, the *Khmers Bleu*. *Id.* But the term also refers to the Kampuchean Communist Party (KCP), the organization controlled by Pol Pot that ruled Cambodia from 1975-1979. *Id.*

⁷⁴ See generally WILLIAM SHAWCROSS, *SIDESHOW: KISSINGER, NIXON AND THE DESTRUCTION OF CAMBODIA* (1979).

⁷⁵ See CHANDA, *supra* note 17, at 60. For example, Vietnamese Vice-Foreign Minister Vo Dong Giang, when recounting the history of the 1960s, did not mention Sihanouk's suppression of the left and noted that Sihanouk was immensely popular. *Id.*

⁷⁶ SEEKINGS, *supra* note 10, at 45.

⁷⁷ CHANDA, *supra* note 17, at 71

⁷⁸ SEEKINGS, *supra* note 10, at 44.

ment and entered Phnom Penh.⁷⁹ The United States had long ago removed itself from Indochina and the nationalist government in South Vietnam was to collapse less than two weeks later.⁸⁰ Thus started a reign of terror in which at least one million Cambodians, of an estimated population of six to eight million, were murdered. The Khmer Rouge emptied out all the cities and declared that it was year zero.⁸¹ Disdaining technology and the decadence of Western culture, the Khmer Rouge executed most of the educated class.⁸² Even for the non-targeted working class⁸³ life was miserable. In the agricultural communes where most Cambodians were forced to live and work, discipline was strict and punishment was often times grisly. Spying was commonplace.⁸⁴

The regime cultivated a hatred of the Vietnamese. The anti-Vietnamese sentiment quickly led to escalating attacks on Vietnam by the Khmer Rouge and retaliatory invasions by Vietnam.⁸⁵ Convinced of the intractability of the situation by the Khmer Rouge's refusal to negotiate, on December 24, 1978, Vietnamese troops invaded Cambodia.⁸⁶ By January 7, 1979, the Vietnamese had used their advantage in numbers, training, and weapons to defeat the Khmer Rouge and enter Phnom Penh.⁸⁷ The Vietnamese set up a Cambodian government composed of ex-Khmer Rouge who had defected because of Pol Pot's brutality and pro-Vietnamese Cambodian Communists who had stayed in Vietnam when the Khmer Rouge took over.⁸⁸ The new administration was not strong

⁷⁹ NGUYEN-VO, *supra* note 19, at 78.

⁸⁰ *Id.*

⁸¹ SEEKINGS, *supra* note 10, at 48-49.

⁸² *Id.* at 50.

⁸³ The Khmer Rouge classified people as "new people" (urban dwellers) or "old people" (rural peasants). For "new people," life was often a living hell. They were treated as slave laborers, working the longest hours in the most inhospitable places for the smallest rice rations. SEEKINGS, *supra* note 10, at 53. The life for "old people" was harsh, but not as bad as for "new people." *Id.* In some areas, especially under more moderate commanders along the Vietnamese border, "new people" who were penitent lead the same life as "old people." *Id.* at 53-54. This ended in 1977 when Pol Pot had many Eastern cadres purged for being traitors (i.e. being more moderate) and the remaining moderate cadres fled to Vietnam. *Id.* at 65-66.

⁸⁴ *Id.* at 50-51.

⁸⁵ For a detailed description of the pre-war border attacks, some of which were quite large in scale, see NGUYEN-VO, *supra* note 19, at 96-102, 104.

⁸⁶ *Id.* at 126.

⁸⁷ CHANDA, *supra* note 17, at 316-17.

⁸⁸ SEEKINGS, *supra* note 10, at 193. Ex-Khmer Rouge members in the new government included Heng Samrin, Hun Sen, and Chea Sim. *Id.*; see also RINN-SUP SHIN, GOVERNMENT AND POLITICS IN CAMBODIA: A COUNTRY STUDY 193 (Russell R.

enough to stand on its own so there was significant Vietnamese economic and military support.⁸⁹

Meanwhile, several rebel groups formed on the Thai-Cambodian border. Each vied for control of the numerous refugee camps that had sprung up as Cambodian villagers fled or were forced to flee the fighting. The rebel groups fought the Vietnamese, the Vietnamese-installed Cambodian government, and themselves. The three groups were the Khmer Rouge, backed by China and Thailand; the National United Front for An Independent, Neutral, Peaceful and Cooperative Cambodia (known by its French acronym FUNCINPEC), the royalist movement headed by Prince Sihanouk and backed by China and the Association of Southeast Asian Nations (ASEAN); and the Kampuchean People's National Liberation Front (KPNLF), a rightist group lead by Son Sann and backed by the United States.⁹⁰ At the urging of China and ASEAN, they formed a loose and uneasy alliance known as the Coalition Government of Democratic Kampuchea (CGDK) in order to fight the Vietnamese.⁹¹ Sihanouk was its nominal leader.⁹² The fighting continued throughout the 1980s. Although the Vietnamese and their Cambodian allies, the State of Cambodia (SOC), were never able to defeat the rebel forces, they did deal a crippling blow in the dry season offensive of 1984-1985.⁹³ This gave the SOC sufficient breathing room to form a working, stable government. By the late-1980s, life in Cambodia had achieved some semblance of normalcy, much like life in the pre-war and pre-Lon Nol era some twenty years before.⁹⁴ Under general principles of international law on statehood, the SOC should have been the *de jure* government of Cambodia.⁹⁵ Nonetheless, lobbying by the United States, China, and ASEAN guaranteed that the CGDK, with the Khmer Rouge as its representative, retained Cambodia's seat in the U.N. General Assembly.⁹⁶

Ross ed., 3d ed. 1990).

⁸⁹ CHANDA, *supra* note 17, at 371-72. The most prominent Vietnamese personnel in Cambodia were the approximately 180,000 Vietnamese troops who stayed in Cambodia throughout the 1980s. NGUYEN-VO, *supra* note 19, at 145.

⁹⁰ SHIN, *supra* note 88, at 194-95.

⁹¹ *Id.* at 195-201.

⁹² *Id.* at 202-03.

⁹³ JONATHAN STROMSETH, *TIME ON WHOSE SIDE IN CAMBODIA?* 6 (1988).

⁹⁴ For example, Phnom Penh's population had grown to 500,00 and rice production was up to 2.5 million tons per year, approaching the output for the late 1960s. VIETNAM'S INTERVENTION, *supra* note 35, at 88-89.

⁹⁵ *See id.* at 85-102.

⁹⁶ *Id.* at 8-9; SHIN, *supra* note 88, at 223. In 1979, the vote in the U.N. General Assembly calling for an unconditional withdrawal of Vietnamese troops was 91 to 21, with 29 abstaining. SHIN, *supra* note 88, at 223. The situation was little changed in

This situation changed with the collapse of the Soviet Union and the concomitant cessation of Soviet aid to Vietnam. The Vietnamese had been economically and politically isolated as a result of their invasion and occupation of Cambodia. They were largely dependent on approximately \$1 billion per year of Soviet aid.⁹⁷ When the Soviet Union collapsed, the Vietnamese were forced to reassess the situation. The Cambodian conflict as well as a punitive invasion by China in 1979 and mismanagement of the economy had put Vietnam in terrible economic condition.⁹⁸ Forced to deal with the reality of the change in the world geopolitical order, they gradually withdrew their armed forces from Cambodia. The last withdrawals were completed in 1989.⁹⁹ To the surprise of many, the Vietnamese-installed SOC did not collapse and fought effectively against the rebels. Apparently, the decade of Vietnamese support had given them the time to create a functioning government.

The stalemate eventually led to efforts to resolve the conflict peacefully. On October, 24, 1991, the rebels and the government, under pressure from their various sponsors, agreed to a cease-fire, a demobilization of their forces, and free and fair elections to be run by the United Nations.¹⁰⁰ The first U.N. personnel began arriving the next month. Eventually, the United Nations Transitional Authority in Cambodia (UNTAC), as the mission was called, consisted of 22,000 soldiers and civil administrators.¹⁰¹ It is estimated that the mission cost between \$1.5 to \$2.0 billion, and another \$880 million was pledged in economic aid.¹⁰²

1988, when 122 nations voted in favor of the resolution and 19 voted against, with thirteen abstentions. VIETNAM'S INTERVENTION, *supra* note 35, at 9. It should be noted however, that the United Nations's view of the Khmer Rouge did slowly change as the evidence of its genocidal atrocities emerged. By 1988, resolutions were drafted calling for "the non-return of the universally condemned policies and practices of a recent past" VIETNAM'S INTERVENTION, *supra* note 35, at 9.

⁹⁷ For a more detailed analysis, see VIETNAM'S INTERVENTION, *supra* note 35, at 125-28.

⁹⁸ For example, rice production fell from 18.5 million tons to 17.6 million tons, unemployment was at 30%, and Vietnam faced \$7 billion in debt. *Id.* at 125.

⁹⁹ See William Branigin, *Defections Weakening Ranks of Cambodian Rebels*, WASH. POST, Sept. 25, 1993, at A15. Even the U.S. Defense Department acknowledged that Vietnam had completely withdrawn by October, 1989. See also GARY KLINTWORTH, *CAMBODIA AND PEACEKEEPING 2* (1990).

¹⁰⁰ See Andrew Bell & Nick Cumming-Bruce, *France: Historic Deal to End War in Cambodia*, THE GUARDIAN, Oct. 24, 1991, at 12, available in LEXIS, World Library, Txtlne File.

¹⁰¹ See William Branigin, *U.N. Ends Cambodian Operation; Mission Successful Despite Flaws*, WASH. POST, Sept. 27, 1993, at A12.

¹⁰² See William Branigin, *Cambodia Moves to Return Sihanouk to His Throne*;

The mission, however, was not a complete success. The Khmer Rouge refused to lay down their weapons and their troops did not show up for cantonment. They also refused to participate in the elections and actively attempted to sabotage them. Despite this fact, the elections themselves were a success. From May 23-28, 1993, the United Nations administered elections that were widely considered free and fair.¹⁰³ The turnout was high, more than four million people or 89.04% of the registered voters.¹⁰⁴ FUNCINPEC, Prince Sihanouk's royalist party, won a plurality of the seats, 58 out 120 (45.47% or 1.8 million votes). The Cambodian People's Party (CPP, the party of the SOC) came in second with 51 seats (38.22% or 1.53 million votes).¹⁰⁵ Son Sann's Buddhist Liberal Democratic Party (BLDP) came in third with 10 seats (3.8% or 152,764 votes) and Molinaka, a royalist splinter party, received the remaining vote.¹⁰⁶ Although the SOC at first refused to abide by the results of the elections, the three major victorious parties eventually reached a compromise power-sharing agreement. Prince Ranaridh, head of the royalist party and a son of Prince Sihanouk, became the First Prime Minister while Hun Sen, head of the CPP, became Second Prime Minister.¹⁰⁷ Son Sann was elected Speaker of the Assembly.¹⁰⁸ The royalists

Elected Leaders Said to Form Consensus on Monarchy, WASH. POST, Aug. 26, 1993, at A18; *U.N. Confirms Dates for Cambodia Pullout*, L.A. TIMES Aug. 28, 1993, at A11

¹⁰³ The financial situation of the mission is unclear. Commentators have estimated that the mission could eventually cost between \$1.5-\$2.0 billion, but it is unlikely that a comprehensive and accurate accounting will be done anytime soon. *Aid Is Out If Khmer Rouge Is In, U.S. Tells Cambodia*, WASH. POST, July 19, 1993, at A9; *Cambodia: Thailand 'Recognises' UNTAC's Poll Results*, BANGKOK POST, June 12, 1993. Andrew Peacock, an election observer and Liberal Party member of the Australian Parliament, expressed satisfaction that the poll "was as fair as it could have been under the circumstances." Eric Ellis, *Cambodia's Close Call Raises New Khmer Rouge Fears*, AUSTL. FIN. REV., May 31, 1993. It is unclear why the Khmer Rouge did not actively disrupt the elections, which they could have done. One theory is that they did not want to alienate the vast majority of Cambodians, including some of their own supporters, who wanted to vote. Alternatively, they may have not wanted to instigate full-scale violence against U.N. peacekeepers monitoring the polling stations. Finally, there are reports that the Chinese urged them not to disrupt the elections. Mark Baker, *Khmer Rouge Feted for Role in Peace*, THE AGE (Melbourne), May 27, 1993, at 18.

¹⁰⁴ Lindsay Murdoch, *The Ultimate Bad Loser-Hun Sen*, THE AGE (Melbourne), June 12, 1993 available in LEXIS, Asiapac Library, Cambod File; *U.N. Says Elections Were "Free and Fair,"* AGENCE EUROPE, June 2, 1993, available in LEXIS, World Library, Txtlne file.

¹⁰⁵ See *Cambodia Still in the Pits*, BUS. TIMES (Malaysia), June 18, 1993, at 4.

¹⁰⁶ *Id.*

¹⁰⁷ See Lindsay Murdoch, *Cambodia: New Deal on Cambodian P.M.*, THE AGE

and the CPP agreed to share power over the important interior and defense ministries.¹⁰⁹ The elected representatives drafted a new constitution, which was ratified on September 25, 1993, and then convened itself as the National Assembly.¹¹⁰ In an interesting twist, the monarchy was reinstituted with Sihanouk as king. The National Assembly decided to "Once again vest . . . Sihanouk with the full and special powers inherent in his capacity and duties as head of state in order that he may save our nation and lead it on the path towards peace and prosperity."¹¹¹ Sihanouk was given veto powers over judicial and cabinet appointments and military decisions.¹¹² Sihanouk then declared that henceforth Cambodia would "be a de facto liberal democracy with a parliamentary regime."¹¹³

The United Nations personnel started leaving on August 2, 1993¹¹⁴ and the last members of the mission left on November 15, 1993.¹¹⁵ Recognizing the success of the elections, the Khmer Rouge attempted in July and August, 1993, to negotiate a role for themselves in the new government. To this end, they commenced a campaign of attacks throughout the country, but were repulsed by the government.¹¹⁶ Although the government at first considered a role for the Khmer Rouge, it eventually refused to negotiate until the Khmer Rouge surrendered themselves and

(Melbourne), Sept. 18, 1993., at 9.

¹⁰⁸ Philip Shenon, *Rival Parties In Cambodia Agree to Form a Coalition Government*, N.Y. TIMES, June 17, 1993, at A10.

¹⁰⁹ *Cambodian Agreement*, WASH. POST, June 21, 1993, at A13. In addition, FUNCINPEC would take over the Ministries of Foreign Affairs and Finance while the CPP retained control of the Ministry of Information. *Id.*

¹¹⁰ *Sihanouk Again Becomes King and Picks Government*, N.Y. TIMES, Sept. 25, 1993, at A3.

¹¹¹ Philip Shenon, *New Assembly Gives Prince Sihanouk Broad Powers*, N.Y. TIMES, June 15, 1993, at A3; William Branigin, *Sihanouk Proclaimed New Head of State; Assembly Gives Cambodia 'Special Powers'*, WASH. POST, June 15, 1993, at A16.

¹¹² See Lindsay Murdoch, *Cambodia: Sihanouk Cancer News Shakes Cambodian Plan*, THE AGE (Melbourne), Sept. 21, 1993, at 9. In fact, Sihanouk is the supreme military commander in Cambodia. Lindsay Murdoch, *Cambodia Puts Final Touches on New Regime*, THE AGE (Melbourne), Sept. 16, 1993.

¹¹³ *Khmers to Share Interim Power*, BANGKOK POST, June 17, 1993, available in LEXIS, World Library, Textline File.

¹¹⁴ See *Cambodia: Peacekeeping Troops Have Started Their Withdrawal and Now Cambodia Is Pondering Its Future*, BANGKOK POST, Aug. 10, 1993, at 3; *U.N. Confirms Dates for Cambodia Pullout*, L.A. TIMES, Aug. 28, 1993, at A11.

¹¹⁵ See *Military Troops to End U.N. Mission in Cambodia*, JAPAN ECON. NEWSWIRE, Nov. 15, 1993., available in LEXIS, Asiapc Library, Cambod File.

¹¹⁶ See *UNTAC Pulls Out While Khmer Rouge Attacks Become Routine*, VIET. INV. REV., Aug. 9, 1993, available in LEXIS, Asiapc Library, Cambod File.

their territory.¹¹⁷

Since that time, the newly created Royal Government of Cambodia (RGC) has gone about the business of attempting to rebuild Cambodia. Although it has been unable to destroy the Khmer Rouge, it has registered successes in many fields.¹¹⁸ For their part, the Khmer Rouge have continued their campaign of attacks against ethnic Vietnamese and government personnel, but have been unable to negotiate a role for themselves in the new government. The Khmer Rouge currently have about 12,000 fighters and control fifteen percent of Cambodia's territory, although there is widespread agreement that it is not capable of toppling the new government.¹¹⁹ The new, unified Khmer Royal Army (KRA) has about 90,000 men.¹²⁰

¹¹⁷ "Prince Ranaridh declared today that the Khmer Rouge, the ultra-Maoist faction that boycotted the elections, would be given no political power in the Government and rejected the group's latest request for a 15% share of control over ministries." Lindsay Murdoch, *Cambodia's Rulers Heal Rift Over Power*, THE AGE (Melbourne), Sept. 17, 1993, at 8, available in LEXIS, Asiapc Library, Cambod File. Later, Prince Ranaridh stated, "The position of the Royal Government of Cambodia in this regard [negotiating a role for the Khmer Rouge] is perfectly clear. We are ready to welcome the Khmer Rouge group within the Royal Army and the Royal Government of Cambodia as advisers. But we demand, in return, that the Khmer Rouge group assumes the same responsibilities of the three other former parties which signed the Paris agreements." Fauziah Ismail, *Cambodia Seeks Help In Maintaining Peace*, BUS. TIMES (Malaysia), Oct. 6, 1993, at 18 available in LEXIS, Asiapc Library, Cambod File. However, the Khmer Rouge have refused to lay down their arms and cede their territory to the new government as required. In response, the government passed a bill outlawing the Khmer Rouge. *National Assembly Adopts Bill Outlawing Khmer Rouge*, REUTERS, July 11, 1994, available in LEXIS, World Library, Txtlne File. Not everyone agreed with this move however. Foreign Minister Norodom Sirivudh, Sihanouk's half-brother has "never thought a military option would settle the problem of the Khmer Rouge. The government has just decided to outlaw it; the big door has already been closed." He felt that a passage should be left for the Khmer Rouge. "It is not a question of forgiving the genocide, but one cannot carry out a policy of vengeance. A government has the right of self-defense, but the Cambodian people prefer having more hospitals, schools and roads than settling their conflicts." Interview with Prince Norodom Sirivudh, Foreign Minister of Cambodia, in Phnom Penh, Cambodia (July 10, 1994).

¹¹⁸ See *infra* text accompanying notes 219-47.

¹¹⁹ See James Pringle, *Corrupt Army Boosts Image of Khmer Rouge*, THE TIMES (London), Aug. 25, 1994 available in LEXIS, World Library, Txtlne File; *Pol Pot's Men Win the Battle of Fear*, ECONOMIST, May 7, 1994, at 36.

¹²⁰ See Mark Dodd, *Cambodian Army Forms Elite Guard Unit*, REUTERS, Oct. 16, 1994, available in LEXIS, Asiapc Library, Cambod File.

III. THE LEGITIMACY-BASED BENEFITS OF THE ELECTIONS IN CAMBODIA

A. *Introduction*

The recent elections will have many and varied effects on the people and country of Cambodia in the years to come. Some of these effects will not emerge or be identifiable for many years. For example, few academics would be willing to herald the formation of a stable democracy before a score of years has passed since these first elections. However, this Article will analyze three specific products of the elections that are not directly related to the creation of a stable democratic system of government. As such, one can already recognize the existence of these benefits even at this early stage.

Each of these benefits is rooted in the legitimization function of elections. First, those who refuse to participate in free and fair elections and who publicly declare that they will hinder the elections will lose political legitimacy. The Khmer Rouge's boycott of the elections not only resulted in their lack of representation in the newly formed government (i.e., loss of political power), but it also caused them to lose domestic and international support (i.e., loss of political legitimacy). This, in turn, decreased their military and economic strength.

Second, those parties that were legitimized by their participation in the elections came together to form a legitimate and functioning government. The CGDK was a shaky alliance at best. Its adversary, the SOC, lacked domestic and international legitimacy. By contrast, the new coalition government of Cambodia, the RGC, is not only more stable, but also offers more political and economic hope for Cambodia's future. The new government is the first Cambodian government in over two decades to possess both political legitimacy (i.e., the right to govern) and political power (i.e., the ability to govern). The members of the new government thus have all the more reason to protect their new, hard-won advantage.

Finally, the elections have conferred political power on Norodom Sihanouk. This is not surprising considering that Sihanouk possesses more political legitimacy than any other individual in Cambodia. However, for the past two decades, his actual economic, political, and military power has been minor or negligible. Even the Armee National Sihanoukiste (ANS), the military component of FUNCINPEC, has been overshadowed by the armies of the Khmer Rouge and the SOC. But Prince Sihanouk's royalist party won a plurality of the votes in the recent elections and he has been reinstalled as the king in a constitutional monarchy. Although it is unclear exactly how much power he will wield as king, his party's plurality in the legislature, his son's position as First Prime Minister, and his skill at politics, make it likely that Sihanouk will have a significant

role in shaping Cambodia's future. Sihanouk's ascension will bring about the stability much needed for prosperity and eventual democracy, for he is the one individual that most Cambodians and their leaders are willing to obey.

This section of the Article will analyze each of these beneficial products of the elections in four parts. First, it will determine the validity of the premise underlying each electoral benefit. To show that the elections brought a benefit, it is necessary to prove that a prior situation existed which was worse than the current situation. Second, the Article will determine if the current situation is in fact different from the old situation. Third, it will look at the consequences of each electoral benefit to determine if they were in fact beneficial. Finally, the Article will analyze the causal link between the elections and the benefits, focusing on whether the benefits could have come about without the elections. The next section of this Article will discuss the implications of the Cambodian elections by placing them within the larger context of general theories of democracy formation.

B. The Khmer Rouge's Error

1. Introduction

The Khmer Rouge injured themselves when they refused to participate in the elections.¹²¹ They were hurt in two ways. First, they lost political legitimacy at home by revealing their underconfidence and by proving themselves to be a roadblock to peace. Just as important, however, they lost what little political legitimacy they had abroad. Specifically, the Khmer Rouge's actions gave China, a long-time ally and supplier of aid, a face-saving way to distance itself from its notorious client. In addition, the elections created international pressure on the Thais to stop aid and trade with the Khmer Rouge.

2. The Premise

Of course, in order to argue that the Khmer Rouge lost political legitimacy as a result of their boycott and sabotage of the elections, one must first show that such political legitimacy existed in the first place. At first glance, one would guess that the Khmer Rouge are wildly unpopular. It is undisputed that they caused immense hardship for their own people and that their actions shocked the conscience of the world community. However, the level of popular support for them is much disputed. In fact,

¹²¹ The question of why the Khmer Rouge would agree to have elections in the first place is an interesting one. They had little to gain since many Cambodians suffered under their rule.

an inquiry into the level of political legitimacy the Khmer Rouge enjoyed before the elections reveals a surprising answer.¹²²

Within Cambodia, the Khmer Rouge were not as unpopular as one might initially suspect. First, memories of the Khmer Rouge's reign are not as strong as one would imagine. In 1990, 34.9% of the population was under fourteen years of age,¹²³ meaning that over one-third of all Cambodians were roughly four years old or younger the last time the Khmer Rouge were in power. In such a young country, memories may indeed be short. For example, a large portion of Khmer Rouge military recruits are quite young, eighty percent of them having been recruited after 1979.¹²⁴ Even among those Cambodians old enough to remember, it was urban professionals and other skilled persons who bore the brunt of the wrath of the Khmer Rouge. Not everyone in Cambodia faced the "Killing Fields." It is, therefore, likely that the reign of the Khmer Rouge did not cause a loss of support among the traditional supporters of the Khmer Rouge, the poorest peasants. The life of average Cambodian farmers today is far from easy. To them, distant memories of life under the Khmer Rouge might not seem so harsh.

Second, the Khmer Rouge have instituted a new campaign to win the hearts and minds of Cambodian citizens. Although there are reports that much of the work and recruiting done by the Khmer Rouge is at gun point, Khmer Rouge cadres in many areas have been kind, thoughtful, and helpful to civilians.¹²⁵ In addition, the Khmer Rouge publicly announced in 1979 that Pol Pot would be stepping down from his leadership role and that the Khmer Rouge would be represented by more moderate leaders such as Khieu Samphan.¹²⁶ Although there is agreement that this is a cosmetic change and that Pol Pot retains power, the Khmer Rouge have no doubt benefited by distancing themselves from names that evoke memories of bad times in Cambodia. Further, the Khmer Rouge have been apologetic about their rule, attempting to gain forgiveness. Khieu Samphan has admitted that the Khmer Rouge tried to develop the country "much too fast" and that this had "affected the health

¹²² Perhaps one of the reasons that the Khmer Rouge did in fact agree to the elections was that they ascertained a certain amount of popular support upon which they felt they could build.

¹²³ *Country: Cambodia*, KCWD/Kaleidoscope, Feb. 20, 1995, available in LEXIS, Asiapc Library, Cambod File. Given that Cambodia's population growth rate is projected at 2.5% per year and that 34.5% of the population was 14 or under in 1987, see SHIN, *supra* note 88, at 308. The percentage is no doubt higher today. *Id.*

¹²⁴ See, e.g., KLINTWORTH, *supra* note 99, at 6.

¹²⁵ *Id.*

¹²⁶ SHIN, *supra* note 88, at 194.

of the people," leading to approximately one million deaths.¹²⁷ Finally, the Khmer Rouge have announced a liberalization in their policies. They have expressed support for the new constitution, which guarantees economic freedom, political freedom, and human rights.¹²⁸ They now say they are in favor of a capitalist economy and a parliamentary political system.¹²⁹ Although it is implausible that the Khmer Rouge are telling the truth, they have improved their image to the extent that their detractors cannot conclusively prove that their policies are to the contrary and to the extent that their friends have some arguments to defend their support of the Khmer Rouge.¹³⁰

Finally, the Khmer Rouge have gained popularity by whipping up anti-Vietnamese sentiment. The Khmer Rouge were responsible for a program of terror in which thirty-three Vietnamese were killed in March, 1993, causing thousands of Vietnamese to flee in the ensuing months.¹³¹ In April another 100 or so Vietnamese were killed by the Khmer Rouge.¹³² Even as late as July, after the elections, eleven Vietnamese were killed by Khmer Rouge attacks.¹³³ Although it was the Vietnamese who liberated the Cambodians from the terrors of Pol Pot, many Cambodians are unable to overcome their deep-seated fear and suspicion that Vietnam's ultimate goal is to annex Cambodia proper and populate it with ethnic Vietnamese. Older Cambodians base their fears on past historical experience and, given that history, the fear is not altogether irrational. Younger Cambodians can point to the fact that Vietnamese troops stayed in Cambodia for almost a decade and that Vietnamese settlers streamed into Cambodia after the Vietnamese invasion.¹³⁴

¹²⁷ *Id.* at 198.

¹²⁸ *Rebels Back Cambodia King, Despite Reports of Fighting*, N.Y. TIMES, Oct. 2, 1993, at A3 [hereinafter *Rebels*].

¹²⁹ SHIN, *supra* note 88, at 198; STROMSETH, *supra* note 93, at 13.

¹³⁰ These actions are hardly unexpected. It is common for revolutionary parties which have not achieved power to attempt to win the hearts and minds of the populace. The Khmer Rouge enacted a similar campaign before they came to power in 1975. See RUSSELL R. ROSS & ANDREO MOTLES SOVODO, INTRODUCTION TO FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, CAMBODIA: A COUNTRY STUDY XXXi (Russell R. Ross ed., 3d ed. 1990).

¹³¹ See Ben Kiernan, *Let Cambodians Have Justice at Last*, N.Y. TIMES, Oct. 29, 1993, at A28.

¹³² See *Khmer Rouge Warns U.N. Over 'Illegal' Elections*, AGENCE FRANCE PRESSE, May 21, 1993, available in LEXIS, News Library, AFP File [hereinafter *Khmer Rouge Warns*].

¹³³ See *U.N. to Launch Aid Programme for Ethnic Vietnamese Stranded at Vietnam-Cambodia Border*, VIETNAM INV. REV., Aug. 16, 1993 available in LEXIS, Asiapac Library, Cambod File.

¹³⁴ Some of the ethnic Vietnamese had lived in Cambodia for generations and had

The Khmer Rouge campaign apparently hit such a responsive chord with the Cambodian people that the three other factions, including the Vietnamese-installed SOC, echoed the anti-Vietnamese sentiment. The RGC has taken the same stance. It refuses to allow many Cambodians of Vietnamese ethnicity to return from Vietnam where they fled after Khmer Rouge terror in March, 1993.¹³⁵ First Prime Minister Prince Ranaridh made a statement in late August, 1993 that he felt the presence of ethnic Vietnamese caused serious difficulties for the new government.¹³⁶ The RGC stated that it could not guarantee the safety of those returning home, necessitating a U.N. program to help the refugees.¹³⁷ Given this atmosphere in Cambodia, it is not surprising that the Khmer Rouge, who were among the first and most anti-Vietnamese, would be given the most credit.

Within the international arena, the situation was clearer. Although the Khmer Rouge were widely reviled for their brutal activities, it is undisputed that they received aid from abroad.¹³⁸ Both the Chinese and Thai governments, although embarrassed by mention of their association, are widely acknowledged as having sent aid to the Khmer Rouge.¹³⁹ In fact, Thais were an important conduit of Chinese supplies in addition to being

fled Cambodia only when the Khmer Rouge began persecuting the Vietnamese. Many of these persons were merely returning to their homes. Others were sent by the Vietnamese government as punishment or with incentives. Finally, some came for the economic opportunities. The cease-fire, the presence of large numbers of United Nations personnel, and the revitalization of the Cambodian economy made Cambodia more attractive than economically stagnant Vietnam. The figures for total Vietnamese immigration are disputed. The CGDK claimed that in 1989 there were over 1.2 million Vietnamese settlers in Cambodia. NGUYEN-VO, *supra* note 19, at 146. The SOC claimed that there were only 80,000. East bloc diplomats in Cambodia estimated a number in between; 400,000 to 450,000. *Id.*

¹³⁵ See *Upholding Human Rights After UNTAC*, BANGKOK POST, Aug. 17, 1993, at 2.

¹³⁶ Lindsay Murdoch, *Cambodia Faces New Hostilities*, THE AGE (Melbourne), Aug. 30, 1993, at 8.

¹³⁷ See *U.N. to Launch Aid Programme for Ethnic Vietnamese Stranded at Vietnam-Cambodia Border*, VIETNAM INV. REV., Aug. 16, 1993, available in LEXIS, World Library,, Txtlne File.

¹³⁸ It is not necessary to argue that the Khmer Rouge possessed political legitimacy within the international arena, which they clearly did not. Rather, the emphasis is on proving that they were receiving substantial amounts of aid from international patrons, such aid being cut off in the wake of the elections.

¹³⁹ See, e.g., William Branigin, *Violence Continues in Cambodia: Khmer Rouge Leaves Villagers in Fear*, WASH. POST, Dec. 9, 1991, at A41; Sutin Wanabovorn, *Khmer Rouge Commander Says Goal is Not Military Victory*, REUTERS, Oct. 6, 1989, available in LEXIS, Asiapc Library, Cambod File.

a supplier of arms in their own right.¹⁴⁰ Support came in other forms as well, sometimes from surprising sources. For example, after the Vietnamese had ousted the Khmer Rouge, the United States, China, and ASEAN lobbied for the CGDK to retain Cambodia's seat in the U.N. General Assembly. However, all were abundantly aware that by common agreement of the members of the CGDK, the Khmer Rouge would represent the CGDK at the United Nations.¹⁴¹

3. The Weakening of the Khmer Rouge

a. Domestic Legitimacy

The Khmer Rouge have lost much of their political legitimacy. Not only did they forego an opportunity to win a place in the new government, they also managed to alienate many citizens with their actions. The elections were a huge success. Ninety-eight percent of the citizens eligible to vote were registered and almost ninety percent of those people voted. This high turnout in the face of exhortations to boycott and threats of attack showed the weakness of the Khmer Rouge.

Within the group of people whom the Khmer Rouge did not directly control, it was apparent that their message was ignored. One reporter recounted the story of a lone voting outpost in Khmer Rouge territory.

Five hundred and nine voters reached the mobile polling station beyond the village of Angkor Thom last Tuesday, interrupted only by the twice-daily shelling by the Khmer Rouge, at breakfast and lunch. Mortars landed within a few hundred yards of the Bangladeshi Untac battalion guarding the site. The next day 100 more had voted by lunchtime, straggling in from villages to the north where it is too dangerous to establish polling booths.¹⁴²

Even more telling was the fact that people living under Khmer Rouge control were not deterred from voting. Many Khmer Rouge cadres and their families disobeyed directives from the party leadership and cast their ballots. For example, Khmer Rouge civilians were seen voting in the town of Poipet in Banteay Meanchey province.¹⁴³ A U.N. election official told the story of how Khmer Rouge cadres in another area allowed villagers to vote.

¹⁴⁰ See *Protest Planned Over UNTAC Allegation*, BANGKOK POST, Aug. 7, 1993.

¹⁴¹ *Id.*

¹⁴² Nick Thorpe, *Royalists Take Early Lead in Cambodia Poll*, OBSERVER, May 30, 1993.

¹⁴³ *Government Party Likely to Win 3 Seats in Poipet By Apichart*, BANGKOK POST, May 29, 1993.

Catherine Pascal is [sic] Untac electoral supervisor in the remote Banteay Srei district. Just before the election, she received a regular visitor from a Khmer Rouge-controlled village. Villagers had been given permission by the guerrilla commander to vote. The commander had advised them to vote for Funcinpec, but warned Pascal that once they had voted, an attack would be launched on government soldiers next to the polling site. All 220 registered voters from the village arrived in two groups, on Sunday and Monday. On Wednesday the guerrillas attacked, and were beaten back. But in the one hour the polling station was open between shelling and machine-gun attacks, 24 people from another village voted.¹⁴⁴

Pat Pring, a Khmer Rouge company commander in Kompot Thom, stated that his unit had been ordered to shell polling sites to prevent voting. "In some places we did, and some places we didn't," he said. The orders were disobeyed, he said, when unit members feared harming their relatives who wanted to vote.¹⁴⁵ Sy Ninh, another Khmer Rouge guerrilla commander, was also ordered to disrupt the elections. "We were given the order, but we didn't do it," he said at a Cambodian military camp sixteen miles southeast of Phnom Penh. "It was the people's election. They want peace in the country."¹⁴⁶ There was even internal confusion. The Khmer Rouge radio stated that few Cambodians chose to vote in the elections,¹⁴⁷ despite the fact that its own cadres had defied orders not to vote and widespread agreement that the turnout had been high. As one observer noted "The guerrilla faction [the Khmer Rouge] have been effectively ostracised — largely by its own decision to boycott the polls"¹⁴⁸

Second, the Khmer Rouge's refusal to participate was seen as a sign of underconfidence in their own popularity. Although their refusal may have actually been based on an honest belief that the United Nations would not hold fair elections or that the Vietnamese had not really pulled out, the populace saw a refusal to participate as weakness. The Khmer Rouge argued that the elections would not be free and fair, were meant only to entrench the SOC in power, and that the SOC would not relinquish power.¹⁴⁹ However, the SOC's party did not win and it nonethe-

¹⁴⁴ *Id.*

¹⁴⁵ Branigin, *supra* note 101.

¹⁴⁶ *Id.*

¹⁴⁷ Ellis, *supra* note 103.

¹⁴⁸ Ethan Casey, *A Summary of One Long Month of Suspense in Cambodia*, BANGKOK POST, June 29, 1993.

¹⁴⁹ *Id.*

less agreed to share power with FUNCINPEC and the BLDP. "Our leaders told us there are still Vietnamese troops in Cambodia and that the [Vietnamese-installed] Phnom Penh government would not give power to Prince Ranaridh," said Pring. "But when I got here, I could see it was not true."¹⁵⁰ It is no surprise then that "[d]iplomats and U.N. analysts believe the Khmer Rouge's credibility among Cambodians in rural provinces is diminishing."¹⁵¹

b. International Support

i. China

In the international arena, the Khmer Rouge enjoyed little popularity thanks to concerted efforts by the SOC and the Vietnamese government to expose the atrocities of the "Killing Fields." But the Khmer Rouge did have two major suppliers of arms and aid — China and Thailand. However, China's many reasons for supporting the Khmer Rouge began to disappear. By the late 1980s, Southeast Asia was no longer a proxy for the Sino-Soviet conflict. The Soviet Union had ceased to exist. Although China was still concerned about its security interests vis à vis Vietnam, with the cessation of Soviet aid, the Vietnamese did not pose as grave a threat as they had during the 1980s. The lack of Soviet aid was especially painful to the Vietnamese when coupled with international economic sanctions and domestic economic mismanagement. Tiring of their commitment to the SOC, the Vietnamese agreed to pull their troops out of Cambodia. It is now widely acknowledged that the Vietnamese did in fact withdraw all of their troops from Cambodia in 1989.¹⁵² Although the Khmer Rouge and China initially did not give any credence to Vietnam's announcement of a withdrawal, they have subsequently split on this issue. While the Khmer Rouge called a January, 5, 1989, Vietnamese withdrawal announcement "a deceitful trick," the Chinese called it "a positive step."¹⁵³ In fact, the Vietnamese have improved relations with China in

¹⁵⁰ Branigin, *supra* note 101. Pring's views are supported by almost all the members of the United Nations. For example, the foreign ministers of ASEAN (Brunei, Indonesia, Malaysia, the Philippines, Thailand, and Singapore) made a joint statement that those countries believed the elections to be free and fair. *ASEAN Affirms Its Support for Prince Sihanouk*, BANGKOK POST, June 18, 1993.

¹⁵¹ Lindsay Murdoch, *Rebel Gives Up the Khmer Rouge Fight*, THE AGE (Melbourne), Sept. 17, 1993, at 8 [hereinafter Murdoch, *Rebel Gives Up*].

¹⁵² KLINTWORTH, *supra* note 99, at 2-3. The United Nations probably does not fear that the elections were improperly influenced by a third country because it has accepted the results of the recent elections in countries such as Vietnam.

¹⁵³ *Id.* at 17, n.59.

search of new sources of aid and trade. In November, 1991, Vietnamese Communist Party Secretary Do Muoi and Premier Vo Van Kiet were given a warm reception on a state visit to China.¹⁵⁴ In return, Chinese Premier Li Peng visited Vietnam in early December, 1992.¹⁵⁵ Acknowledging that the Vietnamese no longer exert an undue influence in Cambodia, the Chinese have publicly stated that they will abide by the terms of the cease-fire and elections agreement.¹⁵⁶

At the same time, there emerged reasons for China to stop sending aid to the Khmer Rouge. The events at Tiananmen Square in 1989 severely hampered China's standing in the international community. At a time when it was attempting to make friends abroad and become a regional superpower, its association with the Khmer Rouge marred its reputation. Further, China began looking inward, stressing its domestic economic development.¹⁵⁷ And in the past, China had proven its ability to let pragmatic considerations drive its international affairs. For example, China attempted to curb human rights abuses in the months before Beijing presented its bid to host the summer Olympics.¹⁵⁸ Thus, there was every reason to believe that China would stop supporting the Khmer Rouge.

For political reasons however, China could not just drop a client that it had supported since the early 1970s. That would undermine its other allies' confidence and would cripple China's ability to make new friends, always a necessary condition to becoming a superpower. One scholar has noted that "Beijing cannot tolerate being seen to lose the war by having its Khmer Rouge clients excluded [from a new government], at least not

¹⁵⁴ See Charles P. Wallace, *The Giant Awakens, Vietnam*, L.A. TIMES, June 15, 1993, at 10.

¹⁵⁵ *China Lauds Premier's Visit To Vietnam*, REUTERS, Dec. 5, 1992, available in LEXIS, Asiapc Library, Cambod File.

¹⁵⁶ *China Backs Disarmament of Cambodian Factions*, REUTERS, July 13, 1992, available in LEXIS, Asiapc Library, Cambod File. For example, Foreign Minister Qian Qichen stated that "China supports the second phase of the cease-fire [the disarmament and demobilization of the factions] in Cambodia and its implementation [as] an important step in ensuring the realisation of true peace." *Id.*

¹⁵⁷ "Implicit in China's reluctance to carry out a 'second lesson' [the 'first lesson' being its invasion of Vietnam in February, 1980 in retaliation for Vietnam's invasion of Cambodia the December before] is an admission that its commitment to economic reform at home outweighs its willingness to exert enough muscle against Vietnam to turn the tide of the war in Cambodia." STROMSETH, *supra* note 93, at 21.

¹⁵⁸ Catherine Field, *Silenced Again*, GAZETTE (Montreal), Sept. 26, 1994, at B3. China's pragmatism is such that its human rights abuses began almost as soon as its bid to host the Olympic games was turned down. *Id.*

at this state."¹⁵⁹ Further, any move by China would prove that politically and philosophically, Beijing had never actually believed in the Khmer Rouge's cause, but had only supported them for reasons of political expediency. Either the Chinese leadership would have to admit that they had allowed the genocide in Cambodia to occur because it was convenient to do so, or that their political theories had been wrong.

The question, then, is whether China did in fact use the escape hatch offered to it. It is clear that the Chinese have at least withdrawn their public support for the Khmer Rouge. Chinese Foreign Minister Qian Qichen stated that although China had given aid to a faction in the past, that "did not mean that [China] supported the practices of that faction."¹⁶⁰ Another Chinese Foreign Ministry official echoed the sentiment, "The Chinese government . . . solemnly condemns acts jeopardising the safety of United Nations peacekeeping forces," when asked about Khmer Rouge attacks on U.N. peacekeepers.¹⁶¹ At a recent Chinese reception for Sihanouk in Beijing, the Chinese made another swipe at the Khmer Rouge. Referring to recent Khmer Rouge assaults on returning Cambodian refugees, ethnic Vietnamese, and U.N. peacekeeping troops, National People's Congress Chairman Qiao Shi stated, "We do not support any party in Cambodia to fight a civil war. We do not endorse any . . . practices that lead to confrontation and aggravating contradictions."¹⁶² Finally, Wu Jianmin, the spokesman of the Chinese Foreign Ministry said before the elections that if the civil war was renewed in Cambodia, China would no longer support the Khmer Rouge.¹⁶³ Thus, there is little doubt that China has withdrawn its public support for the Khmer Rouge.

It is also generally agreed that the Chinese have stopped sending supplies to their former clients. Since the signing of the cease-fire and

¹⁵⁹ KLINTWORTH, *supra* note 99, at 11.

¹⁶⁰ *A New Chance for the Khmer Rouge*, THE AGE (Melbourne), July 26, 1993. In May, 1993, the Chinese "Foreign Ministry was asked whether China's relationship with the Khmer Rouge remained one of friendship. The ministry responded a day later with one sentence stating that the Paris accord should be carried out and the four factions treated equally. In effect, the answer seemed to be, 'Friendship? What friendship?'" Nicholas D. Kristof, *Chinese Support for Khmer Rouge Grows Cooler*, N.Y. TIMES, May 9, 1993, at A12.

¹⁶¹ Graham Hutchings, *China Pulls Punches After Cambodia Raid*, DAILY TELEGRAPH (London), May 7, 1993, at 14.

¹⁶² *China Takes Swipe at Khmer Rouge in Farewell Dinner for Sihanouk*, UPI, May 22, 1993, available in LEXIS, Asiapc Library, Cambod File. Although this statement seems rather mild, within the diplomatic arena, the statements are actually harsh considering that they are about an ex-ally.

¹⁶³ Lianhe Zaobo, *Big Boost Awaits If Sydney Wins Olympic Bid*, BUS. TIMES, Apr. 27, 1993, at 26.

election agreements, China has repeatedly insisted that it has not shipped arms to the Khmer Rouge.¹⁶⁴ The latest denial was a letter written by Chinese Premier Li Peng to Prince Ranaridh and Hun Sen insisting that:

[As to] the Khmer Rouge problem, which is an internal issue for Cambodia, the Chinese government will not interfere. Regarding the two prime ministers' proposal calling on the Chinese side to stop providing benefits to the Khmer Rouge, I would like to inform you that according to our inquiry, the Khmer Rouge has not received any benefit from the Chinese side at all.¹⁶⁵

In fact, Foreign Minister Qian Qichen has stated that China was opposed to any faction in Cambodia coming to power by military means and that China would no longer supply military arms to any rebel faction.¹⁶⁶ The new Cambodian government has made it clear that it believes the Chinese have stopped supplying the Khmer Rouge.¹⁶⁷ Even the Khmer Rouge's spokesman, Mak Ben, denied as "groundless rumours" reports that the Khmer Rouge had been using brand new weapons supplied from China.¹⁶⁸

This is supported by reports that the Khmer Rouge are low on supplies. Three mid-level Khmer Rouge officers who defected in late-June told similar stories of low morale, especially in the southwest, due to a scarcity of food, medicine, and money.¹⁶⁹ Defectors from the northwest told similar stories about supplies not reaching units who strayed too far from the main logistical bases in Thailand.¹⁷⁰ Some Khmer Rouge defectors said that they surrendered because they were simply too hungry to continue fighting.¹⁷¹ In a recent attack in Siem Riep province, Khmer Rouge soldiers were seen carrying away television sets from houses they

¹⁶⁴ *Khmer Rouge Warns*, *supra* note 132.

¹⁶⁵ Letter from Li Peng, Premier of China, to Prince Norodom Ranaridh, First Prime Minister of Cambodia, and Hun Sen, Second Prime Minister of Cambodia (Aug. 13, 1994) (On file with author).

¹⁶⁶ *A New Chance for the Khmer Rouge*, THE AGE (Melbourne), July 26, 1993.

¹⁶⁷ Anthony Lewis, *At Home Abroad-'In Pol Pot Time'*, N.Y. TIMES, Aug. 2, 1993, at A15.

¹⁶⁸ *See Khmer Rouge Warns*, *supra* note 132.

¹⁶⁹ *Khmer Rouge Talk, But Keep Shooting*, BANGKOK POST, Aug. 17, 1993 [hereinafter *Khmer Rouge Talk*].

¹⁷⁰ Murdoch, *Rebel Gives Up*, *supra* note 152.

¹⁷¹ *See* Charles P. Wallace, *Next Step: Cambodia Struggles Over What To Do With Its Armies; With A New Transitional Government in Place, Soldiers From the Four Major Factions Remain a Major Threat to Stability*, L.A. TIMES, July 6, 1993, at 2.

had just raided.¹⁷² Khmer Rouge soldiers, under the pressure caused by lack of supplies, are apparently resorting to looting and their leaders are no longer able to command the level of discipline they once did.

Another sign that Chinese support for the Khmer Rouge is diminishing is the Khmer Rouge's increased hostility towards the Chinese. Now that they have nothing to lose, the Khmer Rouge are able to treat the Chinese in the same way they treat the rest of the world. For example, approximately one month before the elections, the Khmer Rouge bombed the compound of Chinese U.N. peacekeepers in Kompong Thom Province.¹⁷³

ii. Thailand

The Thai government has followed in China's footsteps on the issue of aid to the Khmer Rouge. Thai support of the CGDK and specifically the Khmer Rouge was based upon its need to create a buffer between itself and Vietnam. With an independent and legitimate government in Phnom Penh, this need is of only diminished importance. Since the signing of the peace agreement, the Thais have withdrawn their public support of the Khmer Rouge. They have called for an end to the fighting and have urged the Khmer Rouge to make peace.¹⁷⁴ In fact, the Thai government has made an announcement that it does not support the Khmer Rouge and that unless they disarm, the Khmer Rouge would be considered outlaws.¹⁷⁵ In addition, the Thai government recently opposed the attempts of the Khmer Rouge to create its own government and stated that "Thailand reaffirms our unequivocal support for the Royal Government of Cambodia"¹⁷⁶

Thailand has also attempted to stop the flow of arms to the Khmer Rouge. The Thais shut down Unit 838, a special military unit through which flowed most of the Chinese and Thai aid destined for the Khmer

¹⁷² Lewis, *supra* note 167, at A15.

¹⁷³ See Hugo Gordon, *Khmers Launch Biggest Attack Since U.N. Arrival With Elections Two Weeks Away, Rivals Are Re-Arming to Settle Accounts As Europe and America Agonise Over Intervening in Bosnia, Cambodia Has Lessons to Offer*, DAILY TELEGRAPH, May 10, 1993, at 10; Nicholas D. Kristof, *Chinese Support for Khmer Rouge Grows Cooler*, N.Y. TIMES, May 9, 1993, at A12.

¹⁷⁴ See *Khmer Rouge Says It Will Defend Its Territory*, AGENCE FRANCE PRESSE, Sept. 22, 1993, available in LEXIS, World Library, AFP File [hereinafter *Khmer Rouge Will Defend*].

¹⁷⁵ Lindsay Murdoch, *Khmer Rouge Are Still Free To Cross Their Last Frontier*, THE AGE (Melbourne), Oct. 26, 1993 [hereinafter *Khmer Rouge Still Free*].

¹⁷⁶ *Thailand Deplores Khmer Rouge Government Bid*, REUTERS, July 22, 1994, available in LEXIS, Asiapc Library, Cambod File.

Rouge.¹⁷⁷ The Thai Army Commander-In-Chief, General Wimol Wongwanich, is transferring those military officers with the most blatant dealings with the Khmer Rouge.¹⁷⁸ Recently, the Thai National Security Council decided to end all relations between Thailand and the Khmer Rouge and to prohibit all entries and exits across the Thailand-Cambodia border by the Khmer Rouge.¹⁷⁹

Other actions of the Thai government have clearly shown a distancing from the Khmer Rouge. They have made a commitment to equip and train the new unified army of Cambodia.¹⁸⁰ In addition, the Thais have also enforced, although erratically, an embargo on the importation of Cambodian gems and timber, the main source of money for the Khmer Rouge. In the meantime, the Thais have gone out of their way to be neutral in the battles between the Khmer Rouge and the government, telling the Khmer Rouge to stay on their side of the border.¹⁸¹

The final result was put succinctly by one observer, who noted,

There is little doubt that Pol Pot feels isolated and vulnerable. His international backers, notably China, appear uninterested in providing any more material supplies or political support. His domestic allies during a fourteen-year civil war have divided the spoils of office with their former Phnom Penh adversaries. Leaked speeches made by Pol Pot in recent years reveal that he feared more than anything the exact events that have befallen his group as a result of the U.N. peace plan.¹⁸²

¹⁷⁷ *Khmer Rouge Still Free*, *supra* note 175.

¹⁷⁸ *Id.*

¹⁷⁹ *See Thailand: Officials Decide to End Contacts with Khmer Rouge*, REUTERS, Oct. 24, 1994, available in LEXIS, Asiapc Library, Cambod File.

¹⁸⁰ *See Army Agrees to Train Khmer Forces*, BANGKOK POST, Aug. 15, 1993.

¹⁸¹ "Although renewed fighting in northern Cambodia has sent dozens of artillery shells into Thailand, Thai troops are holding fire to avoid being accused of helping any one side, officers said yesterday. Thai troops will not retaliate against an overspill or fire warning shots, said Col. Suchart Pakdipinit, commander of the infantry Special Task Force Six stationed some 100 metres from the disputed area. Thailand wants to avoid being misunderstood of helping any one group . . ." *Thai Troops Hold Their Fire Despite Artillery Barrage*, BANGKOK POST, Sept. 3, 1993. "The guerrillas, under the command of Gen. Sok Piap, have moved close to the Thai border in Nong Ian which juts into Cambodia. The movement prompted a Thai army officer to rush to talk to the guerrillas and to warn them not to use Thai territory in their attack against Phnom Penh forces. Security on the Thai side of the border has also been beefed up to prevent the fighting from spilling over into Thailand. Additional paramilitary rangers and Border Patrol policemen backed up by armored personnel carriers and armored cars have been rushed to key border points south of this border district. *Khmers Flee Ghost Town Haunted by Khmer Rouge Gunners*, BANGKOK POST, Sept. 3, 1993.

¹⁸² Lindsay Murdoch, *Will It Be A Return to the Killing Fields?*, THE AGE (Mel-

Unfortunately, some Khmer Rouge troops remained well-armed even after the elections. The Khmer Rouge leaders had ordered that Chinese weapons be stockpiled before the Chinese ended their shipments. In addition, private Thai businessmen and some members of the Thai military have not cut their ties to the Khmer Rouge, allowing the trade in gems and lumber to continue even after aid shipments from the Chinese and Thai governments ceased arriving.¹⁸³ Khmer Rouge troops are reported to have received new weapons, including long-range artillery, in March of 1993, which were said to have been purchased from private Thai businessmen with money from gem and lumber sales.¹⁸⁴

However, efforts to cut off the Khmer Rouge's sources of income have achieved some success. The U.N.-sponsored embargo on lumber sales was somewhat effective in limiting one of the most lucrative trade products for the Khmer Rouge. U.N. officials noted that the ban had caused a steady decline in lumber sales in the run-up to the elections. In May of 1993, there were nine reported violations of the ban involving 2,596 logs as opposed to forty-one reported violations of the ban involving 38,722 logs in January.¹⁸⁵ More importantly, the figures for logs headed for Thailand, the Khmer Rouge's main trading partner, was 600 in May as opposed to 13,255 in January.¹⁸⁶ More importantly, after the United Nations departed, the Thais instituted their own embargo for fear of angering the world by undermining a United Nations operation that will cost at least \$1.5 billion. The Thai military has imposed strict controls on contacts between Thai civilians and the Khmer Rouge, bringing the gem and logging trade to a trickle.¹⁸⁷

bourne), July 14, 1993, at 18 [hereinafter Murdoch, *A Return to the Killing Fields?*].

¹⁸³ See *Cambodia, The End of the Beginning*, BANGKOK POST, Aug., 19, 1993. It is estimated that the Khmer Rouge have annual revenues of \$250 million dollars from their illegal trade with Thailand. See also Ben Kiernan, *Let Cambodians Have Justice at Last*, N.Y. TIMES, Oct. 29, 1993, at A28. The continued illegal trade is not surprising given the fact that Thai gem-mining companies have invested \$120 million in Khmer Rouge territories; Fisher, *supra* note 3.

¹⁸⁴ *Khmer Rouge Talk*, *supra* note 169.

¹⁸⁵ Susan Cunningham, *After A Brief Respite, Logging is Cutting Its Way Back*, BANGKOK POST, Aug. 24, 1993. Apparently, one of the reasons the ban was effective was that destination countries, such as Thailand, Laos, and Japan feared adverse publicity enough to impound illegal logs. *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See Naowarat Sumsakran, *New Military Policy on KR Affecting Pailin Gem Trade*, BANGKOK POST, July 31, 1994. Only 12 out of 200 gem mines are operational. *Id.* Furniture makers were told that they had to quit or relocate at the end of July as part of the new policy against the Khmer Rouge. *Id.*

4. The Consequences

Of course, this turn in the fortunes of the Khmer Rouge is only a benefit if it is in Cambodia's best interest for the Khmer Rouge to be weakened or eliminated. Although this may seem self-evident, it is still worthwhile to articulate the most important reasons that a weakened or non-existent Khmer Rouge is beneficial for Cambodia's future.

First, there is no sign that the Khmer Rouge have given up their notorious ways. Although the Khmer Rouge have attempted to implement a new policy to win the hearts and minds of the Cambodian people, this does not signify a fundamental shift in their ideology. It is geared only towards gaining support among the populace. The Khmer Rouge used a similar ruse when they were attempting to come to power in the early 1970s. Their ulterior motives are made clear by the exceptions to the new policy. Those persons already under their control in refugee camps and in Cambodia still do not have basic human rights.¹⁸⁸ The policy similarly does not apply to those who need to be "reeducated," those connected with the SOC, and those who could be drafted as soldiers or porters.¹⁸⁹ In addition, the program of hate and murder against ethnic Vietnamese is a sign that the Khmer Rouge are no less violent today than they were in the 1970s. As one Western military source who specializes in guerrilla organizations stated, "We should never forget that such 'Maoist' radical groups never give up. They will pursue their goal, which is to take power, by all means available."¹⁹⁰

Although the Khmer Rouge claim that Pol Pot has retired and that Khieu Samphan now is the Khmer Rouge representative, almost all analysts believe that Pol Pot still controls the Khmer Rouge from a base camp near the Cambodian-Thai border. As late as February 10, 1989, *The Age* reported that "Khieu Samphan refused to rule out the possibility of a return to power by Pol Pot"¹⁹¹ It is no wonder then, that the Cambodia correspondent for *The Age* noted, "[T]here is no evidence that the Khmer Rouge have miraculously transformed from a band of terrorists into responsible parliamentarians."¹⁹²

Second, the Khmer Rouge have consistently hindered efforts to bring peace and democracy to Cambodia. They have been unwilling to abide by the cease-fire and election agreements signed in Paris. First, the Khmer

¹⁸⁸ KLINTWORTH, *supra* note 99, at 7.

¹⁸⁹ *Id.* at 6.

¹⁹⁰ *Khmer Rouge Talk*, *supra* note 169.

¹⁹¹ *Id.* at 17, n.59.

¹⁹² Murdoch, *A Return To The Killing Fields?*, *supra* note 182.

Rouge refused to give United Nations personnel access to areas under their control. Then, they refused to lay down their arms and order their troops into cantonment camps as required by the peace agreement. The other factions responded by also refusing to lay down their arms and demobilize for fear of being caught by the Khmer Rouge without any means of defense. Next, the Khmer Rouge set about to hamper the United Nations mission. Almost all of the seventy murders of U.N. personnel in Cambodia are attributed to the Khmer Rouge. Finally, the Khmer Rouge refused to participate in the elections and called for Cambodians to boycott them. Even after the elections were held, the Khmer Rouge continued to attack the forces of the new coalition government. At no time have the Khmer Rouge ever proved by their actions that the good of Cambodia had priority over their own goals.

Third, the possibility of Vietnamese reintervention will hang over Cambodia as long as the Khmer Rouge exist. Although the issue of whether Vietnam wishes to annex Cambodia is hotly debated, there is little doubt that Vietnam will play a significant role in the decision making of future Cambodian government leaders. Hanoi has consistently noted its opposition to a Khmer Rouge government of any kind in Cambodia. Given the past history of intense Khmer Rouge antipathy towards Vietnam and the numerous Khmer Rouge attacks on Vietnamese settlers this is not surprising. For example, Vietnam insists that it invaded Cambodia because the Khmer Rouge seriously impinged upon Vietnamese national security.¹⁹³ Given the great cost of the Vietnamese involvement in Cambodia from 1978 to 1989, Vietnam will not want that price to be paid in vain. Although the late Nguyen Co Thach, when he was the Vietnamese Foreign Minister, stated that Vietnam would not intervene should the Khmer Rouge regain power and would let the consciences of the world help Cambodia this time around, this was likely a bitter response to the fact that Vietnam was condemned for overthrowing the murderous Pol Pot regime.¹⁹⁴ More likely, if Vietnam feels its security

¹⁹³ VIETNAM'S INTERVENTION, *supra* note 35, at 15.

¹⁹⁴ KLINTWORTH, *supra* note 99, at 3. Le Bang, acting director of the Vietnamese Foreign Ministry's Americas Department, stated "We gave up the burden of Cambodia. We are not committing the mistake again of sending in troops and staying too long. The military is nothing today. We can't invade Cambodia and hold it." Henry Kamm, *After the Cold War: Views From Vietnam, Vietnam, Now Master of Its Own House, Tries to Mend Neighborhood Fences*, N.Y. TIMES, June 19, 1992, at A3. On the other hand, older Vietnamese apparatchiks have a different view. Major General Tran Cong Man, a Vietnamese government spokesman, while warning against increased Thai influence in Cambodia stated that "politically and also militarily we [Vietnam] still have significant power to influence Laos and Cambodia." *Id.*

interests are threatened, it will react, albeit with more caution this time. Regardless whether Vietnam does actually reinvade Cambodia or not, the mere possibility of Vietnamese intervention will prove destabilizing to the Cambodian government. And if Vietnam should actually reinvade, this would almost surely destroy any chance for prosperity or peace in Cambodia for some time to come.

Thus, the words of one observer are hardly surprising. "Indeed, the greatest enduring success of the election may be not so much to extend democracy to Cambodia, but finally, after almost twenty years, to provide the formal framework for the international community and Cambodians to be rid of the Khmer Rouge."¹⁹⁵

5. Causation

Finally, we must determine the causal relationship between the elections and the benefits described above. In this regard, there are two main questions. There first is "Was there a causal relationship between the elections and the benefits?" The second question is "If so, what was the nature of that relationship?" In relation to the second question, we are particularly interested in whether elections were a necessary condition or a sufficient condition. These questions can be answered by making three determinations: whether the elections contributed to the benefit; whether the benefit would have occurred without elections; and whether there were other contributing factors to the benefits.¹⁹⁶

There is a strong argument that the elections did contribute to the weakening of the Khmer Rouge. Although China was already in the process of withdrawing its support for the Khmer Rouge, the elections greatly accelerated this trend. Furthermore, the elections provided China and Thailand not only the reason, but the means to cease aid as well.¹⁹⁷ The elections called for all foreign advisors to leave Cambodia and all aid to the Cambodian factions to cease.¹⁹⁸ This was necessary for an effective cease-fire and for the parties to compete fairly in the elections. Because Vietnam, the Soviet Union, the nations of ASEAN, and the

¹⁹⁵ Ellis, *supra* note 103.

¹⁹⁶ The first determination answers the question "Was there a causal relationship between the elections and the benefit?" The second determination answers the question "Were elections a necessary condition for the benefit?" The third determination answers the question "Were elections a sufficient condition for the benefit?"

¹⁹⁷ Agreement on a Comprehensive Political Settlement of the Cambodian Conflict, Oct. 30, 1991, 31 I.L.M. 174, part I, § 4, art. 8; § 5, art. 9, U.N. Doc. A/36/608S/23177.

¹⁹⁸ *Id.*

United States agreed to stop supporting the other factions, China and Thailand lost no face for ending aid shipments to the Khmer Rouge.¹⁹⁹ To the contrary, international pressure was placed upon them to stop giving aid and they gained prestige when they did so.

Second, China and Thailand can point to the Khmer Rouge's intractability as a reason for their withdrawal of support. In fact, this allowed China and Thailand to take the moral high ground by pointing to the fact that they refused to sponsor a group that reneged on a prior agreement and was flouting international opinion. The prestige of both countries would be increased for doing their part to bring peace and stability to Cambodia.

Further, the elections placed the spotlight on Cambodia. For many years, Cambodia had been a backwater of the international arena. This allowed all manner of questionable acts to occur there without any serious questioning.²⁰⁰ For example, the United States indirectly supported the Khmer Rouge for many years by sending nonlethal aid to FUNCINPEC and the KPNLF, despite the fact that both groups admitted to cooperating and sharing supplies with the Khmer Rouge.²⁰¹ This occurred at the same time that the Bush Administration was loudly denouncing the Khmer Rouge²⁰² and there existed a U.S. law forbidding direct or indirect aid to the Khmer Rouge.²⁰³ However, the elections and the necessary commitment of vast amounts of money and personnel by the United Nations made it that much more difficult for any country to continue supporting the Khmer Rouge because the situation could not be ignored or explained away. This focus on Cambodia made both the Chinese and Thai accelerate the cessation of support for the Khmer Rouge when under normal circumstances, they would have done so only slowly, taking advantage of the relative obscurity of the situation in Cambodia.

¹⁹⁹ The 23 signatories of the cease-fire and elections treaty were Australia, Brunei, Cambodia, Canada, China, France, India, Indonesia, Japan, Laos, Malaysia, Philippines, Singapore, Thailand, the U.S.S.R., the United Kingdom, the United States, Vietnam, Yugoslavia, and the four Cambodian factions.

²⁰⁰ See Phil Gailey, *Khmer Rouge Moves to Regain Power with Indirect Aid from U.S.*, ST. PETERSBURG TIMES, Apr. 19, 1990, at A7 (stating that "[i]n Washington and other world capitals, there doesn't seem to be much interest in what happens in Cambodia, a distant land of impoverished peasants that for decades has been a pawn in the geopolitical power games of the United States, China, and the Soviet Union").

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See Mary McGrory, *New Policy, Old Hang-Up*, WASH. POST, July 24, 1990, at A1.

Although it is clear that the elections contributed to the cessation of aid to the Khmer Rouge, it is not so clear that they were necessary to bringing about the cessation. There are two arguments that one could make concerning the necessity of the elections. The first is that there might have been another pivotal event that could have also turned the Chinese and Thai against the Khmer Rouge. The second is that in the long run support for the Khmer Rouge would have ceased, even without such an event.

It is true that there may have been other focal events that would have caused the Chinese and Thai to stop sending aid to the Khmer Rouge. However, it is difficult to imagine one that would have been a clearer sign to the world community, that could have been forced upon the Khmer Rouge, and that would be as relatively cheap in terms of lives. The large commitment of personnel, money, and time by the United Nations insured that the world community would pay attention to the elections, something that could not be guaranteed in another situation.²⁰⁴ And elections are something to which the Khmer Rouge could not say no. The popularity of democracy is such that few groups today can reject the call for elections without condemnation and loss of legitimacy. Finally, without belittling the sacrifice of those who died in order to give the Cambodian people the chance to vote, it should be noted that the elections were relatively cheap when compared to other events that would have riveted the world's attention to the Khmer Rouge and Cambodia. The reality of today's world seems to require genocide on the scale of Rwanda or warfare equal to that in the former Yugoslavia to merit serious attention by the world community.

However, the second argument, that the cessation of aid would have eventually occurred without the elections, is the more compelling of the two arguments.²⁰⁵ As explained above, the end of the Cold War brought with it numerous reasons for the Chinese and Thai to stop sending aid. However, this did not cause the end of support for the Khmer Rouge. Rather, the Khmer Rouge's patrons only slowly moved away from the notorious group. After all, the Khmer Rouge still held on to some power in Cambodia, making them a valuable ally to some. Others, such as Thai businessmen, were little affected by international considerations. Thus, there was no guarantee that the aid would eventually cease or that the Chinese and Thai would not later increase aid in response to political

²⁰⁴ By way of contrast, the Khmer Rouge's campaign of terror against ethnic Vietnamese in Cambodia, no matter how shocking to our consciences, has failed to get the attention of the world community despite the fact that the killings now number into the hundreds.

²⁰⁵ In essence, the focal event was the ending of the Cold War.

changes in the world. The elections, on the other hand, brought an abrupt end to the Chinese and Thai support, making the resumption of aid more difficult. Given the uncertainty of an eventual cessation without the elections and the strong likelihood that the elections did end support, the real question is whether the added assurance of the elections was worth the added cost of the elections. Given what we know about the Khmer Rouge, the answer must be yes.

Related to this is the issue of whether there were other contributing factors. The answer here must also be yes. In addition to the elections, at least two things stand out when we consider the causes of the delegitimation of the Khmer Rouge — the willingness of the world community to take the elections seriously and the eagerness of the Cambodian people to participate in elections. First, one could easily imagine the scenario where patron states continued to support their clients even in the face of a clear showing of lack of domestic legitimacy. For example, China and Thailand continued to support the Khmer Rouge during the 1980s, long after the world had learned of the brutality of their rule. In addition, one would fear that the Cambodian people, beaten into submission by authoritarian rule; mass murder; and starvation failed to participate in the elections. If there had been low turnout, the mandate of the victors would have been far from clear.²⁰⁶

In conclusion, it is clear that the elections affected the delegitimation of the Khmer Rouge. Further, although it is not clear that elections were the only way to bring this about, they were probably the best alternative. Finally, lest too much credit be given to elections, it must be remembered that at least two other factors must be present before the elections have the effects that we have described here. The people inside the country must be willing to participate in the elections and the world community must be willing to abide by them.

C. The Formation of a Legitimate and Functioning Government

1. Introduction

The second important benefit of the elections was the fact that the three non-Khmer Rouge factions formed a legitimate and viable government. Each of the three factions that participated in the elections gained political legitimacy and political power. Although FUNCINPEC won a

²⁰⁶ Note that both of these factors do not directly affect the benefit, but determine the likelihood that the elections will bring about the benefit. Thus, although elections are not the only factor in bringing about the benefits, they are probably the most important factor.

plurality of the votes in the elections, the SOC-backed CPP and Son Sann's BLDP were also legitimized. This is reflected in the distribution of power in the new government. Although Prince Ranaridh is the First Prime Minister, Hun Sen of CPP is the Second Prime Minister and Son Sann is the President of the Assembly.

Having gained political legitimacy and political power, it is more difficult for any of the parties to defect and return to using violent methods. In order to protect their stake in the new government, each of the factions has to cooperate in order to fight off the Khmer Rouge, which has attacked government areas and has vowed to defend its territories.²⁰⁷ This increases the stability of the new government.

2. The Premise

The question that we must answer is, "Was the political structure before the elections conducive to peace, stability, prosperity, or democracy?" Before the elections, there were two competing groups, the CGDK and the SOC, each claiming to be the legitimate government of Cambodia. It is clear that the CGDK was in no position to bring about peace, stability, prosperity, or democracy. First, the CGDK controlled relatively little land inside Cambodia. It operated mainly out of refugee camps located within Thailand. Although it did control the people in these camps, the refugee population numbered only 350,000.²⁰⁸

But even within the small area controlled by the CGDK, the coalition proved ineffective at making progress, largely because it was at best an uneasy alliance. It took the urging of their sponsors to get the Khmer Rouge, Prince Sihanouk's royalist FUNCINPEC, and Son Sann's rightist KPNLF to agree to form a coalition in 1982.²⁰⁹ Even then, the factions agreed to work together only in order to force the Vietnamese out of Cambodia and overthrow the SOC government. However, the members of the CGDK rarely worked together. The factions within the coalition fought each other as often they battled the Vietnamese and SOC troops.²¹⁰

The main reason for the intra-CGDK hostility was that the composition of the CGDK made little sense. The KPNLF was a right-wing group

²⁰⁷ See *Khmer Rouge Will Defend*, *supra* note 174.

²⁰⁸ Actually, the refugees consisted of 14,000 people who were granted refugee status and 350,000 people who were not granted refugee status. Steven R. Ratner, *The Cambodian Settlement Agreements*, 87 AM. J. INT'L L. 1, 18 (1993). These latter were to be repatriated by the United Nations. *Id.*

²⁰⁹ SHIN, *supra* note 88, at 195-97; STROMSETH, *supra* note 93, at 4.

²¹⁰ STROMSETH, *supra* note 93, at 6.

supported by the United States and the core of the KPNLF's cadres were remnants from the Lon Nol government. This made it the target of much of the Khmer Rouge's brutality after the Khmer Rouge defeated the Lon Nol government. Although Prince Sihanouk acted as a figurehead for the Khmer Rouge in the 1970s, he quickly became disillusioned when it became clear that the Khmer Rouge were merely using him to gain support. In fact, Sihanouk has revealed that many members of his family were murdered by the Khmer Rouge.²¹¹ He cannot help but despise them for what they did to his family and to the Cambodian people.

In addition to being ineffective, the coalition structure had detrimental effects. The inclusion of the Khmer Rouge in the CGDK made a negotiated solution in Cambodia unlikely. The SOC refused at first to discuss any plan involving the Khmer Rouge. Although Son Sann and Sihanouk may have wanted to negotiate with the SOC, they were forced by the coalition structure to refrain from doing so.

And the Khmer Rouge were given a modicum of legitimacy by their association with the CGDK. For example, the CGDK was the representative of Cambodia at the United Nations. By agreement among the parties, it was the Khmer Rouge representative who headed CGDK's permanent mission to the United Nations.²¹²

The CGDK's adversary, the SOC, was not in a much better position to bring peace, stability, prosperity, or democracy. Although it controlled and administered the majority of Cambodia's land and people, the SOC lacked political legitimacy. The government was installed by the hated Vietnamese after an invasion condemned by the United Nations. This meant, for example, that it could not get aid from abroad²¹³ nor complete cooperation from its people. With the collapse of the Soviet Union and the withdrawal of Vietnamese troops, the situation only became

²¹¹ Baker, *supra* note 103. Sihanouk blames the Khmer Rouge for the deaths of five of his children and 14 grandchildren during their bloody reign in the mid-1970s. *Id.* "You know, they killed them all, the Pol Pot faction, the Khmer Rouge. I have every reason to hate the Khmer Rouge." *Id.*

²¹² SHN, *supra* note 88, at 203.²¹²

²¹³ See, e.g., Kenneth Wolf, *Trading With Cambodia; Tourists Flock to Cambodia as Businesses Sit on Sideline*, J. COM., June 11, 1992, at A4 (discussing the rise of tourism industry after the United States lifted its trade embargo against Cambodia). The United States instituted a trade embargo against Cambodia after the fall of Lon Nol. The U.S. kept the embargo in place during the entire time the SOC had *de facto* control of Cambodia. See Frank Jata, *National Security*, in CAMBODIA, A COUNTRY STUDY 250-60 (1990). The embargo was not lifted until January 4, 1992, after the signing of the peace agreement calling for elections. Hong-Phong Pho & George Paine, *Cambodia Breakthrough*, BUS. AM., Apr. 20, 1992, at 21.

worse. However, neither side was able to defeat the other. There was no way to break the stalemate.

3. The Creation of the Royal Government of Cambodia

There is little doubt that nominally, the three non-Khmer Rouge factions have formed a coalition government formally known as the Royal Government of Cambodia. However, that would be of little importance if the three factions had not worked together as a unified government or if the coalition had turned out to be unstable. Fortunately, that was not the case. The new coalition is stable and its members have proven that they can work together effectively. Since coming to power, the government has been able to draft and ratify the constitution, to enact necessary legislation, to administer the country, and to create a unified army.²¹⁴ The leaders of the factions have shown an ability to work together and compromise. For example, when it became clear that a cabinet reshuffle would be necessary, both FUNCINPEC and CPP appointees were dismissed.²¹⁵

Without a doubt, each of the factions has problems with the other. The KPNLF is controlled by Son Sann and its military arm, the Khmer People's National Liberation Armed Forces (KPNLAF), was founded by Dien Del.²¹⁶ Both of these men were officers in the Lon Nol government, which ousted Sihanouk from power.²¹⁷ The SOC has been fighting the two other factions and it did implement a campaign of terror against activists of FUNCINPEC and the KPNLF in the months before the elections. For example, Prince Ranaridh blames the SOC for the murder of 46 FUNCINPEC activists in the months directly preceding the elections.²¹⁸

²¹⁴ See *infra* text accompanying notes 221-29.

²¹⁵ Interview with Prince Norodom Ranaridh, First Prime Minister of Cambodia, in Phnom Penh, Cambodia (Aug. 17, 1994). Among those to be purged were Finance Minister Sam Rainsy, a member of the prince's own FUNCINPEC party, Commerce Minister Va Huot, and Agriculture Minister Kong Sam Ol, both of whom are members of the rival CPP. *Id.* The general feeling is that the reshuffle does not mean trouble within the government and, although the men replaced were well-regarded, that there are many others who would do a good job. Harish Mehta, *Cambodia's Foreign Minister Threatens to Quit*, BUS. TIMES (Singapore), Oct. 24, 1994, at 3; Maja Wallengren, *Foreigners Upbeat on New Cambodia Finance Minister*, REUTERS, Oct. 24, 1994, available in LEXIS, Asiapc Library, Cambod File.

²¹⁶ SHIN, *supra* note 88, at 194.

²¹⁷ Even though Son Sann was Sihanouk's Prime Minister, the two clearly feel antipathy towards each other. STROMSETH, *supra* note 93, at 9.

²¹⁸ Lindsay Murdoch, *Cambodia's Fate Now Rests on the New Leaders From A*

However, none of the three non-Khmer Rouge factions views the others in the same way that they view the Khmer Rouge — as an implacable foe who cannot be allowed to return to power. They do not fear the ascension to power of one of their partners to the same degree that they fear a Khmer Rouge victory.²¹⁹ Thus, each faction is motivated to work with the others by the common goal of stopping the Khmer Rouge. Son Sann's faction was most victimized by the Khmer Rouge. Sihanouk has renounced them. The Hun Sen government is composed of many ex-Khmer Rouge who went to Vietnam because they had disagreed with Pol Pot and feared reprisal.

In addition, the leaders of the faction understand that staying within the coalition government is in its best interest. The domestic political power and political legitimacy of each of the factions is directly related to their participation in the elections and their position within the new coalition government. If any of them were to leave the coalition government, it would be faced with the withdrawal of aid from its sponsors and a decrease in domestic popularity. Each faction must weigh seriously the cost of a decision to return to fighting because the disintegration of the new government would mean increased misery for the Cambodian people and the destruction of a project in which the various countries of the world, through the United Nations, will have spent over \$2.3 billion. Thus, it is no surprise that Hun Sen, when speaking about his position, clearly understood the constraints placed upon him by the need to retain legitimacy.

There is no doubt about this co-premiership issue. It is mentioned clearly in the Constitution of the Kingdom of Cambodia that during the first legislature of the National Assembly there will be two prime ministers. So there is no need to discuss or think about this question — whether there should be one or two prime ministers. If only one prime minister is needed, it is better to wait until after the elections in 1998.²²⁰

Therefore, although the future of the new coalition government is not guaranteed, it holds out a greater prospect for stability than Cambodia has seen in over two decades.

Bloody Past, THE AGE (Melbourne), Sept. 25, 1993, at 20 [hereinafter Murdoch, *Cambodia's Fate*].

²¹⁹ For example, as early as 1989, Hun Sen had received the support of Son Sann and Sihanouk supporters such as In Tam, a Prime Minister under Lon Nol's government. JUSUF WANANDI, *THE CAMBODIAN CONFLICT* 7 (1989).

²²⁰ Interview with Hun Sen, Second Prime Minister of Cambodia, in Phnom Penh, Cambodia (July 14, 1994).

4. The Consequences

The new government of Cambodia, because it possesses both political power and political legitimacy, is able to accomplish tasks that would have been impossible for the SOC or the CGDK. Politically, the RGC has been recognized as the true government of Cambodia by the vast majority of nations in the world. In addition, the existence of a legitimate indigenous government has made it difficult for the Khmer Rouge rank and file to continue believing that they are fighting against foreigners for Cambodia's independence. Militarily, the members of the RGC have effectively joined their forces together to fight the Khmer Rouge. Economically, the new government has enacted reforms geared towards bringing about rapid economic growth on a country-wide scale.

a. Politically

It is within the political arena that the creation of the new coalition has had its most salient effect. Because of the high turnout at the elections and certification by UNTAC that the elections were free and fair, the new government is widely recognized as the legitimate government of Cambodia. The United Nations Security Council has recognized the results of the election.²²¹ In fact, the United States has normalized relations with the new Cambodian government, upgrading its mission to a full embassy.²²² The Vietnamese government has stated its willingness to accept the new government.²²³ The Thai Prime Minister has vowed to seek closer relations with the new government.²²⁴ Even the Khmer Rouge have sent emissaries to the new government seeking an advisory

²²¹ See *Accord On Interim Rule Reported*, L.A. TIMES, June 16, 1993, at A8.

²²² See *U.S. Establishes Diplomatic Ties With Cambodia After 18 Years*, L.A. TIMES, Oct. 1, 1993, at A4.

²²³ *Vietnam Will Recognise Cambodia's New Government to be Elected by a Constitutional National Assembly*, VIETNAM INV. REV., June 7, 1993 ("The Government of the Socialist Republic of Vietnam expresses its willingness to recognise a new government in Cambodia to be elected by a constitutional National Assembly.") During a visit to Hanoi, Cambodian Co-Prime Ministers Prince Norodom Ranaridh and Hun Sen, met with Vietnamese leaders Party Secretary General Do Muoi, President Le Duc Anh, and Premier Vo Van Kiet. Muoi told his guests that Hanoi "would work relentlessly to strengthen the durable friendship, good neighbourliness and fraternal solidarity between the two countries." Nguyen Tri Dung, *Vietnam: Cambodian Co-Premiers Hailed in Hanoi*, VIETNAM INV. REV., Aug. 30, 1993, available in LEXIS, World Library, Txline File.

²²⁴ *Chuan Vows to Promote Ties With Cambodia*, BANGKOK POST, Aug. 14, 1993, at 7.

role.²²⁵

At home, the new government is also perceived to be legitimate. Between the installation of the new government and the end of September, 1993, 1,500-2,000 Khmer Rouge soldiers defected.²²⁶ The desertions occur partly because of the lack of supplies, but also because many Khmer Rouge soldiers no longer have a reason to fight. In Kompong Thom province in early September, 1993, Colonel Sy Ninh and his men defected to the new government.²²⁷ Colonel Ninh, a twenty-year veteran of the Khmer Rouge and commander of the much-feared Division 616, explained, "We were not told the truth. We were told we were fighting to defend Cambodia from the Vietnamese. But in the end we realised we were only killing Cambodians."²²⁸ He and his men deserted despite the fact that they risk death if they should fall into the hands of their ex-comrades. "We were afraid what might happen to us, but we decided to surrender because we want peace," he explained.²²⁹ According to Christophe Peschoux, a French authority on the Khmer Rouge who is attached to the United Nations, "The Khmer Rouge are facing their worst political and ideological crisis since 1979. Their propaganda mill is totally exhausted. They're finding it more and more difficult to keep their forces mobilized."²³⁰

Another sign of the government's legitimacy is that the two coup attempts that have occurred have been quite feeble; neither was a real threat to the new government. The first occurred soon after the elections. In late-July, 1993, General Sin Song, ex-minister of national security of the former SOC, and Prince Norodom Chakkrapong, ex-vice-premier of the former SOC, attempted to carry out the secession of seven eastern provinces, which fizzled out in days for want of support.²³¹ Then, one year later, on July 2, 1994, the same two men attempted an armed revolt

²²⁵ See *Khmer Rouge Talk*, *supra* note 169.

²²⁶ Branigin, *supra* note 99. The same number was 300 for the period between January, 1992 and June, 1993. *Id.* The United Nations has confirmed at least 1,500 defectors. *Id.* These defections will only make the new government stronger as many of the Khmer Rouge are to be integrated into the new unified army according to Tea Banh, the deputy defense minister. See Lindsay Murdoch, *Cambodia: Cambodia's Leaders Heal Rift Over Power*, THE AGE (Melbourne), Sept. 17, 1993, at 8.

²²⁷ Murdoch, *Rebel Gives Up*, *supra* note 151. There are reports that Division 616 has practically disintegrated. Branigin, *supra* note 99.

²²⁸ Murdoch, *Rebel Gives Up*, *supra* note 157.

²²⁹ *Id.*

²³⁰ Branigin, *supra* note 99.

²³¹ Nicholas Cumming-Bruce, *Cambodia Foils Feeble Coup By Sihanouk's Son*, THE GUARDIAN (London), July 4, 1994, at 9.

which was put down without any bloodshed.²³² The abortive coup ended when troops of the newly unified army intercepted approximately 200 heavily-armed soldiers traveling to Phnom Penh in a dozen armored personnel carriers and several lorries, approximately twenty miles east of the capital.²³³

b. Militarily

In the military arena, the three factions have unified their armed forces — the Royalist Armee National Sihanoukiste (ANS), the SOC's Cambodian People's Armed Forces (CPAF), and Son Sann's Khmer People's National Liberation Armed Forces (KPNLAF), in order to fight the Khmer Rouge.²³⁴ Although the results are mixed, the new army has made substantial progress in the fight against the Khmer Rouge. For example, in August, 1993, the new army, known as the Khmer Royal Army (KRA), launched an offensive in Banteay Meanchey province in northwest Cambodia along the Thai border.²³⁵ According to defectors, the offensive was successful in destroying the fighting ability of the Khmer Rouge units. The new army captured 100 Khmer Rouge soldiers and an important Khmer Rouge arms depot at Phum Chhat with forty-five 122 mm. and 130 mm. artillery pieces, 100 B-40 rocket launchers, and a large supply of AK-47 assault rifles.²³⁶ Then in February, the KRA captured Anlong Veng, a major Khmer Rouge base.²³⁷ The following month, on March 19, 1994, the unified army captured Pailin, the unofficial capital of the Khmer Rouge and a major gem-mining base. Although the Khmer Rouge later retook these two cities, most commentators agree that the Khmer Rouge's 12,000-man army is not capable of overthrowing the new government.²³⁸ As one senior UNTAC military official stated, "We still believe that the Khmer Rouge could not go very far on the

²³² Statement of Sok An, Co-Minister attached to the Office of the Council of Ministers of Cambodia, in Phnom Penh (July 3, 1994) (On file with author). Sok An noted that there were unfounded rumors that either FUNCINPEC or CPP instigated the coup against the other. *Id.*

²³³ Cumming-Bruce, *supra* note 231, at 9.

²³⁴ Anuraj Manibhandu, *Settlement Foreseeable*, BANGKOK POST, June 15, 1993, at 1.

²³⁵ Murdoch, *Rebel Gives Up*, *supra* note 151.

²³⁶ *See Government Counters and Rebels Regain Base*, BANGKOK POST, Aug. 20, 1993.

²³⁷ Mark Dodd, *Cambodia Governor Says Khmer Rouge Can Be Beaten*, REUTERS, June 3, 1994, available in LEXIS, Asiapc Library, Cambod File.

²³⁸ Dodd, *supra* note 120; see also *Pol Pot's Men*, *supra* note 119.

battlefield. Their northern troops are the only ones still operational."²³⁹ In contrast, the outlook for the KRA is good. It is set to implement a reform plan that Brigadier General Mark Hamilton, the head of a U.S. military assessment team, found impressive and professional.²⁴⁰ In addition, several countries, including France and Thailand, have agreed to send military experts to help train the new army.²⁴¹

c. Economically

The new government has also made efforts towards increasing economic growth. Its activities in this area could only be implemented by a legitimate government controlling a large portion of the land and people. In a meeting with ASEAN, Cambodia's new foreign minister, Prince Norodom Sirivudh, promised that foreign investments would be protected and encouraged by the new government.²⁴² After the elections, Sam Rainsy, then the Minister of Finance, vowed to institute market-oriented reforms in Cambodia and encouraged overseas investment.²⁴³ Ouk Vibol, a member of the National Investment Committee (the group within the Ministry of Planning that is directly responsible for investment) echoed the sentiment. "Trade and investment are among the priorities, since we have to reconstruct our country and these two areas will certainly contribute."²⁴⁴ In keeping with this priority on investment, the National Assembly recently passed an investment law considered to be among the most liberal in the region.²⁴⁵ The presence of a pro-investment coalition government has lured many investors back to Cambodia after years of war.²⁴⁶ In addition, the International Monetary Fund (IMF) has given

²³⁹ *Khmer Rouge Talk*, *supra* note 169.

²⁴⁰ *Cambodia: U.S. General Impressed by Cambodian Army Reform*, REUTERS, Sept. 23, 1994, available in LEXIS, Asiapc Library, Cambod File.

²⁴¹ *See France to Help Train Cambodia's New Army*, WASH. TIMES, July 7, 1993, at A2.

²⁴² *See Foreign Investments Will Be Protected — Phnom Penh*, BUS. TIMES (Malaysia), July 24, 1993.

²⁴³ *Cambodian Official Promotes Investment*, J. COM., July 28, 1993, at A3.

²⁴⁴ Brian Hansford, *New Legislature May Change How Business Is Done in Cambodia, But Thais Say They Will Stay*, BANGKOK POST, Aug. 24, 1993.

²⁴⁵ *KHMER INVESTMENT LAW ENDORSED BY ASSEMBLY*, BANGK. POST, Sept. 26, 1994. The law has a nine percent corporate income tax, allows for up to eight years tax exemption, has a 100% duty exemption on materials imported by export-oriented industries, and allows investors to use land for up to 70 years with the ability to renew thereafter. *Id.*

²⁴⁶ Chris Burslem, *Foreign Investors Trickling Back Into Cambodia After Political Pact*, J. COM., July 6, 1993, at A5.

Cambodia high marks for its economic program.²⁴⁷ A recent IMF report credited the new government with containing inflation, faithfully following a controlled budget, improving the government's foreign-exchange reserves, and bringing about a reasonably stable exchange rate.²⁴⁸

5. Causation

Here, we will determine if the elections contributed at all to the creation of the new government and its legitimacy and success. In addition, we will also discuss the possibility of the formation of such a government without the elections and determine whether there were other factors that contributed to the creation of the new government.

As this Article has already argued, the elections almost certainly contributed to the creation of a legitimate and functioning coalition government by the three non-Khmer Rouge factions. In fact, the creation of such a government was the goal of the elections. However it is true that the elections were not self-enforcing and the victors did not necessarily have to join the new government. Nonetheless, there were domestic and international pressures inherent in the elections to abide by the results. This made it likely that all victors in the elections would eventually join. And once the government was formed, the legitimacy conferred by the elections insured that the government had the domestic and international support necessary to administer to the country in an effective manner. Thus, it is implausible that the elections failed to contribute to the formation and effectiveness of the new government.

It is also unlikely that the coalition government would have been created without the elections. Before the ceasefire and election agreement was signed in 1991, the SOC had made multiple overtures to Sihanouk and Son Sann. Although both had shown an interest in negotiating, nothing ever came of the discussions. But even if the three factions had allied with each other through their own efforts or at the urging of their patrons, such a government would not have been nearly as stable and

²⁴⁷ *Cambodia: IMF Hails Former Ministers Reforms*, REUTERS, Oct. 20, 1994, available in LEXIS, Asiapc Library, Cambod File. On a visit to Cambodia, former Japanese foreign minister Michio Watanabe was equally impressed by the pace of economic reconstruction. *Former Japanese Minister Optimistic on Cambodia*, REUTERS, Oct. 16, 1994, available in LEXIS, Asiapc Library, Cambod File.

²⁴⁸ Maja Wallengren, *IMF Sees Cambodian Economic Development*, REUTERS, Sept. 30, 1994, available in LEXIS, Asiapc Library, Cambod File. For example, inflation in Cambodia for the first six months of 1994 ran at 11%, compared to 84% for the same period in the previous year. *Cambodia National Bank Reports Inflation Contained*, REUTERS, Aug. 25, 1994, available on LEXIS, Asiapc Library, Cambod File.

powerful as this one. Most importantly, it would have lacked political legitimacy. Its status would have been little better than that of the Vietnamese-backed SOC. Although it would have de facto control of the country, its governance would lack the same moral dimension.

In addition, without the legitimacy, much of the reason for a new government would be lost. Such a government could not expect widespread recognition by other countries, nor could it expect the people to rally behind it. Nor could it expect demoralization from an enemy that was able to exhort its soldiers to fight harder against a coalition created by foreign meddling or backroom deals. Most importantly, there would be no reason to remain faithful to the new government outside of self-interest, which changes over time. Each faction would have little incentive to relinquish control over its military forces, seek compromises with the other factions, or legislate for the benefit of the country as a whole. Each faction would understand that there would be nothing to stop the other factions from leaving the government the second the alliance was no longer of value. That is the difference between a legitimate government chosen by the people and an alliance created by a few men. This is supported by the experience of the two coalitions created without the input of the populace and solely through the negotiations of the Cambodian parties and their international patrons. The first group was the CGDK, the coalition government composed of the Khmer Rouge, FUNCINPEC, and the KPNLF. The CGDK was created shortly after the Vietnamese invasion to fight the SOC and the Vietnamese. The second organization was the Supreme National Council (SNC), a coalition composed of the four major parties. The SNC was created after the ceasefire and election agreement to help the United Nations administer Cambodia pending the elections. Both organizations claimed to be the sovereign government of Cambodia and both lacked the imprimatur of the Cambodian people. As might be expected, both coalitions were never really able to effectively administer the country nor get the support of more than small blocks of the international community. In addition, both coalitions were unstable and fighting often occurred among the members of the coalition.

However, although the elections were almost certainly necessary to form a functioning and legitimate government, it is clear that the elections alone did not bring about the formation of a new government. Another important factor was the willingness of the coalition partners to join with one another. Although the elections certainly brought domestic and international pressure for the winners of the election to form a government, there is reason to believe that this need not have been the case. The fact that the CPP initially did not agree to abide by the results points to strong countervailing pressures such as a desire and the fear of punishment for prior bad acts, that somewhat mitigated the pressure to join the

government. Although the CPP did eventually agree to be part of a new government, one should not take for granted the absence of such counter-vailing pressures.

In conclusion, we can be confident that the elections contributed to the formation of a coalition government. Although there is uncertainty as to whether elections are the only method of forming a coalition government, there is evidence that it is the method that forms the strongest, most stable, and most legitimate governments. Finally, we should not forget that elections cannot do it by themselves. At least one prerequisite is some inclination on the part of the future members of the coalition government to cooperate with one another.

D. The Return of Sihanouk

1. Introduction

The third benefit of the elections in Cambodia is that it conferred political power upon the person with the most political legitimacy in Cambodia, Prince Norodom Sihanouk. He is credited with bringing independence to Cambodia and protecting it from the ravages of the war in neighboring Vietnam. His popularity is complemented by the aura of royalty. Although he may be eccentric, few people question his devotion to Cambodia. It is for these reasons that Sihanouk is treated with reverence by a great number of the Cambodia people. The elections were a vehicle through which the citizens showed their admiration of Sihanouk and granted political power to him.

2. The Premise

The question that needs to be answered is, did Sihanouk possess little political power and much political legitimacy before the election? There is little dispute that Sihanouk has held relatively little power since he was overthrown. Although he is personally popular, until recently, power in Cambodia was measured by the number of people controlled and men under arms. Unfortunately for Sihanouk, FUNCINPEC administered only 35,000 refugees out of a population of six to eight million Cambodians²⁴⁹ and its military arm was estimated to have less than 10,000 soldiers.²⁵⁰ It was dwarfed by the SOC's army, the Khmer Rouge's army, and the Vietnamese occupation force. In fact, after his overthrow, Sihanouk became a Khmer Rouge prisoner and was always

²⁴⁹ Al Santoli, *Endless Insurgency: Cambodia*, WASH. Q., Spring 1985, at 61.

²⁵⁰ Wallace, *supra* note 171, at 2.

escorted by the Khmer Rouge personally wherever he went. In order to finally escape, Sihanouk had to surreptitiously slip an asylum request to a U.S. Secret Service agent while in New York to attend a session of the United Nations.²⁵¹ Thus, there is little doubt that Sihanouk had little real power.

The issue of whether Sihanouk was politically popular is more debatable. There is no disputing that he was successfully overthrown in a coup in 1970. However, many large-scale protests erupted in reaction to the coup, even though Sihanouk was no longer in the country. Further, there is no dispute that Sihanouk was instrumentally involved in bringing about the independence of Cambodia and received much credit for this.

And even after his overthrow, he was much sought after to be the face of sundry organizations, in order to impute his popular support. The Khmer Rouge and China sought him out after Lon Nol overthrew him. He was the clear choice to be the head of the CGDK when it was formed. And after the cease-fire and election agreements were signed, he became head of the Supreme National Council (SNC), an organization consisting of the four factions created as an interim government before the elections. His value as a leader must have been based on his popularity as neither he nor his followers were particularly powerful.

Finally, the elections, which were generally agreed to have been free and fair, gave Sihanouk's party a plurality of the votes. Since none of the other candidates in his party has anything approaching Sihanouk's visibility or popularity, it is generally agreed that FUNCINPEC won because it was associated with Sihanouk. One commentator stated that "Prince Ranaridh[']s royalist party] rode to victory in large part on the prestige and popularity of his father."²⁵² Even the Khmer Rouge support granting power to Sihanouk and the Khmer Rouge civilians who were allowed to vote were instructed to vote for FUNCINPEC.²⁵³ It is no wonder then, that "[m]ost Cambodians . . . credit Sihanouk with being the single unifying symbol among the different factions which are now in an uneasy coalition government. They call this ailing man, in whom rests the hope for durable peace, "deva-raj" (god-king)."²⁵⁴

The hold that he has over the people of Cambodia also insures that

²⁵¹ CHANDA, *supra* note 17, at 363-69.

²⁵² Mark Baker, *Prince Run Around Plays the Devil They Know*, THE AGE (Melbourne), June 9, 1993. During the elections, Ranaridh stated that a vote for his party was a vote for his father. Philip Shenon, *Cambodian Prince Tells Troops to Prepare to Fight Over Secession*, N.Y. TIMES, June 14, 1993, at A3.

²⁵³ Philip Shenon, *New Assembly Gives Prince Sihanouk Broad Powers*, N.Y. TIMES, June 15, 1993, at A3.

²⁵⁴ *Long Live Cambodia*, BUS. TIMES (Malaysia), Sept. 29, 1993.

Sihanouk is taken seriously by foreign diplomats, who must often put up with his eccentricity. During four days of peace talks in Thailand, Sihanouk serenaded ambassadors and V.I.P.s with one of his favorite songs, *Autumn Leaves*. "With his bulging eyes and famous high-pitched delivery, Prince Norodom Sihanouk stole the show. Such was his inspiration that at one point the representatives of the five permanent members of the United Nations Security Council burst into *Happy Birthday*, even though it was not his royal highness's birthday. 'We didn't know the words to anything else,' one said."²⁵⁵ The members of the United Nations recognized that Sihanouk's involvement in the peace process would be instrumental. On more than one occasion, they have even acceded to his wishes. For example, after the elections, the United States stated that it would find it difficult to give aid to the coalition government if the Khmer Rouge were given a role within the new government.²⁵⁶ Prince Sihanouk canceled peace talks with the Khmer Rouge and announced that actions by the United States were severely hampering the RGC's ability to deal with the Khmer Rouge and to govern Cambodia.²⁵⁷ The United States then made an announcement that its prior statement had been misconstrued and that it would, in fact, give aid to a coalition government that included the Khmer Rouge.²⁵⁸ Thus, one commentator noted, "Although notorious for changing his mind, Prince Sihanouk is recognized as a key to the stability of a coalition government comprising representatives of his royalist party and the former communist regime that ruled the country for 14 years."²⁵⁹

²⁵⁵ Lindsay Murdoch, *Cambodia's Prince Poised to Go Home*, THE AGE (Melbourne), Aug. 31, 1991, at A4.

²⁵⁶ Thomas W. Lippman, *Aid is Out if Khmer Rouge Is In, U.S. Tells Cambodia*, WASH. POST, July 19, 1993, at A9. Deputy Secretary of State Clifton R. Wharton, "the highest-ranking U.S. official to visit Cambodia since before the Khmer Rouge took over the country in 1975, said he told the Cambodians that 'the United States is not going to dictate their form of government, but we have a great deal of difficulty with the Khmer Rouge because of the violence they perpetrated and because they are not abiding by their agreement to disarm.'" *Id.*

²⁵⁷ See *Sihanouk Irked at U.S.*, WASH. POST, July 21, 1993, at A14.

²⁵⁸ See John M. Goshko, *U.S. Eases Stance on Cambodia Aid, Official Sees Assistance Even if Government Includes Khmer Rouge*, WASH. POST, July 25, 1993, at A21. "We believe that some recent statements by officials of the U.S. government have been oversimplified," an unidentified senior U.S. official said. "The impression was developing, not only in the media but among some of our partners out here in the region, that we were ruling out flatly any Khmer Rouge participation or any aid to a government that included them We want to clarify that the position is not that airtight." *Id.*

²⁵⁹ Lindsay Murdoch, *Sihanouk Delayed By Illness*, THE AGE (Melbourne), Sept. 11, 1993 at 9 [hereinafter Murdoch, *Sihanouk Delayed*].

3. Sihanouk Gains Political Power

Without a doubt, Sihanouk has been named King and his party was victorious. But is this political power real? Although it is unclear exactly what role Sihanouk will have under the constitutional monarchy, it is highly likely that Sihanouk will play a pivotal role in the new Cambodia. One observer notes "Cambodia throws into bold relief the distinction between de jure and de facto versions of political reality. Sihanouk's centrality to any resolution is a de facto reality reflected in the universal use of the unofficial, undefined phrase 'head of state' to describe him."²⁶⁰ In fact, not only was Sihanouk named "head of state," but the National Assembly gave him "full and special powers" to do whatever was necessary "to save [Cambodia] and lead it toward progress and prosperity."²⁶¹

Furthermore, the royalist party under Sihanouk's son, Prince Ranaridh, holds the most seats in the parliament and they owe that to Sihanouk. Ranaridh, who is the First Prime Minister of Cambodia, admitted this debt when he stated, "One must admit that the situation in Cambodia makes it necessary to form a government of broad national union under the high presidency of my father."²⁶²

Further, Sihanouk is politically astute and known for his activist nature. Most experts agree that "[w]hether he exerts political power directly or behind the scenes, Sihanouk's presence will likely be felt."²⁶³ This is especially likely to be true in the current legislature, in which no party holds the two-thirds majority needed to approve the Constitution or pass legislation.²⁶⁴

Finally, Sihanouk has continued to bolster his immense popularity among the people. He decided not to have a full coronation ceremony when he recently ascended to the throne because it would be too great a

²⁶⁰ Ethan Casey, *A Summary of One Month of Suspense in Cambodia*, BANGKOK POST, June 29, 1993 [hereinafter Casey, *Summary*].

²⁶¹ Philip Shenon, *Rival Parties In Cambodia Agree to Form a Coalition Government*, N.Y. TIMES, June 17, 1993, at A10. In fact, many Cambodians believed this to mean Sihanouk could exercise absolute power if he so chose. *Id.*

²⁶² Casey, *supra* note 260.

²⁶³ Murdoch, *Sihanouk Delayed*, *supra* note 259 ("But analysts said Prince Sihanouk, who abdicated in 1955 to play a more political role, would be in a position to exert strong authority over the affairs of government").

²⁶⁴ Murdoch, *Cambodia's Fate*, *supra* note 218. Although the new Constitution says that Sihanouk should rule and not govern, few people believe that he will be content to sit on the throne quietly, especially given his history of political meddling. *Id.*

cost for his impoverished country to bear.²⁶⁵ In addition, he refused a salary from the new Cambodian government.²⁶⁶ Recently, he has donated money to help flood victims hurt by the monsoon rains in Kompong Speu province.²⁶⁷

The only thing that could hold Sihanouk back is his ill health. In the last year, Sihanouk has spent much of his time in Beijing, receiving treatment for his bone marrow cancer.²⁶⁸ In a letter he sent to Hun Sen, Sihanouk explained that he might not be able to fulfill his role because of his failing health and his need to be away from Cambodia. "This year I [Sihanouk] must stay in the Beijing hospital for two or three months. After leaving the hospital, I must continue to receive medical treatment until January 1995. I must get this medical treatment in Beijing and Pyongyang."²⁶⁹ In fact, Sihanouk has insisted on an amendment to the new Constitution of Cambodia which allows him to delegate his powers as head of state should he be unable to fulfill that role for medical reasons.²⁷⁰

4. The Consequences

Having a leader as strong as Sihanouk will be extremely valuable to Cambodia. He will bring a modicum of stability in a country that has seen four different regimes and constant civil war in the last two decades. In his role as the king, he can break the political deadlocks that will almost certainly occur. As one observer noted,

[I]f there is an impasse between the governing and royalist parties, many see Sihanouk in the role of mediator. Sihanouk has said himself he is willing to accept the largely ceremonial role of head of state who will 'simply open flower shows'. However, it is transparently clear to all

²⁶⁵ Charles P. Wallace, *Sihanouk Takes Throne in Move Toward Peace, Restored King Launches Democratic Constitution, Ceremonies Also End U.N. Mandate*, L.A. TIMES, Sept. 25, 1993, at A1.

²⁶⁶ *Sihanouk Rejects A Salary*, N.Y. TIMES, Sept. 23, 1993, at A13.

²⁶⁷ *Internal Affairs: Sihanouk Donates 10,000 US Dollars to Help Flood Victims* (National Voice of Cambodia radio broadcast, Aug. 5, 1994).

²⁶⁸ *See Cambodia's Sihanouk to Return in April*, REUTERS, Mar. 1, 1994, available in LEXIS, Asiapc Library, Cambod File.

²⁶⁹ Letter from King Norodom Sihanouk, King of Cambodia, to Hun Sen, Second Prime Minister of Cambodia (June 19, 1994) (on file with the author).

²⁷⁰ Sue Downie, *Cambodia Delays King's Amendment*, UPI, July 13, 1994, available in LEXIS, Asiapc Library, Cambod File. Ever the prepared monarch, Sihanouk has already prepared for his burial. *Sihanouk Issues Instructions for Burial Rites*, REUTERS, Mar. 2, 1994, available in LEXIS, Asiapc Library, Cambod File.

that Sihanouk was only making light of what is a very grave matter for Cambodians, for at stake is the happiness and prosperity of a country which has not known both for a quarter century. Since he was ousted in a coup in 1970, the country had not known peace. Cambodians remember his earlier 29-year rule as the last time they had anything resembling peace.²⁷¹

Sihanouk can use his influence to overcome deadlocks because he is popular, powerful, and above the fray.²⁷² For example, Sihanouk is credited with creating and imposing the current power-sharing structure of the coalition government, despite the fact that Hun Sen and Prince Ranaridh initially refused to work together.²⁷³ In essence, Sihanouk can act as the independent, disinterested judiciary that is so lacking in fledgling democracies whose court systems are political creatures.²⁷⁴

Sihanouk can also fulfill a second function of the courts, to check the excesses of the other branches of government. "This [Sihanouk's position] would keep the Parliament from overthrowing the government all the time," said Ek Sereyath, Deputy Information Minister. "It's a

²⁷¹ *Peace at Last for Cambodia?*, BUS. TIMES (Malaysia), June 2, 1993.

²⁷² In fact, Sihanouk takes his role as mediator so seriously that he often goes beyond breaking deadlocks within his own government. He has attempted to mediate with the Vietnamese over the immigration law and repatriation of ethnic Vietnamese problems, the Thai over the plight of nine Thai nationals held for participation in a coup attempt against the new government, *Cambodia to Consider Plea by Sihanouk to Free Thais*, BANGKOK POST, Sept. 20, 1994, at 2. However, Sihanouk may take his role too seriously as he has called for the new government to recognize the Khmer Rouge as a step towards peace. Philip Sherwell, *International-Sihanouk Call to Recognise Khmer Rouge*, DAILY TEL., Sept. 6, 1994, at 12.

²⁷³ Since then, Prince Ranaridh has recognized that "the king has a great mission to reconcile and unify the nation." Interview with Prince Norodom Ranaridh, First Prime Minister of Cambodia, in Phnom Penh, Cambodia (August 17, 1994). Chea Sim, chairman of the CPP, also recognizes Sihanouk's role as mediator and was quick to have the CPP support Sihanouk's call for a cease-fire last May. Interview with Chea Sim, Chairman of the Cambodian People's Party, in Phnom Penh, Cambodia (July 10, 1994).

²⁷⁴ Dennis McNamara, head of UNTAC's Human Rights Section, stated that his biggest regret was UNTAC's inability to create a functioning judicial and enforcement system. *Upholding Human Rights After UNTAC*, BANGKOK POST, Aug. 17, 1993. "A U.N. report stated that the absence of a rule of law 'brings into doubt the longer-term viability of democratic institutions in Cambodia.'" Murdoch, *Cambodia's Fate*, *supra* note 218. The report, written by the United Nations' human rights component in Cambodia, referred to the intimidation of judges, the absence of a functioning legal system, prolonged detentions without a trial, prison overcrowding and a "lack of will on the part of Cambodian authorities to do anything about it." *Id.*

check and balance of power."²⁷⁵ Sihanouk has stated that he will reign, but will not rule and that as king, he will be the first guarantor of popular power.²⁷⁶ For example, the National Assembly recently passed an immigration law over which Vietnamese leaders and the United Nations Secretary General have expressed concern because it would allow for the expulsion of all of Cambodia's 300,000 ethnic Vietnamese.²⁷⁷ Sihanouk called for the modification of some "paragraphs or phrases in a spirit of respect for international laws and human rights," before he would sign it into law.²⁷⁸ In addition, Sihanouk has on more than one occasion attempted to protect human rights. He called for the release of one editor who had been jailed for defamation of a high-level government official²⁷⁹ and for an investigation into the assassination of another newspaper editor.²⁸⁰ In addition, he has "called for the arrest and trial of senior army officers responsible for a spate of killings and human rights violations" at a secret prison in Battambang province.²⁸¹

In addition, Sihanouk could lend his legitimacy to the new government. Once he does this, opposition to the new government will decrease for few Cambodians will fight against a government in which Sihanouk is the head of state. As the United Nations' military chief in Cambodia, Lieutenant-General John Sanderson, stated the Khmer Rouge "are in an

²⁷⁵ *Cambodia King Will Be Able to End Parliament*, L.A. TIMES, Sept. 19, 1993, at A9.

²⁷⁶ Wallace, *supra* note 265.

²⁷⁷ *Vietnam: Further Criticisms for Cambodian Immigration Law*, VIETNAM INV. REV., Sept. 19, 1994 available in LEXIS, Asiapc Library, Cambod File. See also *Vietnam: Vietnamese Concerns of Cambodia's Immigration Law*, VIETNAM INV. REV., Sept. 5, 1994, available in LEXIS, Asiapc Library, Cambod File; *U.N. Chief Alarmed at Cambodian Immigration Law*, REUTERS, Sept. 17, 1994, available in LEXIS, Asiapc Library, Cambod File.

²⁷⁸ *See Cambodia: Sihanouk Gives Green Light to New Immigration Law*, REUTERS, Sept. 30, 1994, available in LEXIS, Asiapc Library, Cambod File.

²⁷⁹ King Norodom Sihanouk, Statement of His Majesty King Norodom Sihanouk on the rights and Freedom of the Press in Cambodia (March 25, 1994) (transcript available from the author). The editor was released on bail the same day. *Sihanouk Discusses "Serious Matter" With Ministers; Editor Released on Bail*, REUTERS, Mar. 28, 1994, available in LEXIS, Asiapc Library, Cambod File.

²⁸⁰ Letter from King Norodom Sihanouk, King of Cambodia, to the Royal Government of Cambodia (Sept. 9, 1994) (on file with the author). The RGC has promised to make a serious effort to apprehend the persons responsible for the murder. *Cambodian Government Issues Statement on Death of Newspaper Editor* (National Voice of Cambodia radio broadcast, Sept. 10, 1994).

²⁸¹ Mark Dodd, *Cambodian Minister Denies Prison Cover-Up*, REUTERS, Aug. 15, 1994, available in LEXIS, Asiapc Library, Cambod File.

extremely difficult position. After the king is appointed, who will they fight? The king?"²⁸²

Finally, Sihanouk could become the "institutional memory" of the Cambodian government. In new democracies, the people may not be patient enough to allow a government to prove that its policies are effective. Governments can come and go in quick succession. Thus, governmental policies tend to be short-sighted and can be contradictory to the laws of previous governments. However, Sihanouk can propose policies with long-term benefits and make sure that subsequent administrations do not implement conflicting laws.²⁸³ For example, he has recently called for a ban on timber exports since uncontrolled logging threatens to turn Cambodia into a desert by the 21st century.²⁸⁴ And in response to the suffering caused by land mines in his country, Sihanouk has also called for the government to draft anti-mine laws and for the armed forces of both the RGC and the Khmer Rouge to stop using mines.²⁸⁵

Although the institution of a monarchy may seem antithetical to the ideals of democracy, Sihanouk's ascension to the throne is not undemocratic. First of all, he is the choice of the people. FUNCINPEC received a plurality of the votes largely on his popularity. Further, the representatives of the people unanimously appointed him King. Even the Khmer Rouge have declared their support for his monarchy.

To the contrary, the presence of King Sihanouk will improve the chances of creating a stable democracy in Cambodia. Sihanouk has already stated that he favors and will protect democracy. He can break the deadlocks that often send fragile democracies towards authoritarian rule. He will confer his legitimacy on future governments, making them more stable. Finally, he can be the unifying thread that runs through successive governments. Sihanouk could become one of several monarchs who are a benefit to the democratic political system of their country.²⁸⁶

²⁸² Lindsay Murdoch, *Cambodia Passes New Constitution*, THE AGE (Melbourne), Sept. 22, 1993.

²⁸³ This is true even if Sihanouk's party loses power since the King will still retain his position, popularity, and veto powers. And given his popularity, it is unlikely that the King will be dethroned in the near future. In fact, the greatest threat to Sihanouk is his advanced age (he is 71 years old) and the fact that he has cancer.

²⁸⁴ See Maja Wallengren, *Cambodia's Sihanouk Calls for Log Export Ban*, REUTERS, Oct. 18, 1994, available in LEXIS, Asiapc Library, Cambod File.

²⁸⁵ *Sihanouk Reiterates Call Against Use and Sale of Landmines*, REUTERS, Oct. 6, 1994, available in LEXIS, Asiapc Library, Cambod File. Cambodia has one of the highest percentages of amputees in the world as a result of 8-10 million land mines being planted in its soil. *Cambodia to Consider Plea by Sihanouk to Free Thais*, BANGKOK POST, Sept. 20, 1994.

²⁸⁶ Other examples include the English monarchy, the Japanese monarchy, and the

5. Causation

In this section, we will first determine whether Sihanouk's gain in political power was related to the elections. Next, we will answer the question whether Sihanouk could have gained political power without elections. Finally, we will determine if there were other factors that lead to his rise.

At first glance, it might seem that the elections had little to do with Sihanouk's gain in political power. Given that Sihanouk undoubtedly has more political power than before the elections, it is surprising that he did not run in the elections at all. And history shows that there are many ways to achieve political power other than elections, including through conquest and coercion. This hypothesis becomes even stronger when the person coming to power has the support of a large part of the populace. Thus, there is the possibility that the elections had little to do with Sihanouk's rise to power and that Sihanouk gained political power in other ways.

However, the reality of the situation belies this theory. Although Sihanouk was popular, he was simply unable to translate that popularity into power. In Cambodia, legitimacy and power have not gone hand-in-hand since Sihanouk's overthrow in 1970. Lon Nol was only popular among the urban, educated classes and was propped up by U.S. aid. The Khmer Rouge managed to alienate large portions of the Cambodian population through their brutality. The SOC was installed by the much-hated Vietnamese in the aftermath of a foreign invasion. The main reason that Sihanouk was not able to effectively use his popularity was that he had little access to the citizens under the control of the other factions. In Cambodia, power is an end in and of itself. It does not need legitimacy to sustain it. Only elections made clear the connection between political legitimacy to political power. Free and fair elections require unrestricted access to the people. After Sihanouk was allowed this freedom, it was no surprise that FUNCINPEC won. He was able to use the elections as a vehicle to directly translate his popularity into an electoral victory. Once that occurred, the inherent pressures of the system to give the winner the spoils insured that Sihanouk had would be given some political power.

In addition, it is unlikely that other methods could have given Sihanouk the amount of political power we noted above. Although his popularity with the people has not flagged since he was overthrown, Sihanouk has been largely powerless for the last twenty-four years. If Sihanouk had not been able to gain power in the absence of elections in

Thai monarchy.

those twenty-four years despite his widespread and enduring popularity, there is no reason to believe that he would be able to take political power in 1993 in the absence of elections.

Although the elections were critical to Sihanouk's increase in political power, much credit must be given to Sihanouk himself. It was possible that Sihanouk, old and sick, may have sought to retire instead of campaigning for his party during the elections. Furthermore, there was no guarantee that Sihanouk would have accepted the political power even if offered to him, for such political power brings with it much responsibility. Fortunately, this did not come to pass.

In conclusion, it is fairly clear that the elections had a great deal to do with the benefit. Furthermore, there was empirical evidence that without the elections, Sihanouk would not have been able to gain political power. Finally, one must give credit to the willingness of the man himself for availing himself of the power of elections and agreeing to be the head of state for his country.

IV. BROADER IMPLICATIONS

A. *Introduction*

The elections in Cambodia raise several questions, the most salient of which is, "are elections beneficial even if they are not democratic"²⁸⁷ or do not lead to a stable democratic regime?" However, note that with regard to elections, being democratic and bringing about a stable democracy are not the same. Although the distinction will be discussed later in greater detail, it suffices for now to assert that the elections in Cambodia were democratic, but it is unclear whether they will bring about a stable democracy. This uncertainty forces us to ask two more questions. The first question is, "would a democratic or nondemocratic government be preferable in Cambodia?" The second question is, "how do we achieve the preferable goal?" After answering these questions, this Article will then unify the conclusions deduced to determine the possible scenarios when an election occurs and the attractiveness of each scenario. Finally, the Article will apply the conclusions to Cambodia.

B. *The Distinction Between Elections That Are Democratic and Elections That Lead to Stable Democracy*

Before determining whether an election can be beneficial even if it is not democratic or does not lead to a stable democracy, it may be

²⁸⁷ For the purposes of this Article, the term "democratic elections" has the same meaning as "free and fair elections."

useful to make a distinction between elections that are democratic and elections that lead to a stable democracy. The two terms do not denote the same thing. An election is democratic when it is fairly administered to grant equal voting rights to every citizen who has the requisite faculties necessary to vote (e.g., in America, most persons over eighteen years of age). In addition, all eligible voters must be allowed to run for office and all candidates must have an equal opportunity to campaign. Finally, the results must be accurately tabulated and the victorious candidates placed into office.²⁸⁸ According to this standard, elections in 18th century England were not free and fair because a major portion of the citizenry was precluded from voting.²⁸⁹ More recent elections in totalitarian countries such as the People's Republic of China are also not free and fair. Even though suffrage is widespread, only a small number of people are allowed to be candidates.²⁹⁰ Finally, elections like those held in the Philippines during the Marcos regime were not democratic because the failure to tally accurately the votes insured that the candidate with the most votes would not be placed into office.²⁹¹

Notwithstanding these inherent procedural guarantees of free and fair elections, such elections need not lead to a stable democracy. Citizens could choose, in free and fair elections, not to have a democracy.²⁹² This can occur because democracy is both a method and a choice. Democracy is a method of making policy decisions for the community. And one of the policy decisions to be made is what method to use in the

²⁸⁸ See *supra* note 1.

²⁸⁹ Before 1832, suffrage was restricted to male English subjects who possessed a freehold interest in any real property worth 40 shillings a year which had been assessed to the land tax for at least six months. DAVID CRESAP MOORE, *THE POLITICS OF DEFERENCE: A STUDY OF THE MID-NINETEENTH CENTURY ENGLISH POLITICAL SYSTEM* 247 (1976).

²⁹⁰ Chinese electoral laws stipulate that there can be no more than 100% more candidates than slots for deputies to the People's Congress. "Please Cast A Vote for Me" — *How New Deputies to Township County People's Congresses Are Elected in Beijing*, XINHUA NEWS AGENCY, Dec. 3, 1993, available on LEXIS, Asiapc Library, Cambod File. Therefore, meetings are held in order to limit the number of candidates. *Id.*

²⁹¹ See Norman Kempster, *American Says Manila Official Admitted Fraud*, L.A. TIMES, Feb. 22, 1986, at 1.

²⁹² However, this first scenario brings with it troubling questions whether one group of voters may commit other, future groups of voters to a specific form of government. Fortunately, this has been a rare occurrence in modern times. It is not clear whether this is because of some inherent universal appeal of democracy or through widespread educational efforts. However, it is clear that people prefer democracy to such an extent that even nondemocratic governments must at least make the rhetoric of democracy.

future. Thus, it is possible that the voters will elect a representative who espouses nondemocratic ideals or is generally regarded as unlikely to continue democratic governance. A second scenario in which free and fair elections do not lead to a stable democracy occurs when elected leaders or representatives decide to take power and refuse to govern the country in a democratic manner. Finally, one could imagine a situation where the members of a democratically elected coalition government cannot agree on how the country is to be administered and resort to violence to settle their differences.

C. Inherent Benefits of Free and Fair Elections

Now that the distinction is clear, it is necessary to split the first question posed into two parts. Are elections beneficial even if they are not democratic? And are they beneficial even if they do not lead to a stable democracy? In answer to the second question, this Article has argued that even when elections do not lead to a stable democracy, they may have benefits. These benefits are inherent in any free and fair election and do not depend upon the short- or long-term outcome of the elections. They can be divided into two categories, those based on legitimacy, which have been the central focus of this Article, and those related to dignitary and participatory values.

1. Legitimacy-based Benefits

Legitimacy-based benefits are those benefits that stem from the fact that elections signify the will of the people. The people are a source of political legitimacy and they bestow this legitimacy by voting for candidates or parties. To understand this, one must start with the premise that people have the right to decide how they will live, both as individuals and as a community. However, in many instances, people delegate this political power to their representatives. This is done not because delegation is necessary by the inherent nature of the political power, but because it is more efficient to do so. We live in a complicated world where we do not have the time to participate personally in every government decision; nor would it be practical to allow the personal participation of every citizen in every government decision. Representative government makes it possible for every citizen's voice to be heard given the pragmatic constraints we face.²⁹³ Thus, voting is one form of delegation

²⁹³ Of course, there are imperfections in this system that may make it inferior to the true participatory democracy of Ancient Athens. These problems arise from the tendency of representative systems to simplify the opinions of many people into a coherent

of the political power and free, and fair elections are a shorthand way of insuring that a delegation of power is valid. If legitimacy is defined as the right to wield political power,²⁹⁴ then the elected representative gains legitimacy through free and fair elections.

It is in this way that elections give force to the wishes of the people. And as we have seen, when something is legitimized through elections, there are profound benefits beyond merely placing a candidate into office. These benefits of free and fair elections have been detailed in this Article. They include the ostracization of destabilizing groups, the creation of a legitimate government which has an incentive not to become illegitimate, and the transfer of political power to persons who are widely popular.

First, in many nondemocratic countries, there will be a faction whose military power is greater than its political legitimacy. When faced with free and fair elections, these groups will shy away from participation. Elections force parties which fit into this category to identify themselves as a group which fears democratic methods of selecting leaders. This is particularly helpful because many of these organizations are highly secretive and keep strict discipline among members. Attempting to obtain and verify intelligence on them by other methods is extremely difficult. In addition, there is a strong likelihood that the self-identification will be accurate. Those who know the faction best, the leaders of the group, are responsible for making the identification. At the least, one could not hope for an identification from a more knowledgeable source.

Identifying and weakening such parties is of special importance because the existence of such groups endangers fragile democracies. Such groups need to be identified so that they can be excluded from the new government. They are likely to resort to force when the situation turns sour and their fortunes change. Because they are stronger in the military arena than within the confines of a political power-sharing arrangement, such groups will prefer the former when the latter fails as a vehicle for achieving their goals. This endangers the stability of any new government, making it essential that such groups be excluded. Fortunately, the realities of free and fair elections make it unlikely that such groups will participate and do well in elections. Once the elections are over, identifying these groups helps to insure that the members of the coalition government will not later offer them a role in governing the country.

Given that such groups should not be a part of the new government, it is essential that they be weakened because they will oppose the govern-

whole (the representative) and the distancing of people from their government. Nonetheless, no other viable options exist at this point.

²⁹⁴ See *supra* note 12.

ment at every turn. Fortunately, elections inherently weaken these parties, who will lose domestic and international support by admitting that they lack domestic legitimacy. The fact that a party has refused to participate in elections when the United Nations is running the elections speaks for itself. It would be difficult to point to a better body to administer elections in a free and fair manner and most of the world's governments know this. Over time, many of the people of the country in which elections are being held will come to recognize this as well. And with the end of the Cold War, there will be no more support for a group merely because another superpower supports its opposition. Each client must prove to its patron that it has not only the power, but the legitimacy, necessary to eventually "win." A faction that voluntarily chooses not to participate in free and fair elections can hardly argue that it has the domestic legitimacy necessary to succeed. Such a faction is clearly imposing its power upon the citizenry rather than deriving its power from the people.

The flip-side of this is that without the Cold War, superpowers and regional powers will seriously consider whether they want to associate with such a faction. Where a patron nation is looking for a face-saving way to drop an ally, elections provide a unique opportunity. In order for elections to be free and fair, aid to a specific faction must be stopped. After the elections, aid being sent to the country must be sent to the legitimate government. Any other action will be seen as an attempt to overthrow the legitimate government by a foreign country. In international law, such an action would be illegal²⁹⁵ and on practical grounds, it would surely be resented by the United Nations and its members, who will have spent much time and money setting up the legitimate government. Thus, elections are a catch-22 for unpopular and undemocratic groups which can only cause them to lose popularity.

The second legitimacy-based benefit of elections is that they have the ability to create a stable government which possess both political power and political legitimacy. Although this does not preclude the possibility of revived conflict in the future, it does decrease that possibility. It allows the different parties a forum in which to work together. This increases the likelihood that the parties will cooperate to deal with destabilizing third-parties and makes cooperation more efficient when the parties decide to do so. At the least, the different parties have an opportunity to learn the value of compromise. Further, parceling power gives each party a stake in defending the system. A party that withdraws from the government will lose domestic and international support. This is not a foolproof method of developing a peaceful, functioning government, but it is superi-

²⁹⁵ U.N. CHARTER art. 2, ¶4.

or to other methods.

The final legitimacy-based benefit is the granting of political power to those who already possess political legitimacy. Where there is someone with widespread political support, it is unlikely that the convictions of the people are misguided. Elections use that high level of political legitimacy to determine whether that person ought to hold a leadership position and its concomitant powers. Although this method of choosing upon whom to confer political power is not foolproof, it is superior to other ways of choosing. Such a person, because he or she is trusted by all factions, is in a unique position to mediate between the sides. He or she could be the conscience of the government, protecting democracy and human rights. Finally, he or she could also lend legitimacy to the fledgling government.

2. Dignitary and Participatory Benefits

In addition to the legitimacy-based benefits, free and fair elections, whether they lead to a stable democracy or not, have dignitary and participatory benefits. However, these benefits are more subtle and much harder to describe. They tend to have consequences that are less dramatic than legitimacy-based benefits.²⁹⁶ Participatory benefits are integrally associated with the act of voting in elections. Simply stated, participation in elections increases self-esteem and one's sense of control. By giving people a chance to affect their lives at the level of national policy-making, it makes people aware of their own power. They are made to recognize their ability to fundamentally change their lives. This has especially pronounced effect in countries where fatalism and politics go hand in hand. This opens up new possibilities as a person's sense of the world changes. Activities and goals that had never crossed people's minds, such as expressing their opinions to large groups of people and even running for office, become viable options. Further, this new-found sense of control need not be limited to politics, but may manifest itself in other areas as well. And this is all true even if one's opinion does not carry the day. People can nonetheless feel a sense of pride when their input is heard and seriously considered. It is no surprise that people are more likely to acquiesce to a decision in which they have input, even if their suggestion is not followed.

Related to these benefits are dignitary benefits. The latter based on the realization that people are autonomous entities. In order to respect this autonomous nature, people should be given the power to give input when decisions that substantially affect their lives and their communities are

²⁹⁶ This difficulty in quantifying or concretizing participatory and dignitary benefits is one of the reasons that this Article focused on legitimacy-based benefits.

being made. There is an inherent value in doing this that cannot be explained in practical terms. Even if the citizens do not react or are slow to change their ways, the benefit still remains because dignitary values are motivated by a moral imperative rather than policy analysis. We ought to have democracy because it promotes the inherent good of autonomy, not because it makes everyone happy. Only by heeding what people believe can one vindicate values such as self-determination and autonomy.

D. Elections That Are Not Free and Fair

In contrast to the plethora of benefits inherent in free and fair elections, it is difficult to find any benefits of elections that are not free and fair. An election is not a magical process shrouded in mystery; it is no more than a formal process of having persons make a choice concerning who will lead them or what policies their community will follow. By limiting participation, limiting candidate choices, or limiting the consequences of election results, elections can easily be denuded of both legitimacy-based and dignitary-participatory benefits.

Elections that are not free and fair are not legitimate, thus destroying any legitimacy-based benefits. Unpopular groups cannot be delegitimized. Parties in an illegitimate government lose no legitimacy when they flee that government. And to the extent that widely popular leaders participate in and emerge victorious from undemocratic elections, they actually lose legitimacy, decreasing their ability to function as a stabilizing element in the government.

In addition, where participation in voting is formally or informally limited, participatory and dignitary benefits are correspondingly limited. Those values that elections inculcate are lost on those who do not vote. And failing to allow people to vote violates the notion that people should be treated as autonomous entities. Most importantly, when elections are limited, those who are not allowed to vote are often those most in need of these participatory benefits. Those persons who are used to being told what to do are normally the first to be excluded.

Limiting candidate choices makes the vote similarly meaningless. This destroys any participatory values the elections might have because not allowing citizens to vote for whom they wish is similar to not allowing them to vote at all.²⁹⁷ Upon seeing the reality of the situation,

²⁹⁷ Limiting candidate choices may be better than not allowing voting at all because voters might still be able to choose among different candidates. Even in nondemocratic regimes, some candidates may still be more attractive to the populace than others. However, restricted candidate elections often exclude from candidacy those most likely

voters are not at all motivated to vote. It is not surprising that in many countries with one-candidate elections, voting is mandatory.²⁹⁸ Finally, the notion that citizens might run for office and directly affect their lives is destroyed. For these reasons, the dignitary and participatory value of elections is completely undermined.

Similar problems come about when the results of elections are not implemented, whether through falsification of results or through refusal to act on the true results. This makes elections meaningless, a ritual no better than praying to the heavens for relief. Actions without consequences cannot give people the sense that they can change their lives. And because voter choices are neither implemented nor considered in making a selection, disrespect is shown for the choices of the people. This denies their right, as autonomous entities, to make choices concerning their lives.

In fact, the limitation of suffrage or candidacy rights or the disregard for the true outcome of an election not only denude elections of benefits, but may have detrimental effects as well. Unfree and unfair elections breed cynicism and contempt. If the nondemocratic government demonstrates enough times that people cannot change their lives, they will begin to believe it. If people are shown that the norm is to deprive others of their right speak, then the people will resort to that in the future.

E. The Path to Stable Democracy

However, the benefits described above are not the only positive effects of free and fair elections. The creation of a stable democratic government is probably the most important goal of elections. In contrast to the benefits mentioned above, however, this benefit is not insured whenever democratic elections are held. It is easily derailed.

to win. Otherwise, there would be no point to excluding candidates. When the people are not allowed to vote for their first choice in this way, the damage is serious enough that the ability to choose the lesser of several evils (approved candidates) does not adequately remedy the violation.

²⁹⁸ Examples include Romania under Nicolae Ceausescu, see Adrian Neagu, *Romanian Peasants Discover the Split Ticket*, REUTERS, Sept. 27, 1992, available in LEXIS, Asiapc Library, Cambod File; the Philippines under Ferdinand Marcos, see Fernando Del Mundo, *Police and Military Forces on Full Alert*, UPI, April 6, 1981, available in LEXIS, Asiapc Library, Cambod File; and Chile under General Augusto Pinochet, see Charles A. Krause, WASH. POST, *Pinochet Wins Overwhelming Vote on New Constitution*, Sept. 12, 1980, at A2.

1. The Threats to Forming A Stable Democracy

There are two main scenarios in which free and fair elections do not lead to a stable democratic government. First, the people may decide to vote for a candidate or faction unlikely to continue democracy in their country. This is a particular danger in countries in which democracy is new and the people may have grown accustomed to the assurances that an authoritarian state afforded to them. Many new democracies are poor and the voters are likely to concentrate on issues other than continued democracy, such as the ability to insure economic well-being. The issue of continued democracy may be the last thing on their minds and they will vote accordingly. For example, voters more interested in their livelihoods than in protecting a fragile democracy reelected the members of the Communist Party in Bulgaria, Albania, and Mongolia after Communism fell in 1989 and 1990.²⁹⁹ And it was this scenario that the military in Algeria feared when it canceled the elections in early 1992. There were no substantiated attacks on the freeness or fairness of the Algerian elections and the fundamentalist Islamic Salvation Front (ISF) party had garnered significantly more votes than any other party in the first round of voting.³⁰⁰ However, the ISF had promised to turn Algeria into an Islamic fundamentalist state if it won, causing the military to cancel the second round of voting, which the ISF was sure to win.³⁰¹

A fledgling democracy can also be destroyed through the seizure of power by its elected officials. Generally, one would fear that the elected leader of a country would declare an authoritarian rule. History has several examples of leaders who were elected democratically with the expectation that they would govern their countries in a democratic manner and then did away with democracy in their countries.³⁰² One recent

²⁹⁹ See Patrick Worsnip, *Communist Legacy Persists in the Balkans*, REUTERS, June 20, 1990, available in LEXIS, Asiapc Library, Cambod File.

³⁰⁰ See Youssef M. Ibrahim, *Algeria Militants Call for Uprising*, N.Y. TIMES, Jan. 14, 1992, at A1. The Islamic Salvation Front received 188 seats of the 231 contested seats, just 28 short of the number it needed to get a majority in the legislature. The second place finisher was the Front for Socialist Forces with 26 seats while the governing party came in third place with 15 seats. *Id.*

³⁰¹ See Alfred Hermida, *Algeria Election Called Off After the President Quits-Tanks and Troops Patrol Streets*, REUTERS, Jan. 13, 1992 available in LEXIS, News Library, Curnws File. Although an Islamic fundamentalist state is theoretically not incompatible with democracy, in reality, the two rarely mix. A theocracy requires a unity of belief that is inimical to democracy. Most Islamic fundamentalist countries are police states where human rights are not honored (e.g., Iran).

³⁰² Of course, this can occur only in representative democracies, where the citizens

example is Alberto Fujimori, who was elected in 1990 to the Peruvian Presidency and two years later dissolved congress, suspended the constitution, and imposed censorship.³⁰³ Alternatively, where no one man or party has enough power to take control, democracy could end through the destabilization of the government through inter-party conflict. The parties of the government would not be able to agree with each other and decide to go back to fighting. The creation of a democratic state is a complicated process and experts on democratic processes are often hesitant to declare the presence of democracy within a generation.³⁰⁴

2. The Value of Democracy

However, our analysis of threats to a stable democracy presupposes that democracy is a goal worth achieving. Although the debate about democracy's inherent worth is beyond the scope of this Article, it may be useful to note the main contours of the debate. In nondemocratic countries, detractors of democracy have two main arguments, one based on the inherent nature of democracy and the other based on the practical impossibility of democracy.³⁰⁵

First, they point to the inefficiency and chaotic nature of democratic rule. Democracy allows for the creation of a substantial opposition party which may freely and publicly air its dissension. This leads to confusion among the populace and anger amongst the leadership. The eventual result will be chaos, a break down of order, and possibly even civil war. In addition, democracy presupposes that every individual should work towards his or her goal, even if it be at cross-purposes to others. This leads to shortsighted and incoherent planning in which no attention is paid to the good of the community as a whole.

In addition, allowing decision-making power to be held by the populace presupposes some minimum level of education necessary to

trust their representative leaders to make policy, largely without input. In a true democracy this could not happen. However, almost all democracies today are representative democracies.

³⁰³ *Peru's Leader Dissolves Congress*, N.Y. TIMES, Apr. 6, 1992, at A5.

³⁰⁴ HUNTINGTON, *supra* note 2, at 266-67.

³⁰⁵ There is at least one other argument against democracy — that it does not adequately protect the rights of minorities (*i.e.*, persons who are different in one way or another from the majority of the population, not just ethnic minorities) and allows tyranny of the majority. I omit this argument from discussion because it is more often made by persons living in democratic countries who wish to increase the number of civil protections afforded to the citizenry. Most of the detractors of democracy in nondemocratic countries are arguing in favor of what amounts to tyranny of the minority and less civil protection for the people.

make an informed decision. The populace of countries where democracy is emerging often have low levels of education. And without this prerequisite, the people will be easily swayed by demagogues and be unprepared to make complicated policy decisions. The best way to improve the situation is through increased stability, which will lead to economic progress, which will lead to better educational opportunities for all.

However, the promise of democracy has never been political rationality. Democracy is valuable for the dignitary and participatory values noted above. Further, arguing that democracy leads to chaos or stalemate does not answer the normative question whether democracy is superior to authoritarian forms of government. Although democracy attempts to cater to the needs of the many, risking chaos or stalemate, authoritarian regimes cater to the needs of the one or the few, courting disaster. It is often preferable in governing to be restricted to doing nothing rather than be given unbridled freedom to do something detrimental. Thus, it is not surprising that although the record of policy-making in democratic countries has been mixed, it is certainly no worse than the record in authoritarian countries. Finally, democracy can actually increase stability rather than causing instability as has been argued. Democratic governments fear a loss of domestic and international support and therefore have a reason to stay democratic. Losers in elections have incentives to stick within the process because they hope for future success. Further, by creating a peaceful process of transferring power, democracy furthers stability by doing away with violent power struggles during autocratic successions.

The second argument made by the detractors of democracy similarly rests on inaccurate assumptions. It presupposes that the way to deal with the poor, uneducated masses is to disregard their opinions, at least for the time being. Proponents of such arguments believe that, by contrast, democratic governance would require following the opinions of such persons. This is true, but this argument does not take into account the inherently educational nature of democracy. Democracy is predicated on the assumption that there will be a free exchange of information and incentives for candidates to educate the citizenry. It is this educational component of democracy that makes it superior to the authoritarian method of decision-making, which because it has stifled certain opinions cannot take into consideration the same number of viewpoints. This in turn greatly decreases the amount of information that the authoritarian rulemaker has at his disposal and the number of options from which he must choose. Thus it is not surprising that there is no evidence that authoritarian rulers make better policy choices than their subjects or even that poor, uneducated voters make worse decisions than their brethren in

more developed countries.³⁰⁶

3. The Stability-Democracy Tradeoff

It is not surprising that there is general agreement that democracy is a desirable goal. The question then becomes how to get there, over which there is no general agreement.³⁰⁷ Traditionally, the belief has been that democracy and stability³⁰⁸ are not compatible. Democracy allows open dissension which means that persons can advocate whatever actions are in their best interest. However, democracy relies upon elections and the guarantee that the elections will be free and fair as the means by which varied opinions and interests are transformed into coherent policy decisions. The problem is that the mechanism of free and fair elections is not self-enforcing. Those who have lost in elections may decide not to abide by the results of the elections. Thus, democracy has unleashed a large number of beliefs and passions that it may not be able to control. Where the government is not able to put force behind the election results, stalemate occurs. Where force is placed behind the election results, outright warfare may erupt, something that might seem remote to the United States, but is very much a problem in Cambodia.³⁰⁹ Authoritarian rule, although it too is susceptible to conflict, is less affected because it has not allowed the full spectrum of opinions to be heard.

Therefore, the comparison that is made is normally between an unstable, democratic government and a stable, undemocratic government.³¹⁰ However, with regard to Cambodia, one needs to have this discussion within the context of a regime that is formally democratic. Even democratic governments face the stability and democracy tradeoff. In the United States during times of emergency, many of our democratic freedoms have been curtailed in the name of stability. President Lincoln jailed many political prisoners and suspended habeas corpus during the

³⁰⁶ Because the Cambodian people have more at stake in elections, they care more. This factor of caring seems to make a bigger difference than economic or educational factors. Elections in similarly poor countries bring the vast majority of the people to the polling stations and voting can often involve intense discussion beforehand.

³⁰⁷ INTRODUCTION TO CAPITALISM, SOCIALISM, AND DEMOCRACY REVISITED XII (Larry Diamond & Marc F. Plattner eds., 1993).

³⁰⁸ By stability, I mean a decrease in the military conflicts and physical violence and an increase in the peace.

³⁰⁹ It is no surprise that most analyses of the American Civil War discuss democratic politics. That war was very much about what happens when dissension cannot be resolved peacefully.

³¹⁰ One common contrast is between the former Soviet Union and the People's Republic of China.

Civil War.³¹¹ President Roosevelt interned thousands of Japanese citizens into camps during World War II for no other reason than their race.³¹² President Truman seized steel mills during the Korean War in order to avert imminent strikes.³¹³ Each of these actions was supported by arguments of insuring national security and the Cambodian government could, with equal or greater plausibility, invoke national security to commit similar acts.³¹⁴ After all, it is in a battle to death with the Khmer Rouge for its very survival.

The wisdom of trading greater democracy for stability in the democratic context, however, depends upon the situation of the country. Where the country is prosperous and has a history of democratic rule, such as in the case of many Western democracies, it may make little sense to curtail democracy in order to increase stability and efficiency. However, Cambodia poses a different problem. There, the people are more interested in daily survival than democracy. When a person's preoccupation is with economics, it is common to believe that democracy is a system which quickly brings about economic success through some mystical process or a system whose sole purpose is to allow everyone to get as much of the pie as he or she can. Whether one has the dynamic (pie-increasing) or static (pie is the same, but I get a larger share) model of democracy, one is surely going to be disappointed by the results. The truth is that democracy is not a guarantee of economic success. Economic success comes about both in democratic (e.g., United States, Germany, Japan) and undemocratic countries (e.g., Taiwan, South Korea, Singapore,). Nor does democracy stave off economic failure (e.g., India).³¹⁵

³¹¹ See *Ex Parte Milligan*, 71 U.S. 2 (4 Wall.) (1866); *Ex Parte Merryman*, 17 F. Cas. 144 (C.C.D. Md. 1861).

³¹² See *Korematsu v. United States*, 323 U.S. 214 (1944).

³¹³ See *Youngstown Sheet & Tube Co. v. Sawyer*, 72 U.S. 1075 (1952).

³¹⁴ And it is not a surprise that publics in South America breathe a sigh of relief when an authoritarian executive officer breaks the deadlock of democratic inefficiency. "According to one poll, three-quarters of the population backs Fujimori's action because it is disgusted with a political system that seems incapable of relieving the grinding poverty in Peru." Norman Kempster, *Bush Vows to Back Democracy in Peru*, L.A. TIMES, Apr. 11, 1992, at A8.

³¹⁵ See SCOTT MAINWARING, GUILLERMO O'DONNELL & J. SAMUEL VALENZUELA, ISSUES IN DEMOCRATIC CONSOLIDATION: THE NEW SOUTH AMERICAN DEMOCRACIES IN COMPARATIVE PERSPECTIVE 8-11 (Scott Mainwaring et al. eds., 1992). Although few stable democracies are economic failures, the causal relation may be trickier to pin down than one might think. A failure to bring about economic success may cause great instability in a young democratic government, as in the case of several South American countries. *Id.*

4. Elections Can Lead to Stability and Democracy

The contribution of this Article, however, is the recognition that the tradeoff may not be as stark as we may think. There are two stages in representative democracy — voting by the people and policy-making by their elected representatives. In Cambodia, free and fair elections, a democratic action by the people, were held. This first stage led to results that tend to increase stability. Furthermore, these stabilizing results constrain the choices made during the second stage. Representatives are less likely to destabilize the government through their policy-making. First, the Khmer Rouge, the group most likely to destabilize the democratic governance of Cambodia, have been excluded. Secondly, each of the factions has a reason to stay within the government in order to continue receiving both international and domestic support. Finally, the role of the neutral, respected elder being filled by Sihanouk helps to decrease dissension through his dispute resolution skills. Thus, the destruction of a fledgling democratic government is made less likely by free and fair elections.

Furthermore, this stability feeds upon itself. Although there are no set requirements for a democracy to become a “stable democracy,” the longer a democracy continues, the better its chances of survival. In the modern era, almost no democracy in existence for more than twenty years has been overthrown from within. This is because the participatory and dignitary benefits grow in strength making the idea of nondemocratic seizure of power unthinkable and widespread resistance to such an act inevitable. It is also because there is an agreed upon, peaceful method of transferring power. There is a recognition that the winner of elections is guaranteed his spot and that the loser can always come back later. Participants in the government are given a stake in it.

E. Four-Grid Analysis

It may be helpful at this point to unify the ideas discussed above by using a four-grid analysis. If we imagine the freeness and fairness of elections on one axis and the eventual outcome (nondemocracy or stable democracy) on the other axis, we come up with four possibilities as follows. Using this grid, we can apply what we have learned to other situations.

	Democratic Elections	Undemocratic Elections
Stable Democracy	Democratic elections that do lead to a stable democracy.	Undemocratic elections that do lead to a stable democracy.
Unstable Democracy	Democratic elections that do not lead to a stable democracy.	Undemocratic elections that do not lead to a stable democracy.

Elections which are not free and fair and do not lead to democracy are unlikely to be of any benefit to anyone other than the persons who are kept in power. Such elections make a farce of voting and give rise to cynicism and demoralization. Furthermore, the lack of democratic governance allows people to grow accustomed to authoritarian or totalitarian rule. Although such elections may have some beneficial consequences, these are indirect at best.

Assessing elections that are not free and fair but do lead to democracy is more difficult. Here, we can point to at least one benefit, ostensibly, democracy. However, there is a causal problem related to this scenario. When elections are not free and fair, they cannot lead directly to democracy. At best, the elections are a catalyst or focal point for beliefs and goals that are external to the elections. Such ideas may have come from a number of sources, ranging from mistreatment by the current government to education on the benefits of democracy. Elections are not a necessary condition for the toppling of an authoritarian or totalitarian regime and installment of a democratic regime. It may be necessary to have elections to actually choose a democratic government, but a democratic system may be put into place without an election at all. There needs only be the intention to have elections in the future. Finally, the causal link that we identified above is weak and hardly certain. Relatively few rigged elections lead to a democratic regime. Therefore, we must be cautious in ascribing a large benefit to nondemocratic elections in general. This should hold equally true even if they should lead to democratic regimes.

Similar to the situation where nondemocratic elections lead to a democratic system, one would be cautious in cheering a situation in which elections are free and fair, but democracy does not take root. After all, one of the main purposes of elections is to start a democracy. However, the populace does receive the participatory and dignitary benefits

that may set the stage for another attempt at democracy.³¹⁶ In addition, this Article has attempted to show that benefits may accrue to a country in which free and fair elections are held, but in which democracy may not eventually take hold or it is unclear that democracy will take hold. As described above, these benefits come from the legitimation function of elections and they tend to have a stabilizing effect on the country.

For this reason, the chances that a country which has just had free and fair elections will become a stable democratic state are greater than we may think. And if this were to happen, it would be difficult to point to the downside. This is probably the best scenario for which one could hope, for the country in question receives both the inherent benefits of free and fair elections and the stability of democracy.

F. Cambodia, the Future?

Where then, does Cambodia fit into all of this? The elections in Cambodia were almost certainly free and fair. It is true that they were marred by intimidation and coercion by the SOC and attacks on polling stations by the Khmer Rouge. However, neither of those parties won the election. In contrast, the party that won a plurality of the votes, FUNCINPEC, used neither intimidation against the other parties nor military-style attacks on polling stations. It is not surprising then, that almost all of the international observers present hailed the elections as being substantially free and fair. Thus, we can be certain that the benefits inherent to democratic elections will accrue to Cambodia's advantage.³¹⁷ However, it is uncertain whether Cambodia's government will be democratic in the long run. There are three threats: that the Cambodian people did not really vote for democracy at all; that their leaders will attempt to seize power; and that their leaders will not be able to peacefully govern the country together and resume fighting. First, it could be argued that there is simply no mandate for democracy in Cambodia. The citizenry have not voted for democracy because, in reality, none of the factions stands for

³¹⁶ Professor Samuel Huntington notes that "in the twentieth century, very few countries created stable democratic systems on their first try." HUNTINGTON, *supra* note 2, at 270. Further, of 29 countries involved in the "Third Wave of Democratization" [which started in 1974 with the democratization of Portugal], 19 had one or more years of democratic experience in the post-World War II period and of the remaining 10, another 4 had significant democratic experience before the war. *Id.* at 271.

³¹⁷ See William Branigin, *U.N. Ends Cambodian Operation, Mission Successful Despite Flaws*, WASH. POST, Sept. 27, 1993, at A12. Thus, commentators have noted that, "even though human rights abuses continue to be committed, the U.N.'s mission in Cambodian has impressed upon the people, perhaps for the first time, that they do have rights." *Id.*

democracy. Although all of the parties participating in the elections stated that they supported continued democracy in Cambodia, none has yet proven this commitment. And it is likely that the Cambodian voter concentrated on other factors such as economics, the personalities of the candidates, and past history to make voting decisions.³¹⁸ Continued democracy was not as relevant a consideration as continued survival.

However, the Khmer Rouge's failed boycott of the elections is one indication that the people "voted for democracy." According to this argument, those persons supporting the Khmer Rouge by refusing to vote should be counted as supporting a nondemocratic regime. Since few people boycotted the elections and the vast majority of citizens voted for one of the parties which formally supported democracy, it was clearly a vote for democracy. However, there are two problems with this argument. First, even the Khmer Rouge spouted the rhetoric of democracy.³¹⁹ Second, the Khmer Rouge have too much historical baggage attached to their name. Refusal to support the Khmer Rouge may have had more to do with fear of a Khmer Rouge return to power than a love of democracy.

An even more compelling argument is based on the enthusiasm and zeal with which the Cambodian people involved themselves in the democratic process. A high percentage of the registered voters cast their ballots despite the threats of attacks by the Khmer Rouge and a great number of people campaigned despite the harassment and killings by the SOC. This fact supports the argument that the high election turnout was a mandate for democracy in and of itself. If the Cambodian people had not favored democracy, they would not have involved themselves so widely and so deeply in a process that is the core of democracy.³²⁰

However, the unclear nature of the mandate is a much smaller threat

³¹⁸ Although this cannot be verified substantively, my own talks with citizens in Phnom Penh revealed that many Cambodians worry about their continued ability to make a living. These concerns were prevalent during the elections and are still prevalent today.

³¹⁹ None of the other factions had any experience with democracy, placing them at odds with the Khmer Rouge. Notwithstanding the fact that the Khmer Rouge's actions in the past were more widespread and more reprehensible, its formal support of democracy and its record of democracy in the past cannot be distinguished from the other parties.

³²⁰ In any case, shortly after the elections, the new representatives signed the Constitution of Cambodia, which calls for periodic elections. See *generally Rebels*, *supra* note 128, at A3. Thus, although the question of a mandate for democracy is clouded, the RGC has now constituted itself as a democracy. It is unlikely that the unclear nature of the electoral mandate could overrule the requirements of the new constitution. *Id.*

to democracy than the actions of Cambodia's leaders. Notwithstanding the optimistic signs in Cambodia during the recent elections, Cambodia's history is too troubled and its leaders too inexperienced with democracy for anyone to declare with any certainty that a stable democracy has been established in Cambodia. It is not beyond the bounds of plausibility that one faction will seize power or that the government will fall apart as the factions are unable to compromise. This is the real threat to continued democracy in Cambodia. Cambodia-watchers should focus on the actions of the new government rather than the shenanigans of the Khmer Rouge.

V. CONCLUSION

The end of the Cold War is the start of a new era for the United Nations; one in which it will play a more active role in peacemaking, peacekeeping, and electoral supervision. Azerbaijan, Macedonia, Georgia, and Haiti are all sites of possible future U.N. peacekeeping missions.³²¹ In addition to the problems of Cambodia, crises in Somalia, Bosnia, Croatia, Haiti, El Salvador, Angola, Mozambique, and Iraq have all landed on the plate of the United Nations.³²² As of last year, the United Nations had a presence in fourteen countries, the biggest operations being in Somalia with 28,000 U.N. personnel and Bosnia-Herzegovina with 24,000 U.N. personnel.³²³ Such actions are costly in terms of money and lives. The Cambodia operation, for example, is expected to cost at least \$1.5 billion, plus another \$800 million in economic aid pledged. In addition almost seventy U.N. personnel were killed in Cambodia.³²⁴ The U.N. plans to spend some \$3 billion in 1993 on peacekeeping operations involving 90,000 personnel.³²⁵ Because of the large cost, there is already

³²¹ See Stanley Meisler, *Activist U.N. Leader On Firing Line, His Arrogance Alienates Many. But Boutros Boutros-Ghali Is the Boldest Secretary General In Decades*, L.A. TIMES, Nov. 9, 1993, at 1.

³²² *Id.*

³²³ *Id.*; Warren Strobel, *The World's Policeman, Is U.N. In Over Its Head?, Peacekeeper Role Provokes Debate*, WASH. TIMES, July 13, 1993, at A1. In addition to the countries listed in the text, U.N. troops are stationed the Western Sahara, Sinai-Egypt-Israel, Lebanon, Cyprus, Syria-Golan Heights, India-Pakistan, and Rwanda. David Lauter & Paul Richter, *Clinton To Insist on U.S. Control of G.I.s in U.N. Roles*, L.A. TIMES, Oct. 15, 1993, at A1; Warren Strobel, *The World's Policeman, Is U.N. In Over Its Head?, Peacekeeper Role Provokes Debate*, WASH. TIMES, July 13, 1993, at A1.

³²⁴ See Sicham Siv & Richard H. Solomon, *The U.N. is on the Verge of Retreating in the Face of a Success, After Years of Bloodshed, a Democratic Government is Near, Not Extending the U.N. Mandate Would Betray the People*, L.A. TIMES, Aug. 22, 1993, at M2.

³²⁵ See Julia Preston, *Members of U.N. Failing to Pay Up for Peace Keeping As Global Missions Multiply, U.S. and Others Withhold Funds*, WASH. POST, June 27,

a reluctance on the part of many nations to contribute to U.N. operations. In March, 1993, when a request for \$150 million was made to help pay for a portion of the Somalia operation, only \$35 million was raised.³²⁶ Of the \$800 million in economic aid pledged to Cambodia, only \$150 million has appeared.³²⁷ According to Leo Hosang, the U.N.'s finance director, member states are some \$1.3 billion in arrears in peacekeeping payments.³²⁸ The United States itself is nearing \$1 billion in arrears.³²⁹ As S. Iqbal Riza, U.N. assistant secretary-general for peacekeeping operations stated, "We are very much at a critical point in determining whether this concept of collective security, which has worked in a restrictive sense during the Cold War, is now going to prove itself valid and viable."³³⁰

The proponents of U.N. peacekeeping and electoral missions, including the U.N. Secretary General, must convince many entities, most importantly the countries contributing to the effort, of the utility of U.N. missions.³³¹ Such arguments should be made not only in terms of the creation of democracy, but also in terms of legitimacy-based and dignitary and participatory values. In many developing countries today, the chances of creating a democratic system of government may be slim in the short-run. Such countries are often miserably poor, have no democratic traditions, and have experienced widespread warfare between seemingly implacable foes. Faced with such dismal prospects and domestic budget restraints, many countries could easily opt to vote against United Nations intervention. It is easy to see why many are wary of United Nations actions in Somalia, Haiti, and Yugoslavia. Yet Cambodia possesses all of the problems that these countries face, perhaps to a greater degree than any of them. To dismiss intervention then, merely when it is not likely to achieve instant democracy may be a mistake.

Of course, as our causation analysis showed, there are some prerequisites that are necessary for elections to have their full beneficial effects.

1993, at A25.

³²⁶ See Jonathan Moore, *The U.N.'s New Mission: Nation-Building, With Bosnia and Somalia, the United Nations Is Now in the Business of Setting Up Governments, But Isn't That the People's Choice?*, L.A. TIMES, June 27, 1993, at M1.

³²⁷ *Id.*

³²⁸ Preston, *supra* note 325.

³²⁹ See Paul Lewis, *U.S. Peacekeeping Arrears Could Reach a Billion*, N.Y. TIMES, Oct. 22, 1993, at A5.

³³⁰ Strobel, *supra* note 323, at A1.

³³¹ For an example of arguments against spending money to control militants around the world, see George Melloan, *How Much Peace Can Western Money Buy?*, Sept. 13, 1993, WALL ST. J., at A17.

Surprisingly, these factors were not economic in nature, but were of psychological origin. The people must be willing to participate in large numbers and in a meaningful way in elections. The international community must be willing to respect the results of the election. The members of the new coalition must be inclined to work together. Finally, those with the most political legitimacy must be willing to receive political power. It is fortunate that Cambodia met all of these requirements.

Notwithstanding these requirements, we must encourage the holding of free and fair elections wherever possible. Elections bring immediately the kinds of benefits that we mentioned above and they can bring these benefits with more surety than the negotiations of diplomats. In turn, the benefits help create the peace, stability, and prosperity necessary for long-term democracy. In this sense, Cambodia is well on its way. It is no wonder then that William Shawcross noted that, "[s]uccess was the right word" when it came to the United Nations operation in Cambodia. He stated, "This [the current political situation brought about by the elections] is not the perfect solution, but it is better than any other Cambodia has had in more than 20 years of civil war and bloody revolutions."³³²

³³² William Shawcross, *The Nightmare is Over*, N.Y. TIMES, Oct. 12, 1993, at A23.