



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

26 May 2009, 918H

Trial Day 21

Before the Judges:

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. BATES	English
NAYAN CHANDA, WITNESS	English
CRAIG ETCHESON, WITNESS	English
MR. HONG KIMSUON	Khmer
MR. KAR SAVUTH	Khmer
MR. KONG PISEY	Khmer
JUDGE LAVERGNE	French
MS. RABESANDRATANA	French
MR. ROUX	French
MS. SE KOLVUTHY	Khmer
MS. STUDZINSKY	English
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. TY SRINNA	Khmer
MR. WERNER	English

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1 P R O C E E D I N G S

2 (Judges enter courtroom)

3 [09.15.00]

4 MR. PRESIDENT:

5 The Court is now in session. The session here is about the
6 testimony of Mr. Nayan Chanda regarding the armed conflict.
7 Before we start the proceedings the greffiers are invited to
8 verify the attendance of the parties to the proceeding today.

9 THE GREFFIER:

10 Mr. President, the parties to the proceedings during today's
11 hearing are all present. The expert is also present here in the
12 courtroom.

13 MR. PRESIDENT:

14 During yesterday's session we moved up to the stage in which the
15 Co-Prosecutor was putting questions to the expert. There are
16 still questions to be put to the witness, the expert, so we would
17 like to give the floor again to the Co-Prosecutor to continue
18 putting more questions.

19 The floor is yours.

20 [09.16.35]

21 MR. BATES:

22 Thank you, Mr. President.

23 BY MR BATES:

24 Q.And good morning, Mr. Chanda. Perhaps can I remind you first
25 of all you are still on oath? Thank you.

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1 You mentioned yesterday that when you went to the border
2 provinces in March 1978 in Vietnam you learned that in the first
3 five months after the Khmer Rouge came to power, so after the
4 17th of April 1975, more than 150,000 Vietnamese flooded into the
5 border regions of Vietnam from Cambodia.

6 Can I ask you to, if you can recall, let us know where you heard
7 that from? What were your sources for that particular
8 information?

9 A.From what I recall, that information came from officials of
10 the authority's Foreign Ministry Office in H? Chí MinhCity who
11 were in charge of dealing with the press and who actually
12 escorted me to some of the camps when I visited in March 1978.

13 Q.I wonder, if you will, could you please describe these camps
14 in general terms: how big they were, what you saw, whether you
15 had any interviews -- you conducted interviews of people at these
16 camps?

17 A.The camps I visited are of different size. Some of the larger
18 camps were located in former military base, which is a large area
19 with very minimal security or enclosure. People had set up huts
20 with bamboo and thatch, and it's a very, very basic housing and
21 it seemed that the -- some of the refugees, young men in
22 particular, were acting as a sort of -- policing or looking after
23 the discipline or sort of order in that camp, and I did interview
24 quite a few camp inmates; most of them without any official being
25 present, so I thought they were more likely to tell the truth in

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1 the absence of any official presence.

2 But the stories were essentially the same, that they were living
3 in total fear and the Vietnamese -- arrival of Vietnamese tanks
4 and the rout of the Khmer Rouge allowed them to actually flee
5 where they were located in the eastern border region, and so they
6 said that they were very happy to be escaping from the -- from
7 their own homeland, and they expressed hope that they can go back
8 to Cambodia when the country is liberated from the Khmer Rouge.

9 And I asked who will liberate Cambodia, and one of them said, "Of
10 course the Vietnamese."

11 So that was the kind of expectation, that the Vietnamese are the
12 only ones who can come and defeat them and so that they can go
13 back home. So that was my impression.

14 [09.21.13]

15 Q.Thank you.

16 Can you perhaps just be very clear on the ethnicity of these
17 people in the camps? Were they of one ethnicity or were they of
18 many or several?

19 A.I cannot be absolutely sure, not having spoken to more than a
20 few, but they looked like mostly Khmer because the interviews I
21 conducted were through Khmer-English interpreters, so they were
22 Khmer mostly.

23 Q.You said the camps were of differing sizes. Perhaps it might
24 be difficult, looking back now, but are we talking in the dozens
25 of refugees, if we can use that word, in the hundreds or in the

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1 thousands?

2 A. In the thousands.

3 [09.22.14]

4 Q. Moving on to something you told Her Honour Judge Cartwright
5 yesterday, we were discussing -- you were discussing the policy
6 of the Khmer Rouge to prisoners or people they came upon during
7 the armed conflict. And you said something that I'd like you,
8 please, to perhaps elaborate on.

9 You mentioned that generally, if my note is correct, the policy
10 was not to take prisoners. Could you explain from where you
11 learned this, what were your sources, and whether you learned the
12 reason for the Khmer Rouge not taking prisoners as a matter of
13 course?

14 A. I cannot give a specific source for that observation because
15 that is something that you learn over the course of seeing places
16 which were attacked by the Khmer Rouge and the aftermath of those
17 attacks, because whenever the Khmer Rouge would capture a
18 prisoner, most of the time I think they would broadcast through
19 Radio Phnom Penh that, "We have in our hands proof of the
20 aggression by the Vietnamese because we have captured some of the
21 enemies."

22 But that kind of reports were -- to my memory was few and far
23 between, so -- and yet we know that there were many Khmer Rouge
24 attacks along the border of Vietnam over the years. So given
25 the fact that there were not many prisoners being taken, as

5

1 reported, and the general brutality that I had witnessed in the
2 aftermath of attacks, that was my own conclusion.

3 Q.You alluded to radio broadcasts and in answer to Her Honour's
4 questions yesterday, you mentioned -- and again, I'll be
5 corrected if my note isn't accurate -- that generally, prisoners
6 were not taken unless they were, otherwise, useful. Could you
7 just elaborate on what you meant by "prisoners being otherwise
8 useful"?

9 A.My hunch would be that people who were taken prisoners were
10 thought to be, at least by the Khmer Rouge, of some rank who'd
11 have more information to yield than a simple soldier or simple
12 militia person so the -- and if I again -- if my memory may be
13 faulty, but my recollection is that whenever I read the
14 transcript of Radio Phnom Penh broadcasts of Vietnamese prisoners
15 being presented, their ranks were given. Now, whether that rank
16 designation was accurate, I cannot say, but it seemed to me that
17 very rarely you'd be presented with the name of a Vietnamese
18 prisoner who was just a simple soldier.

19 [09.26.08]

20 Q.Did you notice anything particular about the content of the
21 broadcast of these Vietnamese ranking confessions? Was there a
22 pattern? Was there any particular purpose that you could
23 determine?

24 A.Again, I have to confess to having somewhat hazy memory of
25 those things I read 30-odd years ago, but impression I still

6

1 retain is that they were basically without any value other than
2 to claim that these are Vietnamese military personnel, and they
3 confessed that Vietnam has this aggressive design on Cambodia.

4 So it was to simply strengthen their case that Vietnam has this
5 aggressive design on Cambodia rather than any other specific
6 information that was being passed on to the general public.

7 Q. My last topic is the lull that we have talked about in the
8 fighting; certainly the lull in the reporting of fighting, and my
9 question is, after the very first armed attacks by Vietnam and by
10 Cambodia on the islands in 1975, and up until the main assault of
11 the Vietnamese in strength in Cambodia in 1978 -- late '78 -- was
12 there anything that might be called a general conclusion of peace
13 between those two dates, concluded between Cambodia or Vietnam,
14 to your knowledge?

15 A. I have no recollection of any peace agreement or deal being
16 concluded other than some local arrangements I have heard from
17 Vietnamese sources who were a bit ashamed by the deal that was
18 struck between the provincial authorities on the Vietnamese side
19 and the Khmer Rouge to take back some of the people who fled from
20 Cambodia to Vietnam in the early years -- early months after the
21 Khmer Rouge victory. And often those who were sent back were
22 Khmers or Cham or non-Vietnamese ethnic group, and they were
23 returned in exchange for draft animal, or some sort of exchange
24 was done during that kind of return of escapees from Cambodia.
25 So that was what I recall having been the kind of local, you can

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1 say, peace agreement or return of the escapees.

2 [09.29.48]

3 Q.And apart from such local agreements, are you able to recall
4 any official policy of détente between the two countries; any
5 official peace talks that concluded in peace?

6 A.No, there were several attempts -- several visits by
7 Vietnamese leaders to Phnom Penh in '75 and also in '76, but
8 those attempts did not lead to any lasting or even, for a short
9 period, a truce. They were -- in my recollection, they're
10 inconclusive.

11 MR. BATES:

12 Thank you, Mr. Chanda.

13 Mr. President, in due course, the Co-Prosecutors will seek to put
14 certain documents before the Trial Chamber, but in the interests
15 of a speedy hearing of this particular witness, we don't seek to
16 do so at this point. But we inform the Court that in due course,
17 at the proper time, we will seek to put certain documents
18 relating to the international armed conflict before the Chamber.

19 Thank you.

20 [09.31.41]

21 MR. PRESIDENT:

22 Judge Lavergne, the floor is yours.

23 BY JUDGE LAVERGNE:

24 Q.Yes, I would like to get back to one point that you just
25 brought up. You indicated, unless I'm mistaken, that there were

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1 some local agreements -- well, I don't know how I could qualify
2 this exactly, but in order to allow the return or to provide to
3 the Cambodian authorities people who would have sought refuge in
4 Vietnam -- and we are mentioning here particularly minorities,
5 the Cham minority -- did I understand correctly what you said?
6 And can you tell us if you have specific elements or specific
7 sources that allow you to support these statements?

8 A.Honourable Judge, I do not recall the detail, but I know that
9 I mentioned this fact of forced repatriation of some Cambodian
10 nationals by the Vietnamese in my book, and if you permit me, I
11 can, perhaps, find the reference, and see whether -- what kind of
12 source I used for that information.

13 Q.Eventually, what we could do is that during this hearing you
14 could give us the references. It's not necessary to have them
15 right now. I think of course our time is very precious so you
16 might be able to provide us with this during the course of the
17 hearing.

18 [9.35.06]

19 THE PRESIDENT:

20 Co-Prosecutor, the floor is yours.

21 MR. BATES:

22 I don't know whether this assist you or not but in the English
23 version of Mr. Chanda's book at page 85 in the English -- and the
24 ERN number is, if you excuse me, 00192270 -- there is, roughly
25 two-thirds of the way down the page, a reference to repatriation

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1 of Khmers who had fled from Cambodia to Vietnam in recent months.
2 And that is footnoted, footnote 19 which appears at the back of
3 the English book at page 423, which has an English ERN of
4 00192608.

5 [9.37.05]

6 I'm sorry to rise to my feet again, but there is a further
7 reference in the book which specifically relates to a transaction
8 involving livestock. That is at page 85 in the English, ERN
9 00192270.

10 [9.38.58]

11 THE PRESIDENT:

12 The Co-Prosecutor, I notice your presence. Which matter do you
13 require to raise?

14 MR. BATES:

15 I do apologize, Mr. President. I do apologize for making the
16 observation; it was in relation to Judge Lavergne and his request
17 to the witness for sources for the deals of repatriation that
18 took place, and I was pointing out that at page 85 of the English
19 version, footnotes 19 and 20, there is reference to the source
20 material.

21 THE PRESIDENT:

22 Judge Lavergne, do you have anything else to add?

23 Next, the Chamber would give the floor to the civil party lawyers
24 to put questions to these experts and because of the changes in
25 our program, in our scheduling, this time we rotate and now we

10

1 start with group 4 first.

2 Hong Kimsuon, the floor is yours.

3 MR. HONG KIMSUON:

4 Thank you very much, Mr. President. I am on behalf of group 4,

5 Your Honours.

6 [9.40.53]

7 In our group there is Mr. Olivier Sur who also takes part in the
8 process. However, I would like to put questions on his behalf to

9 Mr. Nayan Chanda.

10 QUESTIONING BY COUNSEL FOR CIVIL PARTIES

11 BY MR. HONG KIMSUON:

12 Q.The first question is about your compilation of the document

13 -- in Khmer it says Brother Enemy. Could you please elaborate

14 the terms "brother enemy" in your book because here in the

15 hearing we focus on the armed conflict between Vietnam and

16 Cambodia and it has some connections to the CPK regime in which a

17 lot of people were purged.

18 So I would like you to kindly elaborate the term "brother enemy."

19 A.Thank you very much for your question. I chose the title to

20 basically designate the relationship between the Cambodian and

21 the Vietnamese parties but also the relationship between the

22 Chinese and Vietnamese parties. Both these sets of relationship

23 were very intimate at one stage and the Party literature

24 propaganda always talked about fraternal solidarity between these

25 parties, and yet both the Vietnamese and Chinese fought a bitter

11

1 war in '79, and the Vietnamese and Khmers fought long battles
2 along the border and then eventually a big war in '78-'79.
3 [9.43.18]
4 So the fact that they were brothers once, and then became
5 enemies, this fact applied to both these sets of relationship and
6 that is why I chose the title Brother Enemy.

7 Q.Thank you very much.

8 The next question also links to the title of your book. If I am
9 not mistaken, you regarded the alliance between the Communist
10 Party of Vietnam and Communist Party of Cambodia, that kind of
11 relationship or intimacy, that you indicated that they are more
12 like fraternal relationship. Was that only that the people,
13 because of the merge, the relationship between the two parties
14 that you call this a kind of brotherhood or whether because of
15 other previous relationship between the two countries that you
16 call them brothers?

17 A.I chose the title specifically with the Communist parties of
18 Vietnam, Cambodia, and China in mind, not necessarily the people
19 of these countries. That is not to say that there were not
20 fraternal and good relationship between the people of these
21 countries, there were, and most of the time they had a very
22 friendly and peaceful existence, but there were periods when
23 those relationship was conflictual but that is not what I had in
24 mind while choosing the title of the book.

25 [9.45.40]

12

1 Q.Thank you.

2 The next question is concerning the times in which the conflicts
3 erupted between the Communist Party of Vietnam and the Communist
4 Party of Kampuchea.

5 In your book on page number 5 in Khmer and with the ERN number
6 00191310 in Document D91/1, in the second paragraph of your
7 document it is about the second Indochina war, which has not
8 ended; the third war started; it was the war between brothers and
9 brothers and comrades and comrades. I think I would like to
10 point out another new term which is about comrades. You
11 mentioned about brothers and brothers but now it is more about
12 comrades. Was it the term you referred to the Communist Party of
13 Vietnam and that of the Communist Party of Cambodia or Kampuchea?

14 A.Yes, I used the word comrade to identify them as Communists.

15 Q.Thank you.

16 I may now move to the same topic of Vietnamese Communist Party
17 and Democratic Kampuchea Communist Party.

18 There were two major conflicts. You, through your experience,
19 you lived in Saigon, known as H? Chí Minh City, before South
20 Vietnam was liberated. According to your research in 1972 and
21 1973 -- I think you already stated about this matter but I would
22 like to pinpoint this so that there is a linkage to the matter.
23 Now, when it comes to the conflicts between the Vietnamese troops
24 in Cambodia territory, and you mentioned that at that time the
25 United Nations had close relation with the Communist Party of

13

1 Vietnam to negotiate with the Khmer Rouge troops so that there
2 was a peace installed but the Khmer Rouge did not agree with the
3 peace deal. At that time, after the collapse of the Lon Nol
4 regime and there was a conflict between Cambodia and Vietnam, I'm
5 wondering whether this is the consequence left over from the
6 previous war?

7 [9.49.47]

8 A.Yes, indeed. As I indicated yesterday the -- as a result of
9 the first Indochina war in which the Indochinese Communist Party
10 -- later on broken up into three parties -- fought the French,
11 when the war was concluded, in the Geneva agreements of 1954 the
12 loser was the Cambodian Communist Party because they did not get
13 any presentation at the conference and they did not get any
14 recognition whatsoever as having been a fighter for anti-colonial
15 struggle. The Vietnamese government allowed some 2,000 Cambodia
16 cadres to go to Hanoi to stay there. And so that was seen by the
17 Cambodian -- many Cambodian Communists, not all -- as a betrayal
18 and that war has been used in many, I think, Khmer Rouge
19 documents.

20 And so when in 1973 the Paris Peace Accord between Vietnam and
21 the United States was concluded, at that point the U.S.
22 government negotiators pressured Vietnam very much to bring their
23 Khmer Rouge allies to the table. And I recall reading in Henry
24 Kissinger's memoirs that Kissinger admitted that he hadn't
25 realized how independent of the Vietnamese the Khmer Rouge were

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1 because when the Vietnamese told Henry Kissinger that we cannot
2 force them to come to the table, it is beyond our control,
3 Kissinger was somewhat dubious that that was the case, but when
4 he wrote his memoir by that time he had understood that the Khmer
5 Rouge had a mind of their own and they did not want to take part
6 in the peace talks so that there could be a deal between Lon Nol
7 government and the Khmer Rouge movement.

8 So to answer your question, yes, this was some legacy of the
9 previous war.

10 [9.52.38]

11 Q.Thank you.

12 The follow-up question is that when the Khmer Rouge did not agree
13 with the peace deal negotiated by the negotiators of the U.S. at
14 that time the troops of the Communist Party of Vietnam who
15 stationed in Cambodia who expelled -- it means that the Khmer
16 Rouge had fighting with the Vietnamese troop but did the Khmer
17 Rouge expel the Vietnamese troop out of Cambodia at that time?

18 A.I do not know that I can use the word "expel" because that
19 would imply using of force, but I would guess that the Vietnamese
20 were not wanted because they had already delivered a massive blow
21 to the Lon Nol government during the '71 period and so they might
22 have withdrawn on their own. But people with sympathy towards
23 Vietnam or pro-Vietnamese elements were definitely then inside
24 Cambodia and they were arrested and executed.

25 And in that connection I might -- Judge Lavergne, you started to

15

1 ask me about the evidence of any such killing during the '72-'73
2 period. And I had found one reference in David Chandler's book
3 Voices from S-21. And with your permission, Mr. President, I
4 would like to read one passage from this book which is relevant
5 to this question.

6 [09.54.52]

7 David Chandler writes that the accused:

8 "...may well have developed his elaborate notion of treachery
9 involving strings of traitors within courts between 1972 and '73
10 when a secret operation was set up by the Khmer Rouge to purge
11 the so-called Hanoi Khmers; Cambodians who had come south in 1970
12 after the years of self-imposed exile in north Vietnam,
13 ostensibly to help the revolution.

14 Hundreds of them were secretly arrested and put to death in 1973
15 after the Vietnamese had withdrawn the bulk of their troops from
16 Cambodia. A few managed to escape to Vietnam after detention,
17 and others were arrested after April 1975. Many were arrested in
18 the special zone. The stealth and mercilessness of the campaign
19 may have owed something to Duch's emerging administrative style.
20 The campaign indeed foreshadowed the modus operandi of S-21."
21 This is page 21 to 22 of the book, Voices from S-21.

22 Q: Thank you.

23 May I ask you the next question about the aftermath of the
24 conflict? I know that you noted already that the Khmer Rouge
25 forcibly driven away the Vietnamese troops. At that time maybe,

16

1 I'm not quite sure, maybe before 1970 and I don't remember the
2 page reference, when it comes to the agreement, whether that
3 agreement was a treaty agreement or just a promise? And do you
4 still recall that between the republic of Vietnam - I refer to
5 the Communist Vietnam - and Communist Party of Cambodia or the
6 National Front, letter by then Prince Norodom Sihanouk, was there
7 any treaty or agreement or official promise signed concerning the
8 war to liberate the country from both Lon Nol and also the war to
9 liberate, from liberate the South Vietnam? Do you think there
10 was such a treaty; for example, if the Vietnam won or was
11 victorious, then parts of the maritime border and islands, for
12 example, were to be given back to the Cambodia? Have you been
13 familiar with this?

14 A:I am not aware of any treaty. I suppose treaties should be,
15 would have to be signed between two sovereign entities, and the
16 Cambodian Liberation Movement was not a sovereign entity. But,
17 there were joint communiqués issued by the two parties promising
18 to cooperate, to liberate their respective countries. And I do
19 not recall seeing any reference to the disputed islands or
20 territories being returned. It is entirely possible that in some
21 unpublished annex of such a communiqué there was such thing but I
22 am not aware of it.

23 Q:Thank you.

24 After the Khmer Rouge fought the Lon Nol soldiers and regime and
25 won in 1975 and compared to the time when the South Vietnam was

17

1 liberated on the 30th of April, and according to your document
2 the capture of Koh Tral or Koh Krachak Ses. In the same book you
3 mentioned about the forcibly deportation of the Vietnamese of
4 roughly 500 civilians, with the ERN reference number 001 -- in
5 Khmer -- 91318. It is about the Khmer Rouge troops which capture
6 the islands on the fourth of May 1975. So are you familiar or do
7 you recall about any agreement about the deal regarding the Koh
8 Tral, or Phu Quoc in Vietnamese? Are you aware of that deal?

9 A:I am not aware of any deal specifically. What I recall is
10 that, I think in June 1975 there was a visit by Vietnamese Party
11 Secretary General Lê Du?n and, I think, during that visit, it
12 was, I think, announced that Vietnamese were going to return,
13 pull away, to Cambodia, which they had captured earlier in their
14 retaliatory action. Apart from that I do not recall whether
15 there was any other statement involving Koh Tral or the Ses
16 Island.

17 [10.02.15]

18 Q:Thank you.

19 In your book it also states that after two weeks the Vietnamese
20 soldiers retaliated the Khmer Rouge soldiers and captured the
21 Khmer Rouge soldiers. Were you aware that when Vietnamese troops
22 recaptured the island and the Khmer Rouge soldiers were captured,
23 were there any exchange of the prisoners of war?

24 A: No, I do not believe I heard any of such development
25 involving exchange of prisoners but I would be surprised if there

18

1 were.

2 Q: Thank you very much.

3 My next question is related to the question raised by the
4 Co-Prosecutor: I would like to verify it, but I can not recall
5 the exact time. Vietnam made a proposal to exchange the Khmer
6 people who fled to Vietnam together with some combatants or
7 cadres in exchange for livestock? At that time, did the Khmer
8 Rouge object to the exchange or not?

9 [10.04.02]

10 And after that, were there any further exchanges or transfers or
11 repatriation of the Khmer Rouge, or the Khmer people to the East
12 Zone within the Democratic Kampuchea territory?

13 A. This information I obtained in 1981 from a Cambodian official
14 in Svay Rieng and he told me that in early 1977 the Vietnamese
15 provincial authorities allowed the Khmer Rouge to select 49
16 refugees from a camp in Moh Qua (phonetic) in Vietnam, and they
17 were exchanged for one bull per person.

18 Q. Thank you. Yesterday you spoke about the armed conflict that
19 the Khmer Rouge invaded into a village in the border -- near the
20 border of Kampuchea and Vietnam. It was the Tay Ninh province,
21 and the Khmer Rouge soldiers killed the Vietnamese civilians.
22 You also talked about the incursion of the Vietnamese troops into
23 the Vietnamese territory. That was raised by you yesterday.
24 Was the large-scale attack or incursion by the Khmer Rouge troops
25 into the Vietnamese territory before the Vietnamese started their

19

1 large-scale invasion into the territory of the Democratic
2 Kampuchea?

3 A.Yes. The initiative in attacking border villages came from
4 the Khmer Rouge and, as I indicated, on April 30th, 1977 there
5 was a major attack, and then also in September 24th, 1977 there
6 was a major attack. So the Vietnamese major offensive followed
7 the Khmer Rouge attacks; they did not precede them.

8 [10.07.11]

9 Q.Thank you.

10 Yesterday you also talked about a large-scale attack and then the
11 Vietnamese troops withdrew themselves. Also in your book you
12 talked that Son Sen, Kae Pok and Ta Mok led their troops to the
13 border between Cambodia and Vietnam at the Eastern Zone.

14 Also in your document you write about the joyful activities by
15 the people of the Khmer Rouge victory, but I think this is just a
16 means for the Vietnamese not to create war, so that they withdrew
17 themselves and then the Khmer Rouge would incur into the
18 Vietnamese territory.

19 My question to you is that the course of the conflict in these
20 minor forms started from '72 to '73 and before the incursion or
21 the armed conflict in large scale, the conflicts already started
22 from the time of the liberation of the country by the Khmer Rouge
23 or when North Vietnam liberated South Vietnam. Were there any
24 connections from the smaller conflicts to the major large-scale
25 wars, or only the conflicts because of the disagreement between

20

1 the two Communist parties?

2 A.I need to clarify one point; that while there was arrest and
3 execution of pro-Vietnamese or supposedly pro-Vietnamese
4 Cambodian Communists in '72-'73 period, there was a tactical
5 alliance again between the Vietnamese Communist Party and the
6 Cambodian Communist Party in '74. When it was clear that the
7 United States is going to be withdrawing and the Khmer Rouge
8 could actually take power in Cambodia, Vietnamese were willing to
9 help the Khmer Rouge, and the April 17th, 1975 victory of the
10 Khmer Rouge was made possible by significant Vietnamese arms
11 supply and training provided to the Khmer Rouge in '74,
12 particularly late '74 period. And that was the time when Chinese
13 were unable to provide assistance, because they had no
14 independent means, and the supply had to be delivered through the
15 Vietnamese, who had a sort of common border with China.

16 [10.10.40]

17 And so as a result, the Vietnamese Communist Party provided very
18 valuable assistance to the Khmer Rouge for their final victory on
19 April 17th. So that was in some ways an aberration in otherwise
20 conflictual relationship. So my hunch would be that Vietnamese
21 again were hopeful that by providing assistance to the Khmer
22 Rouge they would be able to win them over to their line of
23 thinking, and that proved to be wrong.

24 As soon as the Khmer Rouge won the victory, and they in fact
25 announced that they had won the victory all by themselves without

21

1 any foreign assistance -- and that was a statement that was
2 broadcast by Radio Phnom Penh, indicating that it was a
3 completely Khmer victory without any assistance. So the
4 Vietnamese understood that they were not going to get any
5 gratitude from the Khmer Rouge.

6 Q.Thank you.

7 [10.11.57]

8 I asked you about the conflict between the Khmer Rouge and
9 Vietnam in '72 and '73, and subsequently the Vietnamese removed
10 from Cambodia. So what were the reasons why the Vietnamese
11 assisted the Khmer Rouge in the later stage?

12 A.Yes, as I indicated, Vietnamese were perhaps under the wrong
13 impression that they had more friends in the Cambodian Party than
14 they really had. So they were hopeful that by supporting the
15 Khmer Rouge, giving them very vital assistance, they would
16 actually gain gratitude and perhaps support of their friends in
17 the Party.

18 And in that connection I would like to note I have read a recent
19 paper by a Russian scholar on the Vietnam-Cambodia relations,
20 based on Russian archival diplomatic papers that was released
21 recently, and this Russian scholar says that Nuon Chea was the
22 designated person that Pol Pot always sent to ask Vietnam for
23 help and be the Vietnamese person in the Party, and it was Nuon
24 Chea who was dispatched to seek Vietnam's help before the fall of
25 Phnom Penh in '75. And the similar pattern was repeated later

22

1 on, and Vietnamese certainly thought -- I know for sure that
2 Vietnamese thought until 1978 that Nuon Chea was perhaps a
3 moderate person and a friend of Vietnam.

4 [10.14.06]

5 Q.Thank you.

6 My next question relates to the negotiation or the agreement on
7 the conflicts at the border which ultimately led to the attacks
8 or the incursions by the Khmer Rouge troops into Vietnam, and
9 also by the incursion by Vietnam back into the Cambodian
10 territory. In your document, it states about the large-scale
11 attacks by the Vietnamese, and the first attacks in Vietnam by
12 the Vietnamese into the DK territory, first, is to show the Khmer
13 Rouge that Vietnam was strong and would not tolerate, and second,
14 to expel the Khmer Rouge troops from their territory. However,
15 it also reads that the Vietnamese troops chased the Khmer Rouge
16 troops and reach into the Kampong Cham Province without any
17 resistance in 1977.

18 What I want to ask is, what was your observation, and what was it
19 that lead to the Khmer Rouge to have revenge on these large-scale
20 attacks by the Vietnamese troops? Were any properties destroyed
21 or Khmer civilians killed by this Vietnamese attack?

22 A.I'm afraid I have no clear memory as to the details of those
23 operations, but it seems to me that the -- those attacks were
24 more a show of force by sending in tanks rather than actually
25 destroying many places, and so I have no specific knowledge about

23

1 that, but that is my general sense that there was not much
2 destruction as such; simply a show of force.

3 [10.16.33]

4 Q.Thank you.

5 My next question relates to the times when Vietnam handed back
6 the Puolo Wai Islands to the Democratic Kampuchea, but the war
7 kept continuing.

8 In your document, you said that Nuon Chea congratulated the
9 hand-over of the Island, but the war kept continuing, and that
10 led to the large-scale attack or incursion the second time by
11 Vietnam into the Cambodia territory towards Phnom Penh, and
12 ultimately, the fall of the Khmer Rouge regime.

13 In your research, did that event relate to the dispute or
14 disagreement for both the land borders and maritime borders?

15 A.I believe that by the end of 1977, the Vietnamese had
16 concluded that it was not the question of misunderstanding or
17 question of dissolving some territorial dispute or boundary
18 dispute; it was more from the mental question of the Khmer Rouge
19 policy towards Vietnam, and it was a problem that has to be
20 resolved by the change of policy in Phnom Penh or, if that is not
21 possible, then change your personnel in Phnom Penh. In other
22 words, if there was internal change in Cambodian party, that was
23 something Vietnamese preferred without too much public notice.
24 But if that wasn't possible then Vietnamese would have to change
25 the regime in Phnom Penh in order to secure peace and stability.

24

1 So I think it was no longer a question of territorial dispute,
2 but it was a more fundamental political dispute.

3 Q.Thank you. I have two or three more questions for you.

4 [10.19.47]

5 In the armed conflict that is between '75 to '79, that is within
6 the DK period, were there armed conflicts between the Democratic
7 Kampuchea and Vietnam, and were there any armed conflicts between
8 the DK regime and Thailand? Did you do any research on this
9 particular point?

10 A.As I mentioned yesterday that there were clashes with the Thai
11 troops and the Khmer Rouge troops, but that was clearly on the
12 question of border demarcation; where the border actually lies,
13 because there were cases where the border markers which were
14 placed by the French in the beginning of the 20th Century were
15 removed in different places and so that unmarked or ill-defined
16 border was the cause of some clashes, but this was insignificant
17 politically because this was purely a territorial dispute, and
18 not a political dispute.

19 Q.Thank you. This is a follow-up question.

20 In your document, I cannot locate it. It is more about the
21 dispute. May I ask the President's leave whether the expert
22 observed, during the conflict between Thailand and Cambodia, that
23 Khmer refugees -- whether the repatriation of Cambodian refugees,
24 26 of them who were sent through Aranyaprathet and by that town
25 into Cambodia, was there a negotiation between Cambodia wrote by

25

1 the Democratic Kampuchea regime and Thailand to repatriate these
2 people? Was there any agreement? May I ask you to clarify this?

3 A.I have no recollection of such agreement and I -- as I said,
4 it's a long time ago, and I don't remember.

5 Q.Thank you.

6 The last question. May I ask you to clarify a little bit
7 concerning the history of Vietnam and Cambodia as stated in your
8 book. And you said yesterday that -- I may not be sure about
9 this and I may want you to clarify that not only the Communist
10 Party of Vietnam but also the people of Vietnam have the notion
11 of expansionist, of the -- you know, of taking more lands from
12 Cambodia. Was that the part that led to the more conflicts
13 between Vietnam and Cambodia?

14 A.In The Black Book, the Khmer Rouge made that assertion that
15 the nature of the Vietnamese -- that 's the word they used, the
16 "nature" of the Vietnamese -- meaning all Vietnamese, whether
17 they are from the Imperial time or whether they're from the time
18 of Ho Chi Minh, they all have an expansionist and an accessionist
19 approach towards Cambodia.

20 That was the Khmer Rouge conclusion that the Vietnamese as a
21 people were expansionist.

22 Q.Thank you very much, Mr. Nayan Chanda, and thank you, the
23 President and Your Honours. May our colleague continue putting
24 some more questions?

25 Thank you.

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1 [10.25.03]

2 MR. PRESIDENT:

3 The floor is now given to lawyers of group 3 who would wish to
4 put questions to the expert.

5 The floor is yours.

6 MS. RABESANDRATANA:

7 Mr. President, group 3 will not have any questions to put.

8 Thank you.

9 MR. PRESIDENT:

10 Next, civil party lawyers group 2, the floor is yours if you
11 would wish to question the expert, Mr. Nayan Chanda.

12 MR. KONG PISEY:

13 Thank you, Mr. President.

14 On behalf of civil party lawyers group 2, I have no more
15 questions at the moment because the expert was significantly
16 asked.

17 MR. PRESIDENT:

18 I would like to invite civil party lawyers, group 1, to put
19 questions before the expert.

20 MR. WERNER:

21 Thank you, Your Honour.

22 BY MR. WERNER:

23 Q. Good morning, Mr. Chanda. My name is Alain Werner. I'm
24 co-lawyer for civil party group 1, and I'm representing civil
25 parties with my colleague, Ty Srinna.

27

1 As I said yesterday, we have only one question for you, and here
2 is the question. You said yesterday that the U.S. military
3 operation in Cambodia -- you've mentioned, I believe, two times
4 this military operation. Sir, could you confirm for us the fact
5 that the American bombings in Cambodia stopped in August 1973; is
6 that correct?

7 [10.27.13]

8 A. That is what I recall, but then there was bombing in '75 when
9 Mayaguez was captured by the Khmer Rouge.

10 Q. But concerning the one in 1973, for that year they stopped in
11 August?

12 A. Yeah, I think so.

13 Q. Thank you.

14 MR. WERNER:

15 We have no further questions, Your Honour.

16 [10.27.50]

17 MR. PRESIDENT:

18 We would like now to give the floor to the defence counsel to put
19 questions to Mr. Nayan Chanda if they would wish to do so.

20 The floor is yours.

21 MR. KAR SAVUTH:

22 Thank you very much, Mr. President.

23 QUESTIONING BY COUNSEL FOR DEFENCE

24 BY MR. KAR SAVUTH:

25 Q. I may not have a lot of questions because regarding the

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1 conflicts -- armed conflicts between the CPK and the Socialist
2 Republic of Cambodia was the matter -- the top matters between
3 the two states, it was nothing to do with S-21.
4 And I would only wish the expert to confirm, just in one word,
5 whether Vietnam was aware that when the people were exchanged,
6 for example, in the east, in Svay Rieng, that one person was to
7 be exchanged for a cow. In Svay Rieng a person was exchanged
8 with a bucket of salt. So Vietnamese took a basket of salt and
9 then returned a person; sometimes 20 or 30 people were exchanged.

10 [10.29.20]

11 My question is that are you familiar that the Vietnam actually
12 was quite familiar that the people who were exchanged were later
13 on executed in Cambodia?

14 A.I did not know the story about the basket of salt but it is --
15 to me it is very clear that the Vietnamese undertook this
16 repatriation I think in the full knowledge of what might be
17 awaiting those repatriated person. But that is also my
18 supposition. I have no knowledge, direct knowledge. And as I
19 said, I learned about those exchanges from a Cambodian official
20 in 1981.

21 Q.Could you please confirm -- my question is that whether
22 Vietnam was familiar that the people who were exchanged were
23 killed here in Cambodia? Of course Vietnam -- the Vietnamese got
24 the basket of salt, the cows to be cooked I mean, but here in
25 Cambodia people who were exchanged were perished. Did you know

29

1 that?

2 A.As I indicated, that I have no direct knowledge about those
3 exchanges, I heard it from the Cambodian official. So I cannot
4 speculate as to how much the Vietnamese knew or what happened to
5 those people who were exchanged.

6 MR. PRESIDENT:

7 (Microphone not activated)

8 MR. ROUX:

9 Thank you, Mr. President.

10 Hello, Mr. Nayan Chanda. Thank you for your statement.

11 Mr. President, at this level in the proceedings I would like the
12 accused to make a few comments before I ask him my questions. So
13 I would like the accused to react to what has been said in the
14 presence of the expert.

15 [10.32.49]

16 MR. PRESIDENT:

17 Mr. Kaing Guek Eav, the floor is yours.

18 THE ACCUSED:

19 Thank you, Mr. President, for allowing me to make some comments
20 concerning the achievement of the expert. Mr. Nayan Chanda.
21 Through my observations the good things of the achievement of Mr.
22 Nayan Chanda is that the achievement is very significant. A lot
23 of events were captured according to what Mr. Nayan Chanda has
24 recollected. He saw the events you -- he read them, the
25 materials, and you were aware of the events.

30

1 In conclusion, the reason I said it is significant because there
2 were a lot of good collections of historical events compiled in
3 the book.

4 The second good achievement is that you show us the major notion.
5 That concept, according to my understanding -- and I would be
6 corrected -- it was the notion from which the expert heard from
7 Pham Van Dong directly, verbally. Pham Van Dong was the Prime
8 Minister of the Socialist Republic of Vietnam.

9 According to your summary concerning the concept mentioned by
10 Pham Van Dong, it included three points. First, which is the
11 first step, that the Communist Party of Cambodia, Lay Yun, would
12 like to educate Pol Pot to follow their way. If they could not
13 succeed in doing so then they allowed the Khmers in the
14 Democratic Kampuchea to topple Pol Pot.

15 [10.36.48]

16 Number 3, if all failed then there would be from the outside
17 attack.

18 These are the main concepts I heard from the expert yesterday, if
19 I am not mistaken. These concepts, according to my
20 understanding, I would like to now elaborate and make an analysis
21 regarding the concepts, which is in paragraph 3 of my comment.

22 It was part of the implementation of Ho Chi Minh's theory. H?
23 Chí Minh stated that the only main cause was the struggle against
24 the French. Therefore, there must be only one ruling party,
25 which was then called the Indochina Communist Party. One party,

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1 one soldier, one government, one country, which was then the
2 Federation of Indochina. This was the theory of Ho Chi Minh, as
3 I stated yesterday in the hearing. It was the source of life and
4 death, hostility between Lay Yun (phonetic) and Pol Pot. Lay Yun
5 was the Secretary of the Labour Party of Vietnam, which was later
6 on changed to the Communist Party of Vietnam.

7 MR. ROUX:

8 Mr. President, there's a problem with the translation,
9 apparently. I would like the name of the Vietnamese Secretary of
10 the Communist Party to be repeated, please, in French. This is
11 not what was communicated to us.

12 Well, could you please spell it out, Mr. Duch; the name of the
13 Secretary of the Communist Party of Vietnam? So we're speaking
14 about Mr. Le Duan, for the purposes of the French translation:
15 Mr. Le Duan; not Lay Yun, Mr. Le Duan -- not Mr. Lay Yun. Thank
16 you.

17 [10.40.44]

18 THE ACCUSED:

19 I think it is good to clarify the term. The term "yuon" actually
20 I did not intend to look down on the Vietnamese by using this
21 term.

22 I would like to continue. The conflict between Le Duan and Pol
23 Pot was a life and death conflict. It was a protracted and long
24 conflict. Starting from 1954 he still boasted himself as the
25 father of the Indochina, even if there were a Geneva conference.

32

1 That's what I informed the Chamber yesterday. That's the
2 conflict between Le Duan and Pol Pot. They tried to topple one
3 another, and the expert also raised a number of issues and
4 clarified those issues. Although the armed conflicts existed,
5 they were within the framework that Le Duan wanted Pol Pot to
6 follow him.

7 I would like to express my thanks on the three main concepts by
8 Pham Van Dong as raised by the expert. So these three -- the
9 conflicts which led to the open armed conflicts raised -- and was
10 aware by the international community in 1978. On the 31st of
11 December '78 they announced in public that there was an opened
12 war.

13 I would like to state that Pol Pot and Le Duan hate personal
14 conflict. Each hate their own party, hate their own soldiers.
15 Therefore, the disaster cost the bloodshed and the lives of the
16 normal civilians.

17 You Honours, what I have said is not to say that he, Pol Pot, was
18 the greatest patriot of the country. Pol Pot was a murderer. He
19 was a murderer. He was the father of the murder of Cambodia.

20 The lines set out by Pol Pot in the "Revolutionary Flag" in 1973,
21 which he states whatever class lines of that class origins, that
22 was for that class origin. It means the Communist Party of
23 Kampuchea was the proletarian class.

24 [10.46.37]

25 If you are a member of the Communist Party of Kampuchea, you had

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1 to build yourself following that class. If you can not build
2 yourself then you would be removed from the Party or you would be
3 smashed.

4 I also informed the Co-Investigating Judges on the 21st of
5 October 2008, in the document D90/2/1 at page with ERN 00023079
6 -- in that document I informed the Court that in whatever forms
7 that Pol Pot tries to hit himself. The document's reference was
8 D90/2, so it was D90/2/1. In that document I did not think of
9 Pol Pot as the patriot. He had blood on his hands.

10 Pol Pot used the slogan if we want to defeat the Vietnamese, we
11 had to be clean in our ranks and we had to be clean amongst
12 ourselves.

13 So I still maintain my stance that it was the conflict between
14 Pol Pot and the Indochinese Federation in the first point. In
15 that conflict Pol Pot was the murderer and more than one million
16 people were killed under the hand of Pol Pot. And in that S-21
17 my hand stained with blood of those who were killed at S-21 -
18 there were 12,380 people. I did not deny it from the spirit of
19 being responsible for this crime. I just want to show the
20 conflict between Pol Pot and Le Duan was long and protracted.
21 The Vietnamese and Khmer bloodshed flew because of the conflict
22 between these two people.

23 And I would like to conclude with my observation on the words
24 used by the expert. The title of your book is "Brother Enemy".
25 If you talked about Korea, then I would support it. They had a

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1 joint history, they had a joint territory and they had a joint
2 language. As for us and Vietnam, we never had any joint
3 territory. I wished Korea and China to have good fortune and to
4 reunite like the case of Germany.

5 [10.53.03]

6 Finally, I would like to express my appreciation to your
7 achievement and your work, that you write the expressions of Pham
8 Van Dong in your book. If I use the language of Pol Pot, that
9 would have no value, but you carried out and you chose the words
10 by Pham Van Dong and it has great value.

11 Once again I would like to thank you, Mr. Expert, for listening
12 to my statement and I apologize if my opinion is different from
13 yours.

14 Thank you, Mr. President. That is the conclusion of my speech.

15 MR. PRESIDENT:

16 It is now time for adjournment and also it's time for the IT
17 section to change the tape.

18 The Chamber, we will now take a 20 minute break until 10 past 11
19 when the Court will be back in session.

20 Court Officer, assist the expert and provide him with
21 refreshment.

22 (Judges exit courtroom)

23 (Court recesses from 1055H to 1118H)

24 (Judges enter courtroom)

25 [11.18.32]

35

1 MR. PRESIDENT:

2 Please be seated. The court is now in session.

3 Ms. Lawyer?

4 MS. TY SRINNA:

5 Your Honours, the President, before we start the next proceeding

6 could I take the floor to seek clarification from the accused

7 before the adjournment? May I be permitted from the President so

8 that the accused can be allowed to clarify that position because

9 I'm afraid that if the clarification is not sought at this

10 moment, it would be difficult at a later stage.

11 MR. PRESIDENT:

12 The Trial Chamber allows you to do so. The floor is yours.

13 MS. TY SRINNA:

14 Thank you, Mr. President.

15 Before the adjournment I heard that Duch stated on one point

16 regarding the individual disputes between Pol Pot and Le Duan.

17 He raised this matter, but before there were such personal

18 disputes which led to the more widespread disputes, which was

19 official disputes revealed in the armed conflicts at a later

20 date. I would like to know whether Pol Pot and Le Duan, who led

21 the Communist Party of Vietnam -- and Pol Pot -- could you please

22 share with us the relationship between the two individuals before

23 such conflicts -- armed conflict?

24 THE ACCUSED:

25 This is a long historical issue.

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1 [11.21.15]

2 In 1930 H? Chí Minh established Indochina Party in France, and
3 then he built the base in Quan Thong.

4 In 1945 he established the Socialist Republic of Vietnam. At
5 that year, one Vietnamese cadre was Nguyen Tan Sen (phonetic) who
6 was sent to build Khmer forces in Cambodia. I base this on the
7 document prepared by a French author and which the Lon Nol Party
8 used as the core document for the Party. And when the Communist
9 Party used to train us, as I already explained, there was only
10 one cause, to struggle against the French; there would be only
11 Party, one soldier, and one country. So this has been a long
12 historical event.

13 And in 1953 Pol Pot entered the Party with other people. In
14 1956, after the election, Pol Pot built one force which was
15 independent and was not under the umbrella of the Indochina
16 Federation, and then Mr. Nayan Chanda also touched upon it. And
17 Pol Pot built the forces gradually, and the forces were prepared
18 to conduct an armed struggle. They were referred to as the
19 "secret forces." So they had the secret militia.

20 [11.23.42]

21 On the 18th of January, not 17, Pol Pot's local militia led by
22 Brother Nheom attacked the location, the base, and then grabbed
23 some weapons, and escaped to Phnom Chap.

24 And on the 18th of March, when Lon Nol started the coup d'état,
25 at that time when Pol Pot was the secretary -- the successor of

37

1 Ta Tou.

2 On the 20th of July 1962 to February 1963 - I forget the day -

3 there was a small conference of the Democratic Kampuchea at that

4 time. It was the Labour Party of Kampuchea in which Pol Pot was

5 the Secretary and Nuon Chea was still the Deputy Secretary.

6 At that time there was a direction the Party followed which was

7 not in conjunction with the Federation of Indochina led by Ho Chi

8 Minh. So they had different directions already.

9 In 1960 the Communist Party of Kampuchea was established. The

10 expert said that there was a meeting attended by about 20 people.

11 I think it was only the number of people set by Pol Pot but from

12 Chou Chet's testimony or confession at S-21, there were not 20

13 people attended that meeting - less than that. There were two

14 documents to use as the basic which was the strategic lines for

15 the struggle or revolutionary struggle in Cambodia and the

16 strategy to build forces to fight the enemy during the revolution

17 of Democratic Kampuchea.

18 [11.26.13]

19 The second one was the Statute of the Labour Party of Kampuchea.

20 The Party Centre was also established at that time. So when the

21 establishment of the Labour Party of Kampuchea started back then

22 and there was a line which was not the same as that of Ho Chi

23 Minh. So the ideological disputes were acute. Mao Tse Tung

24 disapproved of the Party and so would - he disapproved of the way

25 that he was not given the independence and autonomy and he said

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1 that the proletariat class in the world must unite and there
2 would be only one proletariat party in the world.
3 When H? Chí Minh died, then Le Duan succeeded with the same theory
4 or concept, that the expert already quoted, which stems from Pham
5 Van Dong's speech.

6 [11.28.00]

7 But if you look at the political concept, you could see that
8 Cambodian, Laos and Vietnamese would like to be - would be
9 expected to be under one control of the Indochina and that's why
10 I could see that the people themselves had different views.
11 That's why I called them the acute disputes because there could
12 not be two lines at the same time because one - for example, if
13 the Indochina Federation's political line survived, then the
14 political line of Democratic Kampuchea would collapse, so there
15 would be only one line.

16 [11.28.41]

17 So if one person had militaries or soldiers in their own Party,
18 the other would like to have the same political - to have the
19 military, and in the Party, then, there would be conflict and
20 disputes. So as I told you, if each side had different soldiers
21 under their control, then it led to disputes.

22 This is how I could recall regarding your question.

23 MS. TY SRINNA:

24 Thank you very much for your clarification.

25 MR. PRESIDENT:

39

1 Next we would like to give the floor to Mr. François Roux to put
2 questions to the expert.

3 MR. ROUX:

4 Thank you, Mr. President.

5 BY MR. ROUX:

6 Q.Thank you, Mr. Chanda, to be willing to listen to a few more
7 questions or to listen to a few observations.

8 I believe, Mr. Chanda, that right now the defence has to explain
9 to you what -- can explain such an honour as having you here
10 among us today in this trial. In reality, the Co-Prosecutor's
11 office is trying to demonstrate and to obtain from the Chamber a
12 decision that would state - and I would like to read this for the
13 interpreters: paragraph 216 of the final submission of the
14 Co-Prosecutors.

15 Mr. Chanda, I would like to explain to you the Co-Prosecutors'
16 final submission is the documents that the Co-Prosecutors
17 establish at the end of the investigation phase that was carried
18 out by the Co-Investigating Judges. So we could say that these
19 are the conclusions that the prosecutors draw from the
20 investigation phase. In these conclusions, in paragraph 216, it
21 is indicated the following.

22 "The evidence included in the case file that are mentioned in
23 this final submission concerning the material elements - this
24 evidence demonstrate that an international armed conflict took
25 place between the Cambodian and Vietnamese Armed Forces from

40

1 April '75 to the 6th of January 1979."

2 So for you to be completely clear about this, this question --
3 which is not only a political question but also a legal question
4 -- could have consequences because as of the moment when an armed
5 conflict would have existed since April 1975, this would mean
6 that all of the Vietnamese prisoners who were sent to S-21 as of
7 that date were victims of war crimes.

8 [11.33.04]

9 You see, this is really what is at stake in this question which,
10 for Duch does not represent much interest because Duch stated
11 always, "I confess that I knew as of December 1977 that there was
12 an open conflict between Vietnam and Cambodia and therefore I
13 admit that at least during the entirety of the year 1978, the
14 Vietnamese prisoners were indeed victims of war crimes under my
15 responsibility. I acknowledge this and I accept this."

16 So you see that the quarrel here does not have much consequence
17 on Duch's guilt. However, I drew the Chamber's attention to the
18 responsibility that the Co-Prosecutors wanted the international
19 criminal justice system to take on. That is to say that up until
20 now, we have always heard that the international armed conflict
21 had started as of December 31st, 1977, date upon which diplomatic
22 relations were broken between both countries, and the
23 Co-Prosecutors are requesting the Chamber to make the heavy
24 decision of contradicting, by a decision of justice, this date.

25 [11.34.50]

41

1 So I apologize for this rather lengthy explanation but it seemed
2 necessary to me, so therefore I would like to state here that the
3 Co-Prosecutors made you come to try to see you confirm the simple
4 statement: an international armed conflict existed between the
5 Cambodian and Vietnamese Armed Forces from April 1975 to the 6th
6 of January 1979.

7 And I notice, however, that you have not confirmed this
8 statement, and I notice as well that you on the contrary have
9 indicated -- if of course -- if I have taken the right notes from
10 what you said, that there had been several skirmishes, several
11 punctual clashes between both armies, but that -- but you said
12 again this morning that you had the feeling that as of the end of
13 1977 the Vietnamese had concluded that these were not the result
14 of misunderstandings.

15 And if I remember correct, you also said yesterday that up until
16 the end of 1977 the Vietnamese government had tried to prevent
17 the armed conflict from degenerating. Is that so, Mr. Chanda?

18 A.Yes, that is right. The Vietnamese hoped that the conflict
19 could be contained by either discussion, negotiations, or by
20 changes operating within the Cambodian Communist Party, and that
21 was my understanding and that's why they have been very attentive
22 to keeping this war secret. In fact this episode involving the
23 Hungarian journalist is an indication of the seriousness with
24 which they viewed making the conflict public.

25 But I'm not a lawyer and I have no idea about how one defines

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1 war. Does the war have to be a declared event or can war occur
2 without any declaration? If war can occur without declaration,
3 Cambodia and Vietnam were at war right from '75. But if it means
4 that one government has to announce to the world that, "We are at
5 war," then I think war started with the announcement from Phnom
6 Penh on December 31st, 1977.

7 [11.38.17]

8 Q.Mr. Chanda, thank you for having come to contribute to the
9 work of justice. I do not have any further questions. Thank
10 you. It's very clear.

11 MR. PRESIDENT:

12 Do Judges of the Bench wish to put further questions to the
13 expert?

14 Since the testimony of Mr. Nayan Chanda regarding the armed
15 conflicts has already been heard and comes to an end, the Trial
16 Chamber is very grateful to Mr. Nayan Chanda for your precious
17 time attending the Court to provide your significant testimony.
18 The Trial Chamber would like to inform the parties that, based on
19 the scheduling of the hearing concerning the expected time to
20 hear Mr. Nayan Chanda's testimony, as earlier stated we would
21 hear him in two days. However, the testimony has already been
22 heard in one day and a half, so we would like to invite Mr. Craig
23 Etcheson to testify in the afternoon session. So we would like
24 to take an adjournment now and resume at 1.30 p.m.

25 The Court Officer is now instructed to take the accused back to

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1 the detention facility and return him by 1.30. The Greffier can
2 please talk with Mr. Craig Etcheson so that he can be available
3 here at 1.30.

4 The Court Officers are also instructed to liaise with Mr. Nayan
5 Chanda so that he can be well taken to his residence.

6 (Judges exit courtroom)

7 (Court recesses from 1141H to 1332H)

8 (Judges enter courtroom)

9 MR. PRESIDENT:

10 Please be seated. The Court is now in session.

11 Regarding the implementation of the CPK policy at S-21, the
12 Chamber is going to hear the testimony of Mr. Craig Etcheson
13 again.

14 The Court officials, you are instructed to bring in the expert,
15 Mr. Craig Etcheson, into the courtroom.

16 [13.35.02]

17 MR. PRESIDENT:

18 Mr. Craig Etcheson, today you are invited to give testimony as an
19 expert. This testimony is to be continued from what you had
20 already done last week, but due to the fact that we need to hear
21 Mr. Nayan Chanda that's why we shifted your testimony to today.

22 So the Chamber would like to now give the floor to the
23 representative of the prosecution to put further questions to the
24 expert.

25 The floor is yours.

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1 MR. BATES:

2 Thank you, Mr. President.

3 I have one or two more questions.

4 QUESTIONING BY THE CO-PROSECUTORS

5 BY MR. BATES:

6 Q. Good afternoon, Dr. Etcheson. I wonder if we can resume where
7 we left off last week, and I was discussing with you Document
8 Number 75 in your index, which is the meeting of Comrade Tal,
9 T-a-l, Division 290 and Division 170, on the 16th of September
10 1976, ERN 00002233 through 00002235 in Khmer, and 00182791
11 through 92 in English, and 00224407 through 09 in French. You
12 were responding to questions regarding the communication
13 structure and what this document may illustrate.

14 [13.37.26]

15 I'd like to now move on to discuss this document from the
16 perspective of policy of the Communist Party of Kampuchea, and
17 specifically the policy in respect of smashing of enemies.

18 MR. BATES:

19 Before I ask you the question perhaps if we can remind ourselves
20 what the Greffier read out last week. And I wonder, Mr.
21 President, whether you are content for me to read out from the
22 English, as we've already heard it in translation in Khmer, or
23 whether you wish, Mr. President, us to reread it again in Khmer?
24 There are approximately eight lines that I would like this
25 witness to consider.

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1 MR. PRESIDENT:

2 The greffier, have you located that document?

3 MR. BATES:

4 I have it on our Co-Prosecutors' screens in front of us. If the
5 greffier or with Your Honours -- Mr. President, Your Honour's
6 direction, we can transfer the AV screens to our front bench.

7 MR. PRESIDENT:

8 The AV section are advised to link to the screen of the
9 Co-Prosecutor.

10 [13.40.14]

11 MR. PRESIDENT:

12 The AV personnel are advised to link to the monitor of the
13 Co-Prosecutor so that it can be projected. Can you do that?

14 MR. BATES:

15 I think, Mr. President, we have to wait until a particular
16 connection is disconnected and reconnected on this computer. I'm
17 afraid I don't possess the technical know-how to do it myself.

18 I'm sorry.

19 MR. BATES:

20 I hope we can all see it now on the screen.

21 Mr. President, I do not propose the greffier reads everything in
22 the large box, but perhaps if the greffier can be directed to
23 read from the passage immediately after the list of names. And,
24 Mr. President, you will see there is a small hand just next to
25 the paragraph that I would request is read out aloud.

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1 MR. PRESIDENT:

2 The Greffier is now instructed to read the requested paragraph
3 starting from the requested name.

4 THE GREFFIER:

5 "This requested name, the S-21 and Division 170 met to decide,
6 apart from the 11 people. The meeting conducted on the 14th --
7 the 15th of September. Based on the reason confirmed by the S-21
8 and Division".

9 MR. BATES:

10 Thank you, and if the greffier, on your Honour's direction, Mr.
11 President --

12 MR PRESIDENT:

13 The greffier is now instructed to read the paragraph again at a
14 slower pace so that the interpreter can really interpret the
15 paragraphs.

16 THE GREFFIER:

17 "These requested names, the S-21 and Division 170 met to decide,
18 apart from the 11 people, the meeting conducted on the 15th of
19 September. One, based on the confirmation of S-21 and Division
20 there had been practical activities and based on the principle
21 determined by the Party, the strings of contemptible Chakrei.
22 Based on the meeting, these names had to be also included, 29
23 people of them."

24 [13.44.23]

25 MR. BATES:

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1 Thank you, and if the greffier, Mr. President, could please be
2 instructed to read the next red box, the text that is contained
3 in the red box, and I will place the hand next to the section
4 that we wish to be read.

5 THE PRESIDENT:

6 The greffier is now instructed to read the next highlighted box.

7 THE GREFFIER:

8 "1. It is imperative to act according with our experiences in
9 having previously taking these guys again and again. Do it as to
10 not cause disruption in the unit of organization; grasp the unit
11 of organization firmly in hand and do well in maintaining
12 secrecy.

13 Concretely consult and discuss with S-21 as regard operation or
14 methods for taking them and making assignments to administer the
15 unit of organization while these guys are being removed."

16 MR. BATES:

17 Thank you. And please, Mr. President, if we can invite the
18 greffier to read the final text in the red box. Thank you.

19 [13.46.04]

20 MR PRESIDENT:

21 The greffier is now instructed to read the last paragraph in the
22 red box.

23 THE GREFFIER:

24 "1. Division 290; S-21 and division must cooperate and cease
25 right from the motorpool. Division 170; S-1 and the division

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1 must consult about the details of the concrete measures to take
2 all the 40 people."

3 MR. BATES:

4 Thank you, Mr. President.

5 JUDGE LAVERGNE:

6 It appears that the French interpreter had difficulty
7 interpreting everything he had in relay, which means we only have
8 a partial message. The entire passage should be read and
9 reinterpreted.

10 MR. BATES:

11 Your Honour, if necessary, we have the French translation that is
12 on the case file which can be read if that is a preferable course
13 of conduct.

14 MR. PRESIDENT:

15 The defense counsel, you take the floor.

16 [13.47.57]

17 MR. ROUX:

18 Mr. President, yes, indeed, the translation that we have in
19 French in writing does not correspond exactly to the
20 interpretation we've just heard, so I would not wish the
21 document, which has been translated into French to be read. But,
22 what I would like is a reading in Khmer with a simultaneous
23 interpretation of the last two paragraphs. I would also like the
24 first paragraph to be read because I noted a significant
25 inconsistency between the simultaneous interpretation of the

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1 first paragraph read out and what I have here before me in the
2 French written translation.

3 So Mr. President, I would be grateful if you could ask that the
4 first paragraph that was read out be reread again. I would also
5 like the last two paragraphs to be read out. Thank you, Mr.
6 President.

7 MR PRESIDENT:

8 The Co-Prosecutor, you take the floor.

9 [13.48.28]

10 MR. BATES:

11 Thank you Mr. President. I think one of the difficulties that
12 the translators are having is that because of the relay they are
13 having to translate more quickly, and I don't know whether they
14 have the French translation in front of them, in the same way
15 that it appears to me that the English translation, translators
16 have -- I'm sorry, interpreters have in front of them. But, I
17 have no objection to the course of conduct proposed by Maître
18 Roux, and if the defence wish the paragraphs to be reread, let it
19 be done.

20 [13.50.08]

21 MR PRESIDENT:

22 The greffier, can you read the first part again? You can start
23 now.

24 THE GREFFIER:

25 "The names proposed was the result of the meetings decided by

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1 S-21 and Division 170, excluding the 11 people whose name were
2 decided already in the meeting held on the 17th of -- 15th
3 September. Based on the result, and clarification from S-21 and
4 the Division and based on the concrete action, the principle of
5 the organizations on the linked of the Chakrei must be taken to
6 consider in the meeting, in order to take -- to decide on those
7 29 names."

8 [13.51.56]

9 MR ROUX:

10 The interpretation problems are important. What I have just
11 heard now in French is to decide what would become of these
12 people, in English interpretation. But the French text I have
13 here before me says, "The participants at the meeting approve the
14 arrest of these 29 people," so it is not quite the same thing, to
15 say that the arrest is approved and to say that we would decide
16 what would become of these people. So I would just like to know
17 what is said in the Khmer. I have heard the simultaneous
18 interpretation, which indicates "in order to decide what would
19 become of them". This is not consistent with the French
20 translation, and I wager that it is not the same as the English
21 translation that the Co-Prosecutors have before them. It was
22 just a remark.

23 [13.53.05]

24 MR. BATES:

25 Mr. President, of course when we are dealing with original

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1 documents, in the submission of the Co-Prosecutors the original
2 language should be the authoritative version.

3 I agree with Maître Roux that there is a slight difference in the
4 paper English translation that we have, which no doubt
5 corresponds with what appears in the French. And in fact in my
6 version, the version that's on the case file, instead of "S-21
7 and Division 170" that was read out, I have "S-21 and Division
8 290".

9 But be that as it may, my submission would be that the Khmer
10 translation should stand as the authoritative translation for
11 this point, and if there are any differences or difficulties of
12 interpretation, that can be taken into account when considering
13 the responses of this witness to the question I'm about to put to
14 him.

15 MR. PRESIDENT:

16 The floor is yours, Mr. Hong Kimsuon.

17 MR. HONG KIMSUON:

18 Thank you, Mr. President.

19 In the Khmer language, from what it is read it is very hard to
20 understand. I would like to emphasize that when the Greffier
21 read -- and probably I would like to read, so I can put some
22 pauses in between to make it easier to understand.

23 [13.55.10]

24 Number 1:

25 "Based on the reason and confirmation from S-21 and the Division,

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1 they saw the concrete activities and based on the principles
2 determined by the organization, the Chakrei links had to be
3 taken."

4 And then there was a pause.

5 "The meeting agreed to decide to take these extra 29 people.

6 This is my understanding."

7 So there was a break and separate sentences, and what was
8 proposed by the defence was that the Chakrei link was approved by
9 the meeting, and I think this is up to the Chamber to make a
10 decision.

11 MR. PRESIDENT:

12 The accused, you can make your observation regarding this text.

13 THE ACCUSED:

14 Mr. President, I attended the meeting in these particular
15 documents, so I know the details and I would like to shed light
16 for the Chamber, based on my recollection and from my activity.

17 [13.57.04]

18 First I would like to talk about the principles in the documents
19 of the Communist Party of Kampuchea. The decision to smash the
20 Centre army was decided by the general staff. That was outlined
21 in a document dated the 30th of March 1975 -- I'm sorry, 1976.

22 The Centre army was decided by the general staff.

23 And what is S-21? S-21 was a unit under the direct supervision
24 of the Standing Committee, based on the Article 8 of the Statutes
25 of the Party. So S-21 would report to the upper echelon. And

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1 who was the upper echelon? Based on the document of October '75
2 that was still Son Sen. So Son Sen would have all the reports
3 and would call for the meeting and that meeting would call the
4 meeting for the committee with the participation of the general
5 staff. That was Brother 89, Son Sen, and Tum, and then Comrade
6 Som, Nat, and that was the meeting at the time.
7 And when the meeting was conducted for half a day in the morning,
8 and when Son Sen left, Brother 89 left, Brother 81 left the
9 meeting and Comrade Som, Nat, and Comrade Soth and his deputy,
10 Mit Tat and Comrade Tal from 190 Division.
11 If Mr. President permits, if you move it a bit to the back you
12 could see that it was him who left the meeting. Move a bit
13 further to the back. Stop here. Stop there. Move a bit
14 downward.
15 The opinions of Brother 89, and then there was a continuation of
16 the meeting. Brother 81 left the meeting. That was when Brother
17 81 chairs the meeting and then there was Brother Som and then
18 Brother 170, and Comrade Nat and Kao. And the meeting was
19 conducted as usual.
20 [13.59.44]
21 MR. PRESIDENT:
22 Could you slow down for the interpreter and for the record
23 because we have had this issue on this particular point since
24 last week?
25 THE ACCUSED:

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1 The meeting continued. Brother 81 led the meeting, examined the
2 names to be taken from Division 290. That means those in
3 Sector-24 and the Chakrei link. So at that time Brother 89
4 already left and only Brother 81 continues to lead the meeting.
5 Please move down further.
6 And the meeting conducted by Brother 81 was in the same way as in
7 the morning. And Comrade Sok, who was the Secretary of 170
8 Division. And then he asked, "What were the names of these
9 people?"
10 So in conclusion, the meeting agreed on the four names about of
11 the Division 290. That was the opinion of Brother 81, and
12 Brother 81 asked me, "Duch" -- but I would not have any meeting
13 because I was not part of the committee; my name was not
14 included. And I told him no, I did not have any opinion. And
15 then Brother Som asked me too, so then Brother 81 continued.
16 After the meeting Comrade Sok and Kan, Division 170, had agreed
17 to further request the 29 more names, and those are the names
18 listed in the table. So that was what happened at the time
19 during the meeting. It was a meeting of the general staff and
20 the committee's meeting. Although I was criminal amongst the 40
21 names, what was that, because I beat them during my interrogation
22 and I ordered people to beat him to get a confession and then
23 send to Brother 89, who was my superior, based on the principle
24 of the Standing Committee minute the 9th of October 1975. That's
25 how I reported, based on the chains of command and based on the

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1 designations by the Party. My crime was to send those people to
2 them to make decisions. And here in this meeting in the
3 afternoon Brother 81 led the meeting and that was the conclusion.
4 So they made the decision but I was the one who sent the names to
5 them, and it is clear.

6 And from that next point downwards they were the opinions of
7 Brother 81's. A slight -- the translation is normal here.
8 Could the screen be moved a bit further down so the interpreter
9 can see?

10 So these are the opinions of Brother 81 and it was not my
11 opinion. It is inappropriate to include my name as the one who
12 made the opinion in this meeting.

13 [14.03.11]

14 I also reported to the Co-Investigating Judges on this particular
15 meeting, and then where would I go to wait for those people to be
16 sent to me, and then I would assign Ha to arrange for this.

17 And this is the -- my confirmation on what happened and my
18 activities at the time.

19 And Mr. Craig Etcheson, who is an expert, please don't forget
20 that Brother 89 was there and nobody would make decisions than
21 89, and when Brother 89 left he designated the chairmanship of
22 the meeting to Brother 81.

23 That is my submission to you, Mr. President, for allowing me to
24 express my observation.

25 MR. PRESIDENT:

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1 Judge Lavergne, the floor is yours.

2 JUDGE LAVERGNE:

3 You were able to read the Khmer version, which is the original
4 version that stands as the true one. So what we're asking you is
5 not what you thought about what happened during this meeting but
6 what you can read.

7 Do you read that it is mentioned that a decision to include a
8 certain number of people in lists of people who were going to be
9 purged -- do you read that this decision was taken by basing --
10 by being based on opinions that were brought forth by S-21 or
11 based on reasons that were brought up by S-21? I'm asking you to
12 tell me what you see in the document.

13 [14.05.55]

14 THE ACCUSED:

15 Your Honour, all these names were the names in the list which saw
16 S-21 reported to Son Sen a few days earlier. Therefore, the
17 opinion and the work of S-21 was included in that list. And as
18 for the 40 names and the 29 names were extracted from the list,
19 which I reported to Son Sen, the list was not included in this
20 document.

21 MR. HONG KIMSUON:

22 Mr. President, I would like to raise a few points.

23 JUDGE LAVERGNE:

24 In order to be clear about this, in the Khmer document, such as
25 it is being presented here at the screen, is it said yes or no

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1 that the decision was taken on the basis of reasons that were
2 brought up by S-21 or not? That is all.

3 THE ACCUSED:

4 At that time I did not express my opinion. However, S-21 sent
5 this list earlier and during the meeting I did not express any
6 opinion at all.

7 [14.08.02]

8 JUDGE LAVERGNE:

9 I'm not asking you what is your recollection of what happened
10 during this meeting; I'm asking you to examine, to look at what
11 is in the document that is displayed here and to tell us if in
12 this document it is stated that the decision -- or that a certain
13 number of decisions were taken by being -- for reasons that were
14 brought up by S-21. I'm not speaking about memories; I'm
15 speaking about what is stated in the document.

16 THE ACCUSED:

17 In this list 29 people were named. And let me move on.

18 Could you move the screen down a bit further? Could you please
19 move back to the text that was presented earlier on the screen?

20 Stop here. These requested names were the decision made in the
21 meeting between S-21 and Division 170 besides the 11 people which
22 the meetings already held on the 15th of September -- there was a
23 meeting on the 15th of September and a decision was already made
24 and now they make another decision based on the list that I sent.
25 So this is the opinion of Brother 81. And the mentioning of S-21

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1 here was when he reminded of the responsibility of S-21 when a
2 list was sent from S-21. I did not express my opinion here.
3 These are the opinions of Brother 81. I was present there and
4 my list was there too, although I did not express my opinion at
5 the time during the meeting.

6 MR. BATES:

7 Mr. President, there appears to be a ---

8 MR. PRESIDENT:

9 We note the presence of Mr. Hong Kimsuon earlier.

10 MR. HONG KIMSUON:

11 Thank you, Mr. President.

12 We, the civil party lawyers, are not sure of the shortcuts used
13 in that document. I would like him to use the full name. What
14 he referred to as 89 or 81, who were they then?

15 MR. PRESIDENT:

16 The Accused, could you elaborate further on the request by Mr.
17 Hong Kimsuon regarding the secret names, for example, like 89,
18 81; who are they?

19 THE ACCUSED:

20 Your Honour, the Standing Committee of the General Staff
21 comprised of Brother 89 as the Secretary. His revolutionary name
22 was Khiev. His original name was Son Sen. He was the member of
23 the Standing Committee of the Party Centre. Brother 81, his
24 revolutionary name was Thom. His original name was Siet Chè. He
25 was the alternate member of the Party Centre, the candidate

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1 member of the Centre. He was the Deputy Secretary of the
2 Standing Committee of the General Staff.

3 In this meeting no member of the General Staff attended. There
4 were only the support staff of the General Staff. Two of them
5 attended the meeting. They were Saom, Pich Chhan and Nat or In
6 Lorn. Nat was the former Secretary of S-21.

7 [14.15.00]

8 So I hope I have responded to Mr. Hong Kimsuon's question.

9 THE PRESIDENT:

10 The Co-Prosecutor, you may now take the floor.

11 MR. BATES:

12 Mr. President, I think we're losing sight a little of the issue
13 at hand and the question. With the greatest of respect to Your
14 Honours, the accused is not an expert translator. We have an
15 expert translation into both English and French, but in any
16 event, the authoritative language, as I've said many times, is
17 the Khmer. It will not surprise the Bench that the
18 Co-Prosecutors have a number of questions for the accused on this
19 document and those will be put, we submit, at the appropriate
20 time. But whilst we have Dr. Etcheson as a witness dealing with
21 the issues of communication and policy, the Co-Prosecutors wish
22 to proceed with the questions it was attempting to put to the
23 witness.

24 THE PRESIDENT:

25 You can now proceed with the questionings.

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1 [14.16.42]

2 MR. BATES:

3 Thank you, Mr. President. And perhaps if the AV can be
4 instructed to switch the screens back to the normal view, please.
5 Thank you.

6 BY MR. BATES:

7 Q.Dr. Etcheson, we have had read out a number of passages -- I
8 won't repeat them -- but when it comes to the implementation of
9 the CPK policy of smashing enemies, does this document and the
10 passages that we have highlighted assist you in forming any
11 conclusions about the initiative from where the initiative came
12 to make the arrests of particular persons within military units?
13 I hope you follow my question.

14 A.Yes, Mr. Prosecutor, I follow. It seems to me, looking at the
15 larger context of this document which is connected to the affair
16 of Chan Chakrei that one of the things it illustrates about the
17 process of purging the DK military is that in his capacity as
18 Secretary of S-21 the accused person would study the confessions
19 and then prepare lists of names of persons to be purged. He
20 would then forward those lists of names to upper echelon who
21 would approve, or in some instances defer, or in other instances
22 perhaps not approve the purging of particular individuals.
23 And then in this particular instance, at the direction of upper
24 echelon the accused person was taken to a meeting of the General
25 Staff where the modalities of conducting that purge were

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1 discussed and where Division Commanders were instructed to
2 cooperate with S-21 in conducting the physical arrests as part of
3 the purge process.

4 Q.Yes, thank you.

5 In relation to what appears to be the prior consultation between
6 S-21 and the Divisions, certainly on the face of the document,
7 how do you understand that that fits into the general pattern of
8 purges within the military? More specifically, what does that
9 tell you, if anything, about the specific role of S-21?

10 A.Mr. Prosecutor, I am not certain I follow the purport of your
11 question.

12 Q.I will phrase it another way. Are you aware from your
13 research whether there are similar or whether there were similar
14 consultations between other security officers and divisions at
15 this level, as apparently is shown by this document?

16 A.I am not aware, Mr. Prosecutor, of other security offices
17 which engaged in this sort of process where there were extensive
18 consultation with top level organs of the Democratic Kampuchean
19 state and the Revolutionary Army of Kampuchea General Staff.

20 [14.21.58]

21 Q.Thank you.

22 I would now like to turn to a different set of documents, four of
23 which you refer to in your written report and the nine surviving
24 examples of this type the Co-Prosecutors have placed before the
25 Chamber last week, and I'm referring to the letters sent from Sou

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1 Met, the Secretary of Division 502; letters sent from Sou Met to
2 Duch.

3 At this stage, Mr. President, the Co-Prosecutors would wish -- as
4 is consistent with your ruling last week on the reading out or
5 the summarizing of documents, the Co-Prosecutors would wish to
6 read out summaries of the nine documents relating to
7 communications of Sou Met to Duch. And I understand that last
8 week copies of the Table of Documents prepared by ourselves was
9 handed to the Trial Chamber. Unfortunately, as it was prepared
10 at the last minute we only have copies in English. But if you,
11 Mr. President, would allow us, we will read from this table.

12 [14.23.49]

13 MR. ROUX:

14 Mr. President, I am observing that certain documents were
15 included in Mr. Craig Etcheson's report, the July 2007 report,
16 and the defence has already indicated that it did not have any
17 problems concerning the documents that were in Craig Etcheson's
18 July 2007 report. However, the defence would like to remind that
19 as of July 2007 Mr. Etcheson was directly involved with the
20 Co-Prosecutors Office in the investigation and the defence
21 therefore requested that Mr. Etcheson's statement be not centred
22 on this phase.

23 So I would like, therefore, that we just only concentrate on
24 Craig Etcheson's report from July 2007 and on the documents that
25 are annexed to it. Otherwise I do not see how Mr. Etcheson can

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1 have an objective standpoint whereas he participated directly
2 with -- participated directly in the investigation with the
3 Co-Prosecutors' team.
4 So please let's continue functioning on the basis of the
5 gentlemen's agreement that we had initiated. That is to say that
6 the defence will not raise any problems as long as Mr. Etcheson
7 only speaks about his report and about the documents that are
8 annexed to his report.

9 Thank you, Mr. President.

10 [14.25.54]

11 MR. BATES:

12 Mr. President, we are here to ascertain the truth. There are
13 nine surviving letters from Sou Met to Duch, to the knowledge of
14 the Co-Prosecutors. They are all on the case file and they all
15 relate to a six-month period between the 1st of April 1977 and
16 the 4th of October 1977; the period, I might add, that this
17 witness has already illustrating using graphs and tables to
18 demonstrate the purges within Division 502.

19 Mr. President, there are at least three reasons why all of these
20 documents are relevant and should be discussed before the
21 Chamber. Firstly, as stated by Dr. Etcheson in paragraph 123 of
22 his written report, they establish the general principle that
23 division secretaries had the authority to send prisoners within
24 their unit to S-21. Secondly, they establish the frequency with
25 which the secretary of one division communicated with the accused

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1 on issues of security.

2 And thirdly, Mr. President, they indicate -- at least on their
3 face -- a high level of collaboration between the accused and
4 division secretaries in the investigation and arrest of so-called
5 enemies and traitors, and it is this third point, the
6 Co-Prosecutors submit and will submit in due course, which is
7 strong evidence to support the proposition that the initiative to
8 arrest members of the military came from the accused himself,
9 working in close collaboration with specific military
10 secretaries.

11 And this goes to the very heart of the case. Of course it's
12 contrary to the accused's position that he had no say in the
13 arrest of victims and that it was always at his superior's
14 request, but that position taken by the accused does not make the
15 letters any less relevant.

16 The Co-Prosecutors simply do not understand that there is a legal
17 basis for the defence objection to the admission of these letters
18 and, in fact, Maître Roux has not cited any relevant Internal
19 Rule upon which such documents should be excluded or not
20 discussed, when we have a witness here who is ready and able to
21 testify.

22 [14.29.35]

23 If the defence wish to make a point of the office in which the
24 expert works, let them do so, but let us not lose sight of the
25 fact that the Trial Chamber has already ruled that it is free to

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1 ask witnesses and experts any questions it sees fit and, in the
2 submission of the Co-Prosecutors, it must be true for the
3 parties; of course subject to a ruling from the Court that it is
4 irrelevant or repetitious or not suitable, or the other reasons.
5 The defence claim some unspecified right not to ask an expert
6 witness about evidence that has come out in a judicial
7 investigation. I'm sorry, but that is an absurdity. As I've
8 said, we have a qualified witness here who is able to bring his
9 expertise to bear on documents that are validly on the case file.
10 And should he not be asked to look at them? Is he to be asked to
11 pretend these other documents do not exist? That's patent
12 nonsense, Mr. President, and more to the point, is the very
13 opposite of what this Court is honour-bound to achieve: the
14 ascertainment of the truth.

15 [14.31.26]

16 We have a developing theme here, Mr. President, and it is
17 becoming a problem. There appears to be a total disconnect
18 between the accused's general admissions of responsibility on the
19 one hand, and on the other the apparent defence strategy in
20 raising persistent objections when specific incriminating
21 evidence, specific incriminating documents, get too close to what
22 the accused said or did or believed.

23 If the defence is so eager for credit for the conduct of the
24 defence, for the cooperation, for the remorse, and for admissions
25 of responsibility, then why the persistent objections to relevant

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1 documents?

2 Mr. President, I apologize for taking some time over this but it
3 raises a general principle, and the general principle is that
4 relevant documents should be admitted; their weight can be
5 assessed; the opportunity to comment upon those documents from an
6 expert can be appropriately explored; the defence can be given
7 time to consider the documents and then we can all move on in
8 ascertaining the truth.

9 [14.26.41]

10 But the Co-Prosecutors submit that such an objection from the
11 defence is baseless, and invite the Co-Prosecutors to continue
12 with the questions on all of these documents. They are not a
13 large number, a total of nine, and in the submission of the
14 Co-Prosecutors establish a pattern; a pattern which must be put
15 before the public and before this Court.

16 Thank you.

17 MR. PRESIDENT:

18 The civil party lawyers, if you wish to make your observations
19 regarding the objections by the defence and the request by the
20 Co-Prosecutor to submit the nine documents, the floor is yours.

21 MR. WERNER:

22 Thank you, Mr. President.

23 Very briefly, Mr. President. Mr. Roux made a gentlemen's
24 agreement but maybe with himself or maybe with his team, but not
25 with us, and I don't think he made any gentlemen's agreement with

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1 Your Honours or the prosecution.
2 Your Honours, Mr. Roux has stated his position, that is true,
3 last week, but we didn't agree. I don't think the prosecution
4 agreed and certainly you did not agree. If Alex Bates has a
5 relevant document and he wants to ask questions on this document,
6 he should be entitled, according to the rules, to summarize this
7 document, have the document in and then ask any questions he
8 wants, if these questions are relevant, and that is exactly what
9 you said last Tuesday when Mr. Roux -- maybe with another
10 gentlemen's agreement -- tried to limit your own questions and
11 that is what you said.

12 [14.35.18]

13 And I'm quoting 19 of May, page 31 of the draft transcript, in
14 English.

15 "The Trial Chamber is not bound by the indication given to the
16 parties of scope of the testimony or report of an expert. The
17 reasons; the Trial Chamber or the parties have the right to ask
18 questions that the Trial Chamber considers relevant."

19 And you said when answering such questions the expert is not
20 bound by his or her previous written statement or report, and
21 that is exactly the position we submit should be the position in
22 that case. If there was relevant questions, with relevant
23 documents, the Co-Prosecutor should, of course, be entitled to
24 have this document in front of Your Honours. And if the
25 questions are relevant then they should be entitled to ask the

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1 question.

2 And there was no gentlemen's agreement whatsoever between the
3 defence and anyone in this Court in that regard.

4 MR. PRESIDENT:

5 Lawyers for civil party group 2, the floor is yours.

6 [14.36.19]

7 MS. STUDZINSKY:

8 Yeah, thank you, Mr. President.

9 I would like to remind everybody that the so-called gentlemen's
10 agreement, what the defence mentioned, referred to the annex of a
11 report of the expert, Dr. Etcheson, and meant only that these
12 annex documents can be considered as to be put before the Chamber
13 without reading them or summarizing them.

14 That does not mean that other documents or evidence which are
15 already on the case file can be put before the Chamber by reading
16 or summarizing them, and that is exactly that -- what the
17 prosecution decided in this case, to put them before the Chamber
18 and to summarize them.

19 And I do not see any ground that convinces to exclude this
20 procedure that the prosecutor had taken, or wanted to take and
21 wanted to take, and it was only the defence who insisted that
22 they do not agree to other -- or to the work that the witness and
23 expert witness has done after the report was finalized in July
24 2007.

25 But this is only a statement by the defence. The Chamber has not

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1 taken any decision on this.

2 In contrary, the Chamber has made it clear how in general and in
3 this case the annex can be dealt with, that it is -- considered
4 to be having been put before the Chamber, that is all. And then
5 the defence might raise any points that these documents are not
6 in accordance with Rule 87 and should be excluded, but this is
7 another issue, and so I request the Chamber to reject the
8 objection by the defence.

9 Thank you.

10 [14.40.10]

11 Lawyer for civil party group 3, the floor is yours.

12 MS. RABESANDRATANA:

13 I am speaking on behalf of group 3.

14 The purpose in seeking to put these documents before the Chamber
15 is to ascertain the truth. Anything that serves to ascertain the
16 truth is of benefit to the victims and is good for the civil
17 parties who wish to know, to understand, and to receive an
18 explanation; and most of all, wish to see the back of this
19 culture of secrecy which has cloaked these years in silence --
20 those years in silence.

21 But the cloak is being lifted today, but the rules which are not
22 written -- because all rules of evidence are accepted to try to
23 hamper the ascertainment of the truth, because later on if the
24 intention is to move to another stage, that is a stage of
25 dialogue -- I'm not saying reconciliation, just dialogue -- the

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1 truth must have been ascertained to the full; everybody can put
2 his or her opinion forth.

3 So, I think it is essential that these nine exhibits, which could
4 be of some importance to the victims, be put forward in these
5 proceedings.

6 MR. PRESIDENT:

7 Lawyer for civil party group 4, you have any observations to
8 make? If you have, the floor is yours.

9 François Roux, the floor is yours if you have any observation to
10 make or any response?

11 MR. ROUX.

12 Thank you, Mr. President.

13 A number of brief observations; everybody will have observed that
14 each time the Defense raises an objection, it has not one
15 opponent but many. I am beginning to wonder where equality of
16 arms comes into play in such a trial. Each time the witness is
17 asked questions, there are at least three or four examinations.
18 Each time the defence raises objections, there are three or four
19 replies to the objections, and everybody can judge for himself or
20 for herself.

21 [14.43.47]

22 There have been three responses -- and I wouldn't say that
23 anybody's talking nonsense. First, Duch is fully prepared to
24 answer any question with regard to the nine statements. And of
25 course, he confirms that he has agreed to talk about these nine

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1 statements. I would like to reassure my learned friends for the
2 civil parties, that Duch will talk about these nine statements.
3 You are right that this should serve for the ascertainment of the
4 truth.

5 In particular, I should like to point out that he has already
6 been interviewed by the Co-Investigating Judges, that he has
7 provided answers, and in these proceedings we are discussing
8 answers previously given and any further information provided in
9 that context.

10 What I am objecting to is not that.

11 The other day we had a discussion, first during a trial
12 management meeting and subsequently in a public session, on the
13 issue of the credibility of the expert, Mr. Etcheson. I said --
14 and I believed that I was clear in doing so -- that I was not
15 challenging the credibility of Dr. Etcheson and the annexures to
16 his report, insofar as in this context he was only taking
17 questions concerning his report. And I stated this clearly in
18 public. I thought that we had a gentleman's agreement.

19 [14.46.01]

20 But if now, in spite of my objections and my reservations the
21 Chamber considers that questions can be put to Mr. Craig Etcheson
22 on the basis of the material that he became aware of when he was
23 working with the prosecution team during the investigation phase,
24 that will be for the Chamber to decide. I do not for one moment
25 doubt that this decision, if it were to be taken, would be the

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1 subject of much writing and jurisprudence. To my knowledge, it
2 will be the first time that an expert witness is called when he
3 is a member of the prosecution team. But if the Chamber so
4 decides - all I'm saying is that I expressed reservations with
5 regard to law and the fairness of it.

6 My third and last observation; if my learned friends, the
7 Co-Prosecutors, wish us to talk of the nine letters of Mr. Sou
8 Met written to Duch, could the Co-Prosecutors explain to the
9 Chamber why they did not ask the Co-Investigating Judges to
10 confront Duch with Mr. Sou Met in respect of these documents?
11 Here I support a request made by a civil party team; can the
12 Co-Prosecutors explain to us here and now why they did not seek
13 for Mr. Sou Met to be called before the Co-Investigating Judges?
14 Why did they not call him before this Chamber?

15 It's all very well to wish to put questions to the accused today
16 in the absence of the person who drafted the letters. The role
17 of the defence in any proceeding is to preserve human rights.
18 This is what, as I said before Prosecutor Richard Goldstone said
19 in The Hague recently, "Any defence worthy of that name should
20 protect human rights."

21 [14.48.58]

22 So my learned friends, the Co-Prosecutors, if you wish to put
23 questions to Duch, do so but first do so in the absence of your
24 colleague Mr. Etcheson, and secondly do so when you will have
25 called Mr. Sou Met.

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1 Thank you.

2 MR. PRESIDENT:

3 The Chamber may take an adjournment for half an hour, and during
4 the break the Chamber will deliberate to make a decision
5 regarding the objections of the defence concerning the nine
6 documents attempted to be debated in the Court.

7 (Judges exit the courtroom)

8 (Court recesses from 1450H to 1551H)

9 (Judges enter courtroom)

10 [14.50.41]

11 MR PRESIDENT:

12 Please be seated. The court is now in session.

13 Since the nature of the issues are still complicated regarding
14 the objections of the defence counsel, the Trial Chamber would
15 like to invite the Co-Prosecutor to present the essence of the
16 nine documents as the defence has not objected to the
17 presentation of the document and the Chamber will make a final
18 decision after this.

19 The floor is yours, the Co-Prosecutor.

20 MR. BATES:

21 Thank you, Mr. President.

22 JUDGE LAVERGNE:

23 I'd just clarify what the Co-Prosecutor is allowed to do.

24 We observed that there was no objection to the nine documents
25 which were previously mentioned being put before the Court. So

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1 the Co-Prosecutor may, either in reading them out or in summary,
2 put these documents before the Court.

3 [15.53.02]

4 MR. BATES:

5 Thank you, Your Honour. Can I just seek one small clarification,
6 if I may?

7 Do I understand it that the Court permits the Co-Prosecutors,
8 rather than summarizing each individual document, to give the
9 gist of all nine documents in a couple of sentences? Have I
10 understood that correctly?

11 (No interpretation)

12 Thank you. Then the briefest of summaries in one go, of all nine
13 documents.

14 These are original documents which appear to be written by
15 Division 502 Secretary Sou Met, and they are addressed to the
16 accused, named in person. The nine documents have a date spread
17 of the 1st of April 1977 through to the 4th of October 1977, and
18 they relate to requests for confessions from S-21 to be sent to
19 Sou Met, and discussions concerning traitors or enemies,
20 so-called, that have been arrested from Division 502 and sent to
21 S-21.

22 There are, on a number of occasions, additional annotations upon
23 these letters. The annotations appear to be made by the accused
24 and certain of the annotations give directions and orders, one
25 assumes to the accused's subordinates, regarding interrogation or

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1 other methods.

2 Does that suffice for the Trial Chamber as a brief overview
3 summary of all the documents?

4 [15.56.03]

5 MR. PRESIDENT:

6 Judge Lavergne, you take the floor.

7 JUDGE LAVERGNE:

8 It would appear that a number of documents described as telegrams
9 have already been annexed to Mr. Etcheson's report. Do the
10 documents you have mentioned already include the documents
11 annexed to the report? Are they different? And if they are
12 different could you please provide us with the exact reference
13 numbers?

14 MR. BATES:

15 Yes, of course. The documents annexed to Dr. Etcheson's written
16 report are included in the nine documents the Co-Prosecutors wish
17 to put before the Court. And as I ---

18 JUDGE LAVERGNE:

19 Do these documents correspond to footnote number 285 and footnote
20 number 286? I think 285 involves two documents and 286 concerns
21 another document.

22 MR. BATES:

23 Exactly so, Your Honour, yes.

24 There appears to be a small typographic error in the Annex E55/1,
25 giving the date of one of the letters as the 4th of October when

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1 in fact it should be the 3rd of October, and I'm referring
2 specifically to Document Number 41, using the numbers on the
3 extreme left-hand side of the page. That is listed as 4th of
4 October 1977. In fact it should be the 3rd of October 1977.

5 [15.58.32]

6 I should add for completeness that it appears on closer scrutiny
7 of the index table and the report that there are three, rather
8 than four, Sou Met to Duch letters referred to within the body
9 and footnotes of the report.

10 MR. PRESIDENT:

11 Judge Silvia Cartwright, you take the floor.

12 JUDGE CARTWRIGHT:

13 Yes, thank you.

14 That letter which should have been dated 3 October 1977, is that
15 the one referred to at footnote 286 of the report?

16 MR. BATES:

17 If Your Honour would allow me a brief moment.

18 Yes, it is.

19 JUDGE CARTWRIGHT:

20 And again to clarify further, the three documents mentioned in
21 footnotes 285 and 286 are described there as telegrams rather
22 than letters. Is that correct?

23 MR. BATES:

24 Yes, that's correct.

25 JUDGE CARTWRIGHT:

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1 And were in general the subject of a question that I put to Dr.
2 Etcheson some days ago when I asked if any of those who had been
3 arrested and dispatched to S-21 from military units were
4 accompanied by material which contained instructions or advice
5 concerning their offences -- their alleged offences. Have we
6 connected the right material?

7 MR. BATES:

8 Yes indeed.

9 JUDGE CARTWRIGHT:

10 Thank you.

11 Thank you, Mr. President.

12 [16.01.13]

13 MR. PRESIDENT:

14 Regarding the objection of the defence, in order to clarify the
15 issue I would like to give the floor to Judge Lavergne to put
16 some questions to clarify the matter to see what is the nature of
17 such objection.

18 JUDGE LAVERGNE:

19 I think that it is, first of all, important to bring up a rather
20 special situation, because we started interrogating the expert
21 before questioning the accused. So now that these documents are
22 a part of the proceedings and that there hasn't been any
23 objections concerning the admissibility of these documents, I
24 think that it's a good time to start questioning the accused
25 before questioning the expert. I think that Mr. President could

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1 discuss this again further, but in any case, what is sure is that
2 the documents that are annexed to the report have been considered
3 as being put before the Court; they are to be used as a support
4 to Craig Etcheson's expert report. So can the defence tell us if
5 it intends to object to questions that are asked by the
6 prosecution relating to these documents that are annexed to the
7 report? And if not, for which reasons -- which objective reasons
8 it intends to object to the usage of the other documents which
9 are a priori documents of the same nature in order to be used as
10 a basis for the questioning of the expert, or is there a
11 misunderstanding here?

12 We would like to have clarification on the specific reasons, and
13 on the exact object of your request.

14 [16.03.47]

15 MR. ROUX:

16 Thank you, Your Honour.

17 Well, the defence confirms, concerning the documents that were
18 annexed to Craig Etcheson's expert report, that there is no
19 objection regarding this. There is no objection to question the
20 expert on these documents insofar that these documents are part
21 of his report.

22 But regarding the other documents, the defence states that the
23 problem stems from the fact that Mr. Etcheson became aware of
24 these new documents; whereas he was involved with the prosecution
25 team as an official of the Prosecutors' Office during the

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1 investigation phase.

2 I do not see, as he was an advisor in the Co-Prosecutors' Office

3 -- as he was an advisor for the Co-Prosecutor, as I repeat,

4 concerning these documents, and while they discussed these

5 documents necessarily during the investigation, I do not see

6 here; therefore, how concerning these documents -- these new

7 documents, I do not see how the expert can demonstrate

8 impartiality, objectivity; he is involved. He is directly

9 involved as a member of the prosecution office. That is my

10 problem. It's nothing else. That's where my problem lies.

11 [16.03.53]

12 JUDGE LAVERGNE:

13 Well, to try to be even more precise about this, what -- I

14 believe I understand but maybe I am mistaken. You're telling us

15 that, in fact, these are the eventual answers of the expert that

16 should be taken with a grain of salt. And what you're telling us

17 here is that the answers to these questions put to the expert

18 should be eventually assessed in a different way given the

19 position that he occupies or that he occupied when these

20 documents were included in the case. But, however, do you object

21 to the fact that the questions are being asked?

22 MR. ROUX:

23 I would have preferred that we make a clear distinction between

24 both types of documents. I would have preferred, so that things

25 be clearer for everyone, that we only speak about the new

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1 documents later in that we bring up these documents in questions
2 that the prosecutor or the Chamber could put directly to the
3 accused outside of Mr. Etcheson's presence. I think that this
4 would be a better solution, but I can accept perfectly -- admit
5 perfectly well the -- what you are proposing in your -- that is
6 to say, if the Co-Prosecutors question Mr. Etcheson on this
7 series of documents which he became aware of during the
8 investigation phase, well, Mr. Etcheson's answers should be taken
9 with a grain of salt. So the expert's answers will be taken with
10 a grain of salt; that suits me perfectly well if this allows us
11 to make thing progress.

12 I want it to be clear that the defence agrees absolutely to speak
13 about these documents, but the defence is only trying to raise a
14 problem of principle in relation to what we regard here as a fair
15 trial. So basically, the defence agrees completely for us to
16 continue speaking about these documents, and to continue
17 questioning the accused about these documents, and I'd like to
18 remind you that concerning these new documents, the accused has
19 already been questioned by the Co-Investigating Judges. He
20 already answered these questions so he is ready to answer the
21 questions; that it's only a question of principle that I'm
22 bringing up here.

23 Given Mr. Etcheson's current position, I would like to repeat
24 once again that we have the greatest respect for Mr. Etcheson's
25 work which he did over the course of many years. We have the

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1 greatest respect for his capacity as an expert, but as of the
2 moment when he was directly involved with the Co-Prosecutors in
3 the accusation against -- in the prosecution against Duch, it is
4 hard for me, therefore, to admit that his -- what he has to say
5 is completely objective. But I, indeed, side with your proposal,
6 Your Honour.

7 [16.07.14]

8 JUDGE LAVERGNE:

9 So to summarize things, if the Chamber takes note of your
10 reservations regarding the probative value of Mr. Etcheson's
11 answers, can we consider that you are retracting the objection
12 that you brought up earlier?

13 MR. ROUX:

14 I will -- yes, indeed, and I say this clearly so that we do not
15 belabour the point.

16 MR. BATES:

17 Mr. President, very, very briefly, and just in response to a
18 matter that I have not yet had a chance to reply on.

19 Regarding the defence suggestion that Dr. Etcheson's evidence is
20 a complete novelty in international criminal law, can I correct
21 this statement by quoting from jurisprudence established at the
22 International Criminal Tribunal for the former Yugoslavia, and
23 the prosecutor against Brdjanin, B-r-d-j-a-n-i-n:

24 "The mere fact that an expert witness is employed by or paid by a
25 party does not disqualify him or her from testifying as an expert

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1 witness."

2 This follows also Rule 90(d) of the Rules of Procedure and
3 Evidence of the ICTY which explicitly allows an investigator in
4 charge of a party's investigation to testify as a witness in the
5 proceedings, and to complete the point any concerns that any
6 party has over the impartiality of an expert witness, can be
7 properly addressed by the parties in their questions and also in
8 the right that parties have in calling an expert of their own.

9 And we note that the defence are calling Raoul Jennar in relation
10 to similar issues, and the reference for that particular
11 assertion is the International Criminal Tribunal for Rwanda case
12 of Nahimana, Barayagwiza, and Ngeze against the Prosecutor, which
13 we can provide the full references for in due course.

14 But just to state, that this is a common practice before the
15 other ad hoc tribunals that experts in the employ of one or other
16 of the parties can testify, have testified, and have been allowed
17 to do so with questions from the other party to balance the
18 situation as they see fit.

19 Thank you.

20 [16.12.32]

21 MR PRESIDENT:

22 Lawyers for the civil parties, the floor is yours.

23 MS. STUDZINSKY:

24 Thank you, Mr. President.

25 Only to clarify, did I understand you in this way, that it

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1 depends on the moment of the knowledge of these documents? If
2 so, I think it could be helpful to ask the witness when he got
3 knowledge of all these documents, which are not all included in
4 the report, but which are very similar, and maybe he had already
5 knowledge of these documents by the time of writing and doing his
6 research before being employed with the prosecutors.

7 Thank you.

8 MR. ROUX:

9 Mr. President, I will answer my colleague's question first, and
10 then I will answer the Co-Prosecutor.

11 My esteemed colleague, if Mr. Etcheson became privy to these
12 documents before establishing his reports, and if he did not use
13 them, this goes -- completely, this supports completely what I am
14 trying to say. It is that he believed that it wasn't --they were
15 not necessary to his report. So therefore, I do not see what we
16 are talking about here. We just have to focus on the documents
17 that Mr. Etcheson selected for his report and just to look at
18 these.

19 I would like now to answer my esteemed colleague, Mr. Alex Bates.

20 I also am active in international criminal courts and it is
21 absolutely true that the prosecutors in international criminal
22 courts -- and I apologize for getting back to this point, but
23 international criminal courts have only -- are based on common
24 law. Well, in these courts, the Co-Prosecutors regularly bring
25 in as witnesses their investigators; their head investigators.

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1 That is to say, people who went out into the field, who carried
2 out investigations, and who come, generally, at the beginning of
3 the trial and undergo a questioning and a counter --
4 cross-questioning in front of the judges.

5 [16.17.00]

6 So I'm sorry for insisting on this but we are not in this kind of
7 trial here. In the trial in which we are here, first of all, we
8 do -- we are not facing an investigator. We are dealing with
9 somebody who was known as being an expert and who is known to
10 have worked on the issues regarding Cambodia for years. The
11 prosecutors' office recruited this expert, as it was entitled to
12 do, this expert who was very well known, and this expert started
13 working as your colleague and as your colleague he provided
14 recommendations to you, and that is absolutely normal. And he
15 allowed you to -- and he worked with you for a whole year in the
16 investigation phase; this is what is problematic to me.

17 So if once again, we want to sidetrack this issue, well the
18 Chamber will decide on this. But for me, and I would like to
19 repeat here once again, the -- Mr. Etcheson's position before the
20 investigation, that is to say up until July 2007, well, this
21 position, even if he was already a part of your team, however did
22 not have any effect on his expertise. But, as of the moment when
23 he became involved with your office, and when he became involved
24 in the prosecution, well, in that case, please do not tell me
25 that concerning this period that we're speaking about here, that

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1 he is an impartial expert. And I'd like to repeat and say that I
2 agree with Mr. Judge Lavergne's period that concerning this
3 entire investigation phase, I agree that we consider the answers
4 that will be provided by Mr. Etcheson with the necessary grain of
5 salt.

6 [16.19.20]

7 This does not impair his dignity. This only wishes to take into
8 consideration that during this investigation phase, he was your
9 advisor, and we have to state things the way they really are. He
10 was at your service. He helped you. He helped you to support
11 the accusations against the accused. Let's say this clearly, and
12 I have no problems with this, insofar that this is stated clearly
13 and I expressed here, last week, that he was part of your team.
14 I said it last week, so we should not try to hide behind the
15 facts.

16 MR. PRESIDENT:

17 The floor is yours, Mr. Hong Kimsuon.

18 MR .HONG KIMSUON:

19 Thank you, Mr. President.

20 I have observed that through our discussions today, through my
21 observation I think a lot of time has been wasted unwisely. From
22 the 21st of May 2009, which means last week, we already discussed
23 this matter, until the President deliberated with the Judges of
24 the Chamber and ruled on the matter. So the revisiting of the
25 matters only opening -- open another pandora's box.

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1 So I think when the question at hand is whether the previous
2 decision is still valid or maybe I get message differently
3 through the translation's lost, but I can see that these
4 discussion seem to be the same old things.

5 [16.21.37]

6 (Deliberations between Judges)

7 MR. PRESIDENT:

8 It is time to take the adjournment for today and the Trial
9 Chamber would like to end the session now and resume the session
10 tomorrow at 9 a.m.

11 [16.23.31]

12 The security guard, please take the accused back to the detention
13 facility and return him tomorrow by 9 .am.

14 Mr. Craig Etcheson, since there are still further proceedings
15 that we need you, so please come back again tomorrow.

16 (Judges exit courtroom)

17 (Court adjourns at 1623H)

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