



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

25 May 2009, 0913H

Trial Day 20

Before the Judges:

NIL Nonn, Presiding
Silvia CARTWRIGHT
YA Sokhan
Jean-Marc LAVERGNE
THOU Mony
YOU Ottara (Reserve)
Claudia FENZ (Reserve)

Lawyers for the Civil Parties:

HONG Kimsuon
TY Srinna
Silke STUDZINSKY
KIM Mengkhy
Elizabeth RABESANDRATANA
KONG Pisey
Alain WERNER
MOCH Sovannary
YUNG Phanit

Trial Chamber Greffiers/Legal Officers:

DUCH Phary
SE Kolvuthy
LIM Suy-Hong
Matteo CRIPPA
Natacha WEXELS-RISER

For Court Management Section:

KAUV Keoratanak

For the Office of the Co-Prosecutors:

SENG Bunkheang
Alexander BATES
PICH Sambath
Stuart FORD
PAK Chanlino

The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth
François ROUX
Heleyn UÑAC

INDEX

WITNESSES

WITNESS NAYAN CHANDA

Questioning by The President commences page 5

Questioning by Judge Cartwright commences page 6

Questioning by Judge Lavergne commences page 53

Questioning by Mr. Seng Bunkheang commences page 61

Questioning by Mr. Bates commences page 76

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. BATES	English
NAYAN CHANDA, WITNESS	English
MR. HONG KIMSUON	Khmer
MR. KONG PISEY	Khmer
JUDGE LAVERGNE	French
MS. RABESANDRATANA	French
MR. ROUX	French
MS. SE KOLVUTHY	Khmer
MR. SENG BUNKHEANG	Khmer
MS. STUDZINSKY	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	French

1

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

2 (Judges enter courtroom)

3 [09.13.00]

4 MR. PRESIDENT:

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

6 The Greffier, please verify the attendance of the parties to the
7 proceedings.

8 THE GREFFIER:

9 Mr. President, the parties to the proceedings today are all
10 present.

11 MR. PRESIDENT:

12 Is the expert, Mr. Nayan Chanda, available to testify during the
13 first two days?

14 THE GREFFIER:

15 Mr. President, Mr. Nayan Chanda is available at the waiting room
16 now.

17 MR. PRESIDENT:

18 Lawyer, I note your presence. What would you like to make?

19 [09.15.00]

20 MR. WERNER:

21 Mr. President, Your Honours, hello. May I make a very quick
22 request on behalf of the civil parties?

23 MR. PRESIDENT:

24 Mr. Alain Werner, you take the floor.

25 MR. WERNER:

2

1 Thank you, Mr. President.

2 Mr. President, just one request for confirmation. We would like
3 to be informed in a clear -- we have informed the civil parties
4 in a clear way about the agenda and you see that they're here
5 every day, but also other civil parties we hope will join us on
6 Wednesday and Thursday from the provinces to participate in these
7 hearings.

8 So could you please confirm to us that after having questioned
9 the expert on the armed conflict today and tomorrow -- could you
10 please confirm that you intend to go over the implementation of
11 the CPK policy and S-21, and to finish questioning Craig
12 Etcheson? Could you please confirm this to us. We would be very
13 grateful for this confirmation. Thank you.

14 (Deliberation between Judges)

15 MR. PRESIDENT:

16 The Trial Chamber would like to inform to Mr. Alain Werner and
17 the parties to the proceedings that due to the special
18 circumstance in which Mr. Nayan Chanda, who has not got the
19 opportunity to provide testimony other than the 25th and 26th of
20 May because he has another commitment and he's teaching in Hong
21 Kong, there has been a change in the schedule to testify his
22 testimony regarding the facts on the armed conflict. This is a
23 special circumstance in which the party has already been
24 informed.

25 Regarding the witness, the expert witness Mr. Craig Etcheson's

3

1 testimony, he is going to be called again after the Chamber has
2 heard the armed conflict facts testified by Mr. Nayan Chanda.
3 And we haven't had any time to put questions to the accused
4 concerning the facts on the implementation of the CPK policy yet,
5 so we will do that at a later date.

6 The Court officials are now instructed to bring in Mr. Nayan
7 Chanda into the courtroom, please.

8 [09.20.50]

9 (Witness enters courtroom)

10 MR. PRESIDENT:

11 Is your name Nayan Chanda?

12 MR. CHANDA:

13 (Microphone not activated)

14 MR. PRESIDENT:

15 How old are you this year?

16 MR. CHANDA:

17 (Microphone not activated)

18 MR. PRESIDENT:

19 What is your nationality?

20 MR. CHANDA:

21 Indian.

22 MR. PRESIDENT:

23 Where is your current residence?

24 MR. CHANDA:

25 Connecticut in the United States.

4

1 MR. PRESIDENT:

2 What is your occupation?

3 MR. CHANDA:

4 I'm Director of Publications at the Yale Center for the Study of
5 Globalization.

6 MR. PRESIDENT:

7 Based on the Greffier's report, you are not related to any of the
8 parties in this case. Is this correct?

9 MR. CHANDA:

10 No, Your Honour.

11 MR. PRESIDENT:

12 Based on the Rule 30.2 of the ECCC Internal Rules, Mr. Nayan
13 Chanda, you are called as an expert. You are required to take an
14 oath before your testimony. Do you agree to this?

15 MR. CHANDA:

16 (Microphone not activated) Your Honour.

17 [09.23.33]

18 MR. PRESIDENT:

19 International greffier Matteo, can you arrange the swearing
20 procedure?

21 (Witness Nayan Chanda sworn)

22 [09:24:08]

23 MR. PRESIDENT:

24 You have taken an oath already, and the Chamber would like to ask
25 you some questions, as an expert.

5

1 QUESTIONING BY THE BENCH

2 BY MR. PRESIDENT:

3 Q.First, you have spent almost 30 years as a correspondent and
4 editor for the Far Eastern Economic Review, and during that
5 period you made several reports regarding the far east - the
6 southeast; is that correct?

7 A:Yes, Your Honour.

8 Q:From 1989 to 1990 were you a senior member of the Carnegie
9 Endowment for International Peace, and from '90 to '92 you were
10 the publisher of the Asian Wall Street Journal Weekly; is this
11 correct?

12 A: Yes.

13 Q:Now you are the Editor-in-Chief of the research institution at
14 the Yale University; is that correct?

15 A:Yes

16 Q:Did you write about security policy and security of the
17 Southeast Asia amongst your publication, you are also the
18 publisher of the book entitled, Brother Enemy: The War After the
19 War; is this correct?

20 A:Yes.

21 MR PRESIDENT:

22 Judges of the bench, do you have questions to put forward to this
23 expert witness? If you have, the floor is yours.

24 Judge Cartwright, the floor is yours.

25 [09:26:30]

6

1 BY JUDGE CARTWRIGHT:

2 Q.Thank you, Mr. President.

3 Mr. Chanda, the Court is grateful to you for your attendance to
4 give testimony as an expert. As you have already said, you are
5 the author of the book, Brother Enemy: The War After the War,
6 which is found on the case file at English 00192169 to 00192600;
7 in Khmer at 00191296 to 0019121815; in French 00236900 to 7256.

8 In the course of my questions, I'm going to ask you to focus on
9 passages from that book, and I will also ask you to comment on
10 other material on the case file.

11 For the benefit of the parties, in future references to Brother
12 Enemy will be the ERN references in English only. If you want
13 the other languages, please say so. This is just a way of saving
14 a little time.

15 Now Mr. Chanda, Brother Enemy was written by you and published in
16 1986; is that correct?

17 A:(Microphone not activated)

18 Q:Was it intended to be, as the subtitle suggests, a history of
19 Indochina since the fall of Saigon?

20 A:Yes.

21 Q:Does it therefore cover more than the Khmer Rouge period in
22 Cambodia, extending also to Vietnam, Laos, Thailand, and China's
23 foreign policies and conflicts during the period your book
24 covers?

25 A:Yes, and also the state's policy towards the region.

7

1 Q: In writing your book, did you draw on your experience as
2 correspondent, editor, and editor-at-large for the Far Eastern
3 Economic Review?

4 A: Yes I did, Your Honour.

5 [09.28.58]

6 Q: In your professional capacity, what opportunity did you have
7 to observe the development of the conflict between Cambodia and
8 Vietnam in the mid- to late 1970s?

9 A: The Indochina correspondent of the Far-Eastern Economic
10 Review, I had the occasion to travel to Vietnam, Laos, and
11 Cambodia -- of course, not during the Khmer Rouge period -- and I
12 had, since then, extensive interviews with officials from many
13 countries including countries of Indochina, China, and other
14 states.

15 Q: Thank you, and in fact, I believe you conducted one-on-one
16 interviews with key people from Democratic Kampuchea and from
17 Vietnam, during or after the period that you are concerned with
18 in your book.

19 A: Yes, Your Honour.

20 Q: Can you give me a selection of names of the most critical
21 people from the period of Democratic Kampuchea in Cambodia --
22 from Cambodia or from Vietnam?

23 A: From Democratic Kampuchea I had interviewed Vice-Premier Ieng
24 Sary during the period he was in power, and also afterwards. I
25 had interviewed Prime Minister Ph?m V?n ??ng of Vietnam, Foreign

8

1 Minister Minh Ko Tuk (phonetic) and several other senior
2 officials.

3 Q: Thank you. Did you have any opportunity to interview the
4 Sihanouk, or Pol Pot, or Khieu Samphan?

5 A: I had interviewed Prince Sihanouk many times, but not during
6 the period of the Khmer Rouge. And I had not interviewed Khieu
7 Samphan. I had had conversation with him in receptions, but not
8 interviewed him.

9 Q: In Brother Enemy, you record efforts made by Democratic
10 Kampuchea to secure territory within weeks of their assumption of
11 control of the country, and the reference is -- the English
12 reference is 00192196. In that reference, you say:

13 "Within weeks of the capture of Phnom Penh, the Khmer Rouge units
14 had fanned out to secure their land and sea border. Troops were
15 dispatched to the Gulf of Thailand to take control of the islands
16 that the old regime controlled or claimed."

17 Do you recall that reference in your book?

18 [09.33.51]

19 A. (Microphone not activated)

20 By your use of the terms "Khmer Rouge units" and "troops" do I
21 understand you to say that these were armed actions by the
22 Democratic Kampuchea military?

23 A. Yes, Your Honour.

24 [09.34.11.]

25 Q. Thank you.

9

1 Do you remember any instances of fighting over offshore islands?

2 For example, the Mayagüez incident of the 12th of May 1975?

3 A.Yes, I recall that. That was the period when the Khmer Rouge

4 units had attacked the two major Vietnamese islands and

5 eventually the Vietnamese counterattacked and removed the Khmer

6 Rouge presence from these islands.

7 Q.And in your book at 00192195 you say:

8 "Angry young Khmer Rouge soldiers, who had boarded the Mayagüez

9 with only their AK-47 assault rifles, had actually been trying to

10 assert their newly-gained control along the edges of the

11 country's territorial waters."

12 That is still your assessment of the situation?

13 A.Yes, Your Honour.

14 Q.Do you recall attacks on Puolo Wai? Can you comment on that?

15 A.Yes. Puolo Wai is a Cambodian island but the Vietnamese, in

16 their drive to throw the Khmer Rouge out from the islands they

17 controlled; they also proceeded to Puolo Wai and controlled it

18 for a few months before they returned it to the Khmer Rouge

19 regime.

20 [09.36.16]

21 Q.And this attack happened in approximately June of 1975. Is

22 that your recollection?

23 A.Yes.

24 Q.And you have a reference to that at 00192199.

25 I'm going to ask you some questions now about civilians caught up

10

1 in various disputes during the Khmer Rouge regime.

2 In "Brother Enemy" in some detail you set out accounts of various
3 armed actions undertaken by Democratic Kampuchea, particularly
4 during 1977. Do you know the incidents to which I am referring?

5 A.Yes. I think this was the incident in March of 1978. Is that
6 right?

7 Q.Well, let's start with the exclusion of Vietnamese citizens
8 from Cambodia to which you refer at 00192201.

9 Can I just interpose at this stage; do you have a copy of your
10 book with you?

11 A.(Microphone not activated)

12 Q.Yes. Well, in that case the easier reference for you is page
13 16 of the English version.

14 A.Thank you.

15 [09.38.06]

16 Q.At that page you describe the exclusion of Vietnamese citizens
17 from Cambodia and their being forced into the Mekong Delta area
18 of South Vietnam. Do you recall that incident and is there
19 anything you would like to add to that, perhaps giving
20 indications of numbers and the composition of that population?

21 A.I have visited some of the camps where these people were
22 lodged, and it's my recollection that they're all Cambodians, but
23 in the previous period, in the '75-'76 period, there were
24 Vietnamese who were residents of Cambodia also had fled to
25 Vietnam.

11

1 Q.In your book at that page, however, you describe them as
2 "thousands of Vietnamese men, women and children having been
3 driven out of Cambodia." Are you saying that in fact they were
4 Cambodian people, or were they Cambodian people with Vietnamese
5 connections, or what is your assessment of the make-up of that
6 population?

7 A.I think the -- if I'm looking at the same page, page 16, I had
8 said that several hundred Cambodian refugees of Vietnamese and
9 Chinese origin managed to install themselves in a pagoda in
10 Cholon. And then I said that the first five months after the
11 liberation of Phnom Penh, more than 150,000 destitute Vietnamese
12 had flooded into the Vietnamese provinces.

13 So it was not that I saw them. This is -- I was told that these
14 were Vietnamese people.

15 [09.40.48]

16 Q.And then in your book -- for your reference, at page 87 -- ERN
17 reference 00192272, you talk of Khmer Rouge attacks on a string
18 of villages in the Mekong Delta, and that was on the night of the
19 30th of April 1977. Do you recall that particular incident?

20 A.You said 87?

21 Q.Yes, page 87, at the top part of the page, "...since March in
22 preparation for armed conflict."

23 A.Yes. This was an attack I came to know about much later
24 because these attacks Vietnamese did not report at all when they
25 happened in April '77 and even September '77. So the account I

12

1 have is from sources found after the event.

2 Q.And in this account in your book you mention the attack on Tin
3 Bienh township, which alone had caused about 100 civilian deaths.

4 A.Page number?

5 A.Same reference, same part of the page.

6 A.Yeah.

7 Q.You say, "On the night of 30th of April Khmer Rouge had
8 mounted attacks."

9 A.Yeah.

10 Q.Do you recall that this is the incident to which you refer and
11 which you received further information about much later?

12 A.Yes, this was the incident in 1978 when I went to that area
13 and witnessed scores of dead bodies and sign of attack which had
14 happened a day or two earlier.

15 Q.And this particular township is inside Vietnamese territory,
16 is it not?

17 A.Yes, it is indeed.

18 [09.43.43]

19 Q.And at ERN 00192371 which is page 186 for you.

20 You say that:

21 "These attacks, the elimination of ethnic Vietnamese begun in
22 April, culminated in large-scale Khmer Rouge attacks on the
23 Vietnamese border."

24 Is that correct? That's towards the bottom of that page.

25 A.M'hm. So 186 you said?

13

1 Q.Yes, 186, last paragraph:

2 "Security problems too began to preoccupy Vietnam."

3 That's the paragraph that it starts.

4 [09.45.09]

5 "Its relations with Cambodia had worsened steadily since the
6 beginning of 1977. The elimination of ethnic Vietnamese in
7 Cambodia and purge of suspected pro-Hanoi elements begun in April
8 had culminated in large-scale Khmer Rouge attacks on the
9 Vietnamese border."

10 Do you recall that -- those series of incidents that gave rise to
11 that conclusion on your part?

12 A.Yes, I do. And this in fact refers to the first to the attack
13 on April 30th and previous attacks. Basically what I recall was
14 that in 1977 -- in 1977 in May, the Vietnamese -- the Khmer Rouge
15 had decided that they have to carry on attacks inside Vietnam in
16 a sort of defensive manoeuvre, and that was according to the
17 scholar Steve Heder I spoke, he learned that on May 30th the --
18 sorry, in May 1977 the Eastern Zone planned to attack Vietnam and
19 Mr. Hun Sen, who was then a member of the Khmer Rouge, was put in
20 charge of the plan but he told Steve Heder that he would not do
21 it and he took refuge in the jungle on June 20th, 1977.

22 So this is the period when which this series of attacks were
23 mounted against Vietnam.

24 Q.Thank you.

25 [09.47.41]

14

1 Now, in June of 1977 there were, in fact, peace overtures by
2 Vietnam; is that correct?

3 A.Yes.

4 Q.And the reference in your book, for you, at page 91 and the
5 ERN number is 00192276 but in fact at the next page Democratic
6 Kampuchea replied that:

7 "Talks could resume only after a period of time".

8 Do you recall that? That's on the next page, last paragraph
9 before, "Peking bares its teeth."

10 A.M'hm. Yes, I do recall it and I think this was taken from
11 some official document, that information.

12 Q.And it was at this time that Democratic Kampuchea, for the
13 first time, gave a hint of its disputes with Vietnam by praising
14 the soldiers and competence in Kampot province which bordered
15 Vietnam.

16 A.That is correct.

17 Q.Can you tell me if, to your knowledge, any such peace talks,
18 as proposed by Vietnam, took place at this stage?

19 A.Again, I have to apologize for my memory not being as sharp;
20 these things happened some 35 years ago.

21 I do recall that there were some meetings between Vietnamese
22 officials and the Khmer Rouge officials in -- both in Hanoi and
23 in Phnom Penh; different period, not necessarily in this
24 timeframe, and nothing came of it.

25 Q.Thank you.

15

1 You then write of an incident or series of incidents which
2 occurred in September 1977, at page 193 for you, Mr. Chanda, and
3 00192378, and you recount the experiences of an Hungarian
4 journalist's description of a massacre at a village in Tay Ninh
5 province. Do you recall this particular --

6 [09.50.42]

7 A.Yes, I do recall it very well. In fact, I had spoken to this
8 Hungarian journalist and he had given me all the details which I
9 have used in this chapter 7 of the book.

10 Q.Can you tell us where Tay Ninh province is?

11 A.Tay Ninh province is to the west of Saigon, bordering
12 Cambodia.

13 Q.Thank you.

14 And later, in March of 1978, in fact you personally visited Tay
15 Ninh City and in your book, Brother Enemy, you record your
16 experiences at 00192405 which is for you page 220. So this was
17 some months after the incident described to you had taken place;
18 is that correct?

19 A.Yes.

20 [09.52.02]

21 Q.Can you, from 35 years on, give a brief summary of your
22 experiences, from your own firsthand knowledge?

23 A.The village that I visited looked like it has been hit by a
24 storm. It was -- houses were destroyed, a lot of debris still
25 lying around and people are still trying to build new homes in

16

1 the same spot and I met some survivors who had told me about what
2 happened.

3 And I must say, I was shaken by the accounts of the atrocities
4 that were committed during this attack; that I have never heard
5 of such brutalities perpetrated by man on women, children,
6 innocent people.

7 Q.And at page 223 and 00192408 you describe a harrowing scene of
8 unburied bodies which included men, women, and children; is that
9 correct?

10 A.Yes, and that is a visit which is absolutely engraved in my
11 memory and I even have a personal nightmare of those visits.

12 [09.53.56]

13 I have never seen in my reporting career as many bodies of
14 civilians killed most brutally and left there. And the
15 mindlessness of this attack was most astonishing, that I wondered
16 what these people had done to merit that kind of death.

17 And I think one indication of perhaps the reason from that attack
18 was on a mud hut I saw scribbled in charcoal some Khmer words.
19 And I asked the interpreter to read it to me and he said, "It
20 says, 'This is our land'." And that perhaps is the only
21 explanation I could get from the butchery that I saw that
22 morning.

23 Q.Now, I note from the account in your book that you were
24 escorted to the site or facilitated to visit the site by your
25 Vietnamese hosts; is that correct?

17

1 A.Yes.

2 Q.And you note in your book that you were sceptical as to their
3 motives; is that correct?

4 A.Yes.

5 Q.Apart from the slogan written in charcoal, did you have any
6 other indication from your interviews with people in the village
7 as to who had perpetrated these killings?

8 [9.56.10]

9 A.There were Cambodians who came and they basically said in
10 Khmer -- shouted "Chone chone" which in Khmer means "enter". And
11 the people who lived there they were Vietnamese but I think
12 living in the proximity of Cambodia they understood Khmer. So
13 this account is from the survivors as to the identity of that
14 address.

15 Q.And in fact you interviewed a young couple whom you mention at
16 page 22400192409 and they told you of the shouts of "Chone
17 chone"?

18 A.Yes.

19 Q.They also told you what they saw from their hiding place?

20 A.Yes.

21 Q.Is that correct?

22 A.Right.

23 Q.Thank you. Now, is it correct that a few days later you were
24 summoned by your Vietnamese hosts and transported by air with
25 many other members of the media to a town called Ha Tien which

18

1 had formerly had about 3,000 people in it? Is that correct?

2 A.Yeah, I think the sequence was like this; I visited this
3 village that we discussed right now on the same trip. This was
4 in the morning. I was with some other foreign journalists and we
5 were taken on a Vietnamese Army helicopter and flown to this
6 place where I saw this gruesome sight.

7 Q.So the first village, the one that we've just been discussing,
8 is a village called An Phu; is that right? That's at page 221 --
9 the middle of the page, sentence starting, "The suspicion."

10 [09.58.14]

11 A.Yes, this is An Phu village.

12 Q.So on the same trip you were also taken to Ha Tien; is that
13 correct?

14 A.Yes.

15 Q.And this in fact the village where you saw the harrowing
16 sights that we've already described?

17 A.Yes.

18 Q.Now, the people that you saw awaiting burial, were they
19 members of the military?

20 A.No, they were civilians from the village survivors. In fact,
21 our helicopter landed in --- we were taken to Ha Tien airport and
22 from there we travelled on foot. And on the way of course to the
23 village we saw people digging graves, and these were civilians.

24 Q.Thank you. I now want to move to your account of a major
25 attack on Cambodian territory by Vietnam. In your book you refer

19

1 to the first -- what you describe as the first major attack on

2 Democratic Kampuchea by the Vietnamese Army in October 1977.

3 This account is found at 000192381, and for you page 196.

4 [10.00.48]

5 Do you recall writing about this major attack? Second paragraph

6 on that page.

7 A.Yes, I did write this chapter, yes.

8 Q.And in that account you describe it as an unpublicized

9 military operation against Cambodia in October 1977; is that

10 right?

11 A.M'hm.

12 Q.And that the Vietnamese drove armoured columns up to 15 miles

13 into the Cambodian province of Svay Rieng and, in fact, that was

14 a feigned -- a pretend attack. Is that your recollection?

15 A.Yes, that is what I was told by my sources who were familiar

16 with the military operation, that this was designed to basically

17 draw the Khmer Rouge out so that they could be then attacked.

18 Q.And that in fact happened?

19 A.Yes.

20 Q.But you recalled that losses suffered by the Khmer Rouge were

21 not great and did not seem to stop them one bit; is that correct?

22 A.Yes, in fact that is evidenced by the attacks that followed.

23 [10.02.34]

24 Q.And there were, of course, other attacks by the Vietnamese

25 infantry which is described at 00192391, at page 206. And this

20

1 is the major attack made at the end of 1977 and going into 1978;

2 is that correct?

3 A.Yes.

4 Q.And in your book you describe it as:

5 "...a sizeable force of Vietnamese infantry and artillery,

6 including the elite Ninth Infantry Division, launched a massive

7 attack on Cambodia from half a dozen points along the border with

8 two principle prongs heading towards the capital."

9 Is that right?

10 A.Yes.

11 Q.And on the next page you describe the shock felt by the

12 leaders in Phnom Penh at the scale of this attack and at the rout

13 of the Cambodian forces in the Eastern Zone; is that right?

14 A.Yeah, that is what I was given to understand.

15 Q.And you go on to say, "But they," meaning the leaders in Phnom

16 Penh, "were not ready to sue for peace as the Vietnamese had

17 hoped."

18 A.Yes.

19 Q.Is that correct?

20 A.Right.

21 [10.04.25]

22 Q.So by those statements you are asking your readers to infer

23 that the massive Vietnamese attack had been intended as a way of

24 encouraging peace talks with Democratic Kampuchea; is that right?

25 A.Yeah, that was the impression I got talking to people in

21

1 Hanoi; that they wanted -- did not want a full-fledged war and
2 they wanted to give this message to the Khmer Rouge that there is
3 a price to pay if they continue to carry on attacks on the
4 Vietnamese border that they had been doing, and this was an
5 attempt to dissuade them from continuing those attacks. But it
6 didn't seem to have any effect.

7 Q.And of course at this time there were a lot of communications
8 between commanders in the field and the leaders in Phnom Penh, as
9 you would expect.

10 Did you ever cite any of the telegrams that have survived this
11 period?

12 A.I don't believe so.

13 [10.05.45]

14 Q.I'm just going to refer to one at this point: 00289797,
15 addressed to, "Beloved Office 870" and describing the situation
16 of what is described as, "the enemies at Route 22 battlefield"
17 and the writer of the telegram says that:

18 "The enemies have defeated us. They are moving vigorously from
19 the east and along Route 22. We also got hit hard by our enemies
20 from the west and along Route 22 to the east."

21 And goes on to say that:

22 "Though we are fighting hard, we could no longer hold them back
23 because they are attacking us strongly. The enemies used 50
24 tanks to attack us. We have managed to destroy three of those
25 tanks."

22

1 Now, the Khmer for that telegram is 00021443 and there is no
2 French translation.

3 From your inquiries and interviews, did you learn of any
4 consequences for the Eastern Zone Democratic Military as the
5 result of their failure to repel the Vietnamese in December of
6 1977?

7 A. There had been a significant amount of purges of people living
8 along the border, because they were considered to be either
9 sympathetic to the Vietnamese or collaborators. And so there is
10 many reports of huge purges taking place in the Eastern Zone in
11 that -- since the December '77 attack.

12 [10.08.21]

13 Q. And in fact you describe this to some degree at pages 213 and
14 214, ERN numbers 00192398 and 399; is that so?

15 A. Yes.

16 Q. Thank you.

17 I now want to turn to prisoners of war. You are a journalist and
18 I imagine that you were monitoring news reports between Vietnam
19 and Democratic Kampuchea, and indeed internationally, during this
20 period.

21 A. Yes.

22 Q. Are you aware of any broadcasts concerning Vietnamese
23 prisoners of war emanating from Democratic Kampuchea?

24 A. I don't recall any specific broadcast but there were -- what I
25 recall was that Radio Phnom Penh sometimes broadcast reports

23

1 about their having got Vietnamese prisoners of war and their
2 having confessed to certain things, but I have no clear memory as
3 to when that was and what was said.

4 Q.And what about international media reports concerning prisoner
5 of war confessions? Do you recall, for example, a report -- any
6 reports in Far Eastern Relations?

7 A.I don't recall.

8 Q.Well, I'll ask you to comment if you can, but there is one
9 report from Far Eastern Relations from the Swedish collection --
10 there is no translation of it -- 00010984, referring to the
11 confession of a captured Vietnamese ethnic minority soldier,
12 captured after a Cambodian attack on Vietnamese forces.
13 There are also reports of broadcasts by Radio Phnom Penh between
14 the 19th of February and the 20th of February 1978, 00009837, a
15 confession of a captain -- a Vietnamese captain commanding the
16 9th Special Company of the Independent 3rd Regiment of Dong Thap
17 Province, and of a Vietnamese sergeant -- on the confession of
18 this Vietnamese sergeant broadcast the following day.

19 [10.12.06]

20 You have no personal recollection of such broadcasts or media
21 reports in the international media?

22 A.Those days I used to read radio transmissions that was
23 transcribed by the United States Information Service and they
24 used to transcribe broadcasts from Phnom Penh and Hanoi and all
25 those stations, and I certainly have read those broadcasts and I

24

1 must have seen some of those confessions, or whatever was
2 broadcast, but I have no memory of the specific thing that you
3 are mentioning.

4 Q.Of course I fully appreciate that it's a very long time ago,
5 and I'm grateful to you for your efforts to recall.

6 Now, were you aware at the time of efforts made by the
7 International Committee of the Red Cross to safeguard civilians
8 or captured or wounded soldiers during the disputes at the end of
9 19 -- disputes between Vietnam and Cambodia at the end of 1977
10 and the beginning of 1978?

11 A.No, I do not recall any ICRC involvement. Only thing I recall
12 the UN -- on international involvement was, to some extent, UNHCR
13 was being asked to help in providing for refugees in South
14 Vietnam.

15 Q.There is, at 00166143, English only, a copy of the
16 International Committee of the Red Cross (ICRC) annual report of
17 1978 in which it is recorded that the ICRC offered, on the 31st
18 of December 1977, to assist the civilian population affected by
19 the conflict and of captured or wounded soldiers and it gave
20 identical messages, both to Democratic Kampuchea and to the
21 Socialist Republic of Vietnam.

22 [10.14.55]

23 Do you have any comment on that summary?

24 A.No, since I'm unaware of that particular thing I cannot
25 comment.

25

1 Q.And in the same report it notes that a response was received
2 from Vietnam but it received no reply from Democratic Kampuchea,
3 although it had taken the additional precaution of delivering a
4 copy of its message to the embassy of Democratic Kampuchea in
5 Peking.

6 Now, I want to turn to parts in your book where you discuss
7 Democratic Kampuchean policy in relation to the disputes between
8 the two countries. In fact of course you were publishing as an
9 editor and journalist during this time and there is an article in
10 the Far East Economic Review dated 29 April 1977 with the
11 headline "Cambodia Looks for Friends" which was written by you.
12 That's found in English only at 00006000.

13 A.The date was April?

14 Q.April the 29th, 1977.

15 [10.17.00]

16 A.So what was the question; sorry?

17 Q.Yes, I'll put to you a few questions arising out of this
18 article. In this article you report Ieng Sary's dismissal of any
19 intention on the part of Democratic Kampuchea to form part of a
20 monolithic Indochina and you also refer to border disputes
21 between Democratic Kampuchea and Vietnam; is that correct?

22 A.Yes.

23 Q.You also mention a quote by Ieng Sary, quoted as saying to the
24 ASEAN countries that Democratic Kampuchians are not Communists;
25 is that right?

26

1 A.Yes.

2 Q.Further, there is reference in the article to disputes
3 described as border incidents with Thailand. Do you recall that
4 reference?

5 A.Yes, I do, Your Honour.

6 Q.Were these border incidents, to your knowledge, armed
7 disputes?

8 A.Yes, they were.

9 Q.Yes, thank you.

10 Now, there is a report to which I wish to refer in Far Eastern
11 Relations, the report is dated the 15th of May 1978 and it refers
12 to a broadcast made on the 10th of May 1978. The ERN reference
13 is D60 Annex 260, English ERN 00003959 to 00003962; Khmer
14 00225460 to 00225468; and French 00280403 to 00280407.
15 [10.20.11]

16 And in that report which is excerpts of a broadcast on the
17 national defence situation from April 1977 to 1978, clashes on
18 the western border were mentioned as causing little concern but
19 the rest of the report focuses primarily on the defence of the
20 eastern border.

21 Now, this seems to be quite a major policy statement from
22 Democratic Kampuchea, do you recall this broadcast or the
23 information arising from this broadcast?

24 A.I do not recall specifically this broadcast but it had become
25 increasingly clear that although Democratic Kampuchea had border

27

1 dispute with both its neighbours it was Vietnam which was the
2 biggest concern to the regime.

3 Q.In this report I'm going to read out or summarize some of the
4 statements made from this broadcast. The first is:

5 "The defence of the eastern border has been a matter of vigorous
6 and strenuous battle because to the east Cambodia shares a border
7 with Vietnam. The Vietnamese want to take our territory and turn
8 Cambodia into their satellite, making it part of Vietnam. It was
9 for this reason that during the past year a number of serious and
10 violent battles were fought against the Vietnamese."

11 Now, bearing in mind that that is a statement from Democratic
12 Kampuchea, does it accord with your understanding of the
13 country's policy at that time?

14 [10.22.48]

15 A.Yes, it certainly does. In fact, this has been, in fact, the
16 core issue, the Cambodian, especially Khmer Rouge, concern about
17 Vietnamese ambition, and an expansionist desire as the site being
18 a principal motivation for them to be opposing Vietnam's idea of
19 a special relationship in the -- in your earlier question you
20 asked me about Ieng Sary's comment about joining a monolithic
21 block, what Ieng Sary was referring to was the Vietnamese concept
22 of special relationship in between the countries of Indochina
23 that Vietnam believes was forged during the anti-colonial
24 struggle and was essential to maintain for the security and
25 development of the three countries, whereas the Khmer Rouge

28

1 totally disagreed with that approach and they considered special
2 relationship is a disguise for Vietnamese attempt to control
3 Cambodia and take over its land and resources.

4 [10.24.26]

5 Q.Thank you.

6 The same report of the broadcast refers to continuous fighting
7 from 17 April 1977 to 17 April 1978 involving small, medium,
8 large-scale battles, and a victory over the Vietnamese on 6
9 January 1978.

10 Does that accord with your knowledge, although it is a heavily
11 summarized account?

12 A.No, it doesn't. In fact what is true is that there was
13 continuous skirmishes along the border and in fact the Vietnamese
14 had also started bombing and strafing inside Cambodia by using
15 their air force. Those were not reported in the media. I
16 learned about them from intelligence sources. And neither did
17 the Khmer Rouge acknowledge that they were facing this kind of
18 attack from Vietnam.

19 And the story about the great victory in January 1978, I very
20 strongly doubt it.

21 Q.Can I ask you about the bombing and strafing inside Cambodian
22 territory by the Vietnamese? Can you tell me at what period that
23 started?

24 A.I can't find it right now but my memory is that this was
25 happening in the June-July of '78.

29

1 Q.Thank you.

2 So it was occurring after diplomatic relations were broken off
3 with Vietnam by Democratic Kampuchea?

4 A.Yes.

5 [10.27.02]

6 Q.Thank you.

7 Now, you said that you were sceptical about the statement that
8 Democratic Kampuchea had had a victory over the Vietnamese on the
9 6th of January 1978. This report of the broadcast also records
10 that 29,000 Vietnamese troops were killed or wounded as the
11 result of this "victory" and five divisions were smashed.
12 Are you able to accept that account?

13 A.I'm afraid not. I think the Khmer Rouge broadcasts of their
14 alleged victory against the Vietnamese forces were kind of not
15 taken seriously by any analyst who knew about the state of play
16 between the two armies.

17 Q.And in the same report of the broadcast made on the 10th of
18 May 1978 there is an account of a second phase of a Vietnamese
19 attack at the end of February 1978 which, according to the
20 broadcast, resulted in the defeat of Vietnamese forces in March
21 of 1978.

22 Does this account accord with your knowledge of the situation?

23 A.I don't think so. I think in March '78 that was the time when
24 I was in Vietnam and travelling along the border. That was the
25 time when I went to this village where I saw the massacre, and

30

1 unless the Khmer Rouge considered the killing of the civilians
2 inside Vietnam as a great victory, I did not see anything
3 suggesting that the Vietnamese had suffered any losses on the
4 part of their army or the Khmer Rouge had won their victory.

5 [10.29.30]

6 Q.This report also contains a statement, which is reflected in
7 other places, that one Cambodian soldier is equal to 30
8 Vietnamese soldiers. Are you able to comment on the reasons for
9 making that statement -- that Democratic Kampuchea might have had
10 for making that statement, rather than on the accuracy of the
11 statement?

12 A.From what I recall, that statement I think was on May 30th,
13 1970, a broadcast if I recall correctly the date. That broadcast
14 came in the wake of massive purges of alleged Vietnamese
15 sympathizers and supporters of Vietnam Eastern Zone, and the
16 broadcast, to me, was designed to boost morale of the Khmer Rouge
17 cadres about the war that they were going into, because I think
18 anybody who had seen the situation on the ground would have known
19 how far superior the Vietnamese military were, and it must have
20 caused some demoralization.

21 And so this notion that one Cambodian can actually kill 30
22 Vietnamese and that equation that we will lose two million
23 Cambodians and in the process will kill all the Vietnamese, it is
24 not a rational statement but this is a statement designed to
25 boost morale.

31

1 Q.Now, you mentioned another broadcast which obviously you did
2 monitor. The particular to which I am referring has no names
3 indicating who made or authorized the broadcast. From your
4 research are you able to say who might have done that?

5 A.Are you asking me about this particular broadcast?
6 [10.32.02]

7 Q.Well, it's possible that the one to which you are referring is
8 one and the same as this one. It's quite an extensive report.
9 But in general, a statement such as this which contains a great
10 deal of policy, shall we say propaganda and other material, who
11 would have made or authorized the making of the broadcast? Are
12 you able to comment on that?

13 A.I'm afraid I am not familiar with the internal organization of
14 the Khmer Rouge as to how a particular broadcast was drafted and
15 who authorized their airing.

16 Q.Thank you.

17 In Brother Enemy at ERN 00192190, and for you page 5, you discuss
18 the motivation for Democratic Kampuchea's armed struggle with
19 Vietnam and a section which starts:

20 "The fall of Saigon and Phnom Penh was followed by bloody
21 clashes between the victorious Vietnamese and Cambodian
22 Communists over control of the islands in the Gulf of
23 Thailand..."

24 [10.34.23]

25 And so on. From that quotation am I to infer that your view of

32

1 Democratic Kampuchea's motivation was as follows; that there was
2 hereditary enmity between Cambodia and Vietnam; is that correct?

3 A.Yes, Your Honour.

4 Q.That there was a fight for control of the islands in the Gulf
5 of Thailand?

6 A.Yes, Your Honour.

7 Q.That there was action by Democratic Kampuchea to prevent
8 being. "swallowed by Vietnam;" is that correct?

9 A.Yes.

10 Q.And action, on the other hand, by Vietnam to prevent being
11 dominated by Democratic Kampuchea's backer, China; is that right?

12 A.Yes.

13 Q.So this is the conclusion that you have reached in your book
14 as the result of your research in relation to the disputes
15 between the two countries?

16 A.Yes. If you would permit me to go a little bit back in
17 history, in some ways the Geneva Conference of 1954 was the kind
18 of starting point for the Khmer Rouge -- development of the Khmer
19 Rouge ideology which saw Vietnam as a mortal threat. This notion
20 developed, of course, from the reading of history, that Angkor
21 Empire covered almost all of mainland Southeast Asia in the 12th
22 century. And since then it has shrunk as its territory has been
23 taken by its two neighbours, Thailand and Vietnam. And that
24 historical fact has been a major concern of the Khmer
25 nationalists of all hues.

33

1 [10.36.43]

2 What the Khmer Rouge saw in the Geneva Conference the partners of
3 Vietnam, Laos and Cambodian parties, they were not given reward
4 for their struggle. Vietnam obtained northern Vietnam and
5 eventually South Vietnam. Laos -- they were given control of two
6 provinces in Laos whereas the Khmer revolutionaries were not
7 given a seat at the table and the only thing Vietnam did was to
8 take some 2,000 Khmer cadres to the north so that they can live
9 in Hanoi and not be bothered by the government in -- Royal
10 Government of Cambodia.

11 So this was seen as a Vietnamese design to ensure their control
12 first in Vietnam and then they will have their -- expand their
13 control through the special relationship that Vietnamese has
14 asked for.

15 So this was clearly the Cambodian concern and on the part of the
16 Vietnamese they again had a long historical struggle with China.
17 Chinese controlled Vietnam for 1,000 years, ruled it. And for
18 the next 1,000 or so years Vietnamese had fought many times
19 Chinese attempts to impose their rule on Vietnam.

20 [10.38.22]

21 So the Vietnamese saw Cambodia being the cat's paw of the
22 Chinese, using Cambodia to harass Vietnam in the south. That was
23 the Vietnamese analysis of the situation. So the territorial
24 disputes became the kind of flashpoint. But behind those were
25 these long-term concerns about the destiny of the country, their

34

1 ability to control the territory.

2 Q.Yes, thank you very much. That's very helpful.

3 Now, among your written sources for the writing of your book

4 Brother Enemy, did you include the publication by the Democratic

5 Kampuchean government, "The Black Paper" published in September

6 1978?

7 A.Yes, I did.

8 Q.The ERN number for that is 4.9, English, 0082510 to 0082560;

9 Khmer, 00289644 to 00289722; and the French, 00083173 to

10 00083284.

11 How would you describe this publication by the Democratic

12 Kampuchean government published in September 1978?

13 A.It's a curious document. It is a mixture of facts and

14 fantasy. A lot of the things that "The Black Paper" says are

15 historically inaccurate but what is important, and I found

16 fascinating at the time reading, was that the insight it gave you

17 into their thinking, not necessarily saying whether what that's

18 saying is true or not as to why they are saying this and what is

19 the implication of their saying it.

20 [10.41.13]

21 And what struck me most was the openly racist position they took

22 with the Vietnamese. And in my judgment that anti-Vietnamese

23 racism has been a major factor behind all the massacres,

24 executions, killings, because the book "The Black Paper"

25 describes the Vietnamese nature as aggressive. So it is not the

35

1 Vietnamese rulers, Vietnamese party. It is the Vietnamese people
2 as a whole that are aggressive, and that was the message "The
3 Black Paper" gave.

4 And from there it follows that people who have any sympathy for
5 Vietnam or Vietnamese policies or who may be connected in some
6 fashion with Vietnam are, ipso facto, enemies of the Democratic
7 Kampuchea and I think that equation between anti-Vietnamese
8 racism and considering people who are sympathetic to Vietnam or
9 Vietnamese policies, being the enemy of the country. And that
10 was the conclusion that I drew from reading that book.

11 Q.Thank you.

12 And before we take an adjournment and give you and everyone else
13 a break, you will have noted a disclaimer in the paper at
14 00082514 which says:

15 "This 'Black Paper' is not the result of any research or a
16 thesis but a document gathering together all the actual facts and
17 events during the successive struggles."

18 And that of course emphasizes your comments that it was partly
19 factual and partly -- and I quote you "fantasy;" is that correct?

20 [10.43.27]

21 A.Yes, I think so.

22 JUDGE CARTWRIGHT:

23 Well, I think, Mr. President, this may be a good opportunity to
24 take an adjournment.

25 MR. PRESIDENT:

36

1 The Court will adjourn for 20 minutes until 11 a.m. when we will
2 resume and continue our proceeding.

3 Court official, can you facilitate the expert during the break?

4 (Judges leave courtroom)

5 (Court recesses from 1044H to 1102H)

6 (Judges enter courtroom)

7 [11.07.07]

8 MR. PRESIDENT:

9 Please be seated. The Chamber is now back in session.

10 Before I give the floor to Judge Cartwright to continue her
11 questions to the expert I, the President of the Chamber, would
12 like to remind Judge Cartwright that because the question is in
13 English and the expert also is speaking English, for his
14 immediate response to the question it's difficult for the
15 interpreters. So please leave a gap between each question and
16 response, and please try to slow down a little bit so that the
17 interpreters could interpret both the questions and the
18 responses.

19 And now I would like to give the floor back to Judge Cartwright
20 to continue her questions to the expert.

21 JUDGE CARTWRIGHT:

22 Yes, thank you, Mr. President.

23 BY JUDGE CARTWRIGHT:

24 Q.Before the adjournment we were discussing "The Black Paper," a
25 document of the Democratic Government published in September of

37

1 1978.

2 In your book Brother Enemy you refer to that document at page 196

3 -- 00192381. About halfway down that page you said:

4 "Curiously enough, in its official indictment against Vietnam,

5 the 'Black Book' published by the Pol Pot regime in September

6 1978 makes no mention of the October 1977 attack by the

7 Vietnamese."

8 I want you to comment on your term "the official indictment

9 against Vietnam." Why did you draw that conclusion?

10 A.I was surprised that "Black Book" is in fact a presentation of

11 the Khmer Rouge case against Vietnam, all the terrible things

12 they have done, and it would have been logical for the Khmer

13 Rouge to mention that there was an attempt to assassinate Pol Pot

14 or that there were plans for uprising, that Vietnamese may have

15 been involved, but not mentioning that, that was curious and I --

16 my speculation would be that they did not want, again, to

17 demoralize the population or the cadres by mentioning such

18 attempt by people from within the Party.

19 So that was the reason perhaps why those efforts to unseat Pol

20 Pot in that period was left out.

21 [11.11.45]

22 Q.Thank you.

23 At chapter 6 of "The Black Paper," 00082549, the author or

24 authors describe events from April 17, 1975 to the first semester

25 of 1977. In the first part of that chapter "The Black Paper"

38

1 comments on the liberation of South Vietnam on the 30th of April
2 1975, at which point the Communist Party of Kampuchea asked the
3 Vietnamese to withdraw, by the latest at the end of June 1975.
4 The author of "The Black Paper" goes on to say that the
5 Vietnamese remained in Cambodian territory, and says:
6 "By keeping its forces to stay in Kampuchea's territory, Vietnam
7 wanted to control Kampuchea, the Party and Kampuchea's people,
8 and to organize the people in order to create difficulties for
9 Kampuchea's revolution. It also wanted to create basis for its
10 future aggression."
11 Is that an analysis which you would be able to comment on?
12 [11.14.28]
13 A.I believe that this analysis is somewhat an amalgamation of
14 events over a period and not necessarily of the early months or
15 weeks of 1975 because from what I recall the Vietnamese were
16 angry at the Khmer takeover of Phú Quốc and Thổ Châu Islands in
17 April/May '75 and they counterattacked and took a Cambodian
18 island away which they held on for some weeks and that is the
19 only thing I can remember the Vietnamese were in occupation of in
20 the first months of the victory in Vietnam and in Cambodia.
21 But in 1977/78 period Vietnamese army did enter Cambodia, and in
22 fact indeed maintained their presence inside Cambodia up to 15,
23 20 miles inside as a kind of buffer from the Khmer Rouge attack
24 against Vietnamese territory.
25 So it seems to me that this is -- there is a sort of either

39

1 deliberate or sort of confusion of memory as to when the
2 Vietnamese were inside Cambodia after the initial attacks.
3 Q.And at the same page in "The Black Paper," the author
4 describes border attacks by the Vietnamese continuously launched
5 against the Revolutionary Army of Kampuchea and Vietnam's
6 unceasingly provoked incidents. It further describes how Vietnam
7 sent its nationals to settle in Kampuchea's territory along the
8 borders and concludes:

9 "Thus the Vietnamese attacked Kampuchea immediately the day after
10 her liberation."

11 Do these comments suggest to you that between May 1975 and
12 January 1978, at least, that Democratic Kampuchea considered
13 aggression by the Vietnamese to be more or less continuous?

14 A.It seems to me that this was a post facto justification of
15 their own attacks because from what I have witnessed and what I
16 have read the Vietnamese were extremely careful in not provoking
17 the Khmer Rouge, accepting that occupation of (inaudible) until
18 the middle of 1977. In fact, the first indication that the
19 Vietnamese are not going to be tolerating that continuous Khmer
20 Rouge nibbling attacks along the border was when, in July of '77,
21 Vietnamese Defence Minister Võ Nguyên Giáp was sent to inspect
22 the Cambodia border all along Vietnam and more importantly that
23 visit which could have been kept confidential was actually
24 reported by the Vietnamese media as a kind of warning to the
25 Khmers that we are not going to be tolerating what you have been

40

1 doing.

2 [11.19.55]

3 So I have no reasons to believe that the Vietnamese were engaging
4 in this kind of attack, that the passage you read mentions.

5 Q.Thank you.

6 Are you familiar with the report in Far Eastern Relations of a
7 speech given by Pol Pot, the Secretary of the Central Committee,
8 at a 17 January 1978 mass meeting on the 10th anniversary of the
9 Cambodian Revolutionary Army? This is a report of the speech
10 dated 19 January 1978. Its reference is Document 17.2

11 Introductory Submission, English, 00008671; Khmer, 00224837 to
12 00224852. There does not appear to be a French translation.

13 Are you familiar with that speech or the report of that speech or
14 do you recall it as part of your research for your book?

15 A.I'm absolutely sure that I had read that but at this point I
16 do not recall what the content would have been.

17 Q.In that speech Pol Pot is reported as saying, on the 17th of
18 January 1978:

19 "Since May 1975 these Vietnamese border defence security units
20 have provoked countless incidents along the border from Kampot to
21 Rattanakiri."

22 That again implies, does it not, that in the view of Democratic
23 Kampuchea there was constant aggression by the Vietnamese on the
24 Cambodians?

25 [11.23.00]

41

1 A.As I said before, I think the Vietnamese attack on Cambodia
2 really began in 1977 until that point. The two Khmer Rouge
3 attacks which shook the Vietnamese, one was April 30th, 1977 --
4 April 30th happened to be the anniversary of the fall or
5 liberation of Saigon and that was the day when everybody was in a
6 festive mood and no security was present and that was the day
7 when the Khmer Rouge attacked and virtually killed many
8 civilians. And the second that attack, which was again very,
9 very brutal was on 27 September, which happened to be, like April
10 30th, a Saturday, and apparently the Vietnamese officers they go
11 off weekend. And so Saturday was again chosen by the Khmer Rouge
12 to launch these attacks. And those attacks, plus the information
13 that the Vietnamese had about Chinese military aid beginning to
14 arrive in Cambodia, made them more concerned that this is not a
15 case of Khmers acting somewhat irrationally and attacking
16 villages along the border. It may be part of a bigger plan in
17 which Chinese are involved, and so that was when, I think,
18 General Giáp's visit took place and the Vietnamese Politburo met
19 several times to decide the course of action vis-à-vis Cambodia.
20 [11.25.01]

21 Q:Thank you. During the period of the Democratic Kampuchean
22 regime there were a number of media reports concerning the
23 disputes between Vietnam and Cambodia, were there not?

24 A:Yes, there were.

25 Q:So the international community was relatively well-informed of

42

1 the situation between the two countries?

2 A: I wouldn't say well-informed, but -- because for a variety of
3 reasons, which is perhaps too much of a detail to go into, both
4 the Vietnamese and Cambodians kept many of their conflicts and
5 attacks secret for a long time. So people like me, who are
6 trying to figure out what is going on, we were doing kind of tea
7 leaf reading by analyzing the broadcasts from Radio Phnom Penh and
8 Hanoi and seeing a particular use of word: what does it mean?

9 Why is it being said? Perhaps something going on? So the lot of
10 understanding or suspicion of what is going on between Vietnam
11 and Cambodia was based on inferences read from official
12 statements, rather than actual revelation of what was going on.

13 Q: Thank you. And, in addition to that type of statement, there
14 were investigations done based, presumably, on intelligence by
15 countries such as the United States of America; is that correct?

16 A: Yes.

17 Q: Are you familiar with a report prepared at the request of the
18 Sub-committee of Asian and Pacific Affairs on the fourth of
19 October 1978, for the benefit of the Congress of the United
20 States?

21 [11.27.30]

22 I'll first read out its ERN numbers, which are D84/14 English,
23 00187375 to 00187397; Khmer, 00251353 to 00251356; it does not
24 appear a translation in French. In this report, what is
25 described as the Vietnam-Cambodia Border War is summarized and I

43

1 will briefly go through the Congressional summary as it
2 understood it as at October of 1978.
3 First, following the victory for Communism in Indochina in April
4 and May 1975, the report speaks of a series of land and island
5 grabs by both Vietnamese and Cambodians. Then in August 1975,
6 increased Cambodian incursions into Vietnam. Then in December
7 1975, the Cambodians, according to the Vietnamese, engage in a
8 series of border skirmishes in the highland provinces of Kontum
9 and Daklak and according to the Cambodians, the Vietnamese
10 attempt to sponsor a coup d'état against the Cambodian
11 government, which attempt failed.
12 In -- on April 30, 1977, after what the report describes as one
13 year of relative quiet, according to Vietnam, Cambodia sends
14 division-sized forces into Ha Tien, Châu ??c region. Then in
15 September -- in the summer, rather, of 1977, there are attempts
16 to mediate but in September of that year, Vietnam launches
17 systematic and extensive attacks into Cambodia described as
18 shallow attacks; less than 10 miles penetration, for the most
19 part. Then, on the 25th of December 1977, the Cambodians go
20 public with the war. And in April -- in January of 1978,
21 Vietnamese military forces invade and take some 400 square miles
22 of Cambodian territory. In April of that year, border clashes
23 continued through late winter and into early spring. In June of
24 1978, Hanoi reports a new series of border incidents in the Tay
25 Ninh and Kontum regions.

44

1 [11.32.58]

2 Of course, this report is prepared prior to the final incursion
3 by the Vietnamese. That brief summary for the US Congress, does
4 it coincide with your understanding of the disputes between the
5 two countries over that period?

6 A:Yes, it does. In fact, what I said earlier, about the two
7 major attacks, April 30 that is the attack the report mentions in
8 Ha Tien, Châu ??c area and the second attack was in September.
9 And the Khmer Rouge publicly denouncing the attack and breaking
10 the relationship on December 31st, 1977 actually followed a
11 Vietnamese -- massive Vietnamese invasion, which took place on
12 December 24th.

13 So that was the immediate context for the Khmer Rouge declaration
14 of breaking off relationship.

15 Q.Thank you.

16 Now, there were a large number of international news reports,
17 most of them emanating from newspapers in the United States, and
18 I'm going to put just a small number to you to see if you either
19 recall the report or the incident being reported: 00165943 from
20 The New York Times on the 29th of April 1975, reporting on the
21 new Cambodian government's notice served, apparently aimed at
22 North Vietnam, that no foreign military bases would be tolerated
23 in Cambodia.

24 Does that accord with your knowledge of around that period?

25 A.Your Honour, it doesn't, because 29th April was the day before

45

1 Saigon fell to the Communist forces and I was busy with something
2 else.

3 [11.36.03]

4 Q.And then on the 14th of June 1975 Associated Press report in
5 The New York Times, recording that on the 13th of June Puolo Wai,
6 an island off the coast of Cambodia, was captured by Vietnamese
7 troops. That of course accords with the testimony that you have
8 already given.

9 Then on the 21st -- I'm sorry, that ERN number was 00165960.

10 Then on the 21st of June 1975 a report in The New York Times
11 again, 00165962, noting North and South Vietnamese military
12 forces fighting battles with Cambodian Communists in Cambodia,
13 and noting that the Cambodian fighting took place in border
14 regions and could have been caused by centuries-old frontier
15 disputes or by North Vietnam's refusal to withdraw troops from
16 sanctuaries established during the Vietnam War.

17 Does that accord with your recollection from that period?

18 A.No, it doesn't, because immediately after the Communist
19 victory in Vietnam they were dealing with a flow of Vietnamese
20 residents from Cambodia who were expelled from Cambodia, and
21 basically accommodating them, providing protection to those
22 people, I think was the most important task in the initial weeks
23 after the Communist victory in Vietnam.

24 And I have difficulty imagining that Vietnamese could have
25 maintained their military bases inside Cambodia after 1973. If

46

1 one might digress a little bit into the past, the
2 Vietnamese-Cambodian cooperation was pretty intense in 1971.
3 There were major operations that the Vietnamese mounted against
4 Lon Nol government's attack on the Khmer Rouge areas, and so the
5 -- and since '73 Vietnamese presence was basically ended by the
6 Khmer Rouge.

7 [11.39.57]

8 Q.So you disagree to some extent with this report, which I
9 should note says in its body is based on information that comes
10 from thoroughly reliable sources and from Americans who are still
11 in the area?

12 A.Yes. As a reporter I'm familiar with some reliable sources.

13 Q.Then The Washington Post on the 26th of September 1977, ERN
14 number 00166297, records:

15 "Clashes on the Vietnamese border have been fierce and involve
16 aircraft and artillery."

17 And, moreover, mentions other battles concerning Thailand, and
18 summarizes to some degree the dispute at this stage concerning
19 boundaries -- Democratic Kampuchea borders.

20 So again, as a summary, would you have any disagreement with that
21 very brief analysis?

22 A.No, I won't because, as I mentioned earlier, this major attack
23 on September 24th is, I think -- to correct the record, I think
24 in the past I mentioned September 27th. It was actually
25 September 24th, 1977 that was the major attack.

47

1 Although this attack at the time was not reported by the
2 Vietnamese or the Cambodians, clearly The New York Times had some
3 other sources to be able to report that action on the border.

4 [11.42.26]

5 Q.Then a report in The New York Times, 31st December 1977,
6 00166010, recording the statement by Cambodia severing diplomatic
7 relationships with Hanoi because of border fighting.

8 Does that accord with your recollection from that period?

9 A.I do not recall reading The New York Times but this was a
10 major news story all over the world because this was the first
11 time that the Phnom Penh radio had actually denounced Vietnam
12 openly and announced the break of relations.

13 [11.43.32]

14 Q.In the Los Angeles Times on the 16th of January 1978 there is
15 a report with the headline, "Cambodians Counterattack Into
16 Vietnam;" 00166155.

17 This report mentions the incursion by Cambodian troops into Ha
18 Tien and the Vietnamese invasion force, and goes on to say:
19 "The Cambodian commanders are under orders to attack the
20 Vietnamese wherever they are vulnerable and to take no prisoners,
21 according to sources. Some prisoners [the report says] are known
22 to have been executed."

23 Does this report accord with your knowledge of the situation in
24 January of 1978?

25 A.I have no specific information about that particular attack

48

1 that The New York Times report mentions, nor of the orders about
2 not taking any prisoners. But generally, judging by what has
3 happened in the past and since then, it seems to be the Khmer
4 Rouge policy of not taking prisoners unless the prisoner was of
5 certain value for intelligence purposes.

6 [11.45.40]

7 Q.And in the final of my very small selection of news reports,
8 from The Washington Post -- no, in fact from Los Angeles Times,
9 December the 4th, 1978, a report headlined, "Vietnam Offensive
10 Reportedly Starts in Northeast Cambodia;" that's 00166128.
11 Does that accord with your recollection of the -- what was
12 occurring at that time?

13 A.Specifically no, because I do not recall any particular attack
14 in early December, because my reading of the situation then was
15 that the Vietnamese High Command had decided to launch their
16 invasion of Cambodia on January 1st, 1979 but that date had to be
17 pushed forward when the Khmer Rouge launched attack on 20th and
18 21st December of '78. That led the Vietnamese authorities to
19 bring forward their invasion date and they launched the attack on
20 Cambodia on 23rd December. So that was the attack which ended up
21 in coming to Phnom Penh.

22 [11.47.55]

23 Q.This report refers to a strong drive by Vietnamese forces on
24 December the 4th to cut off Cambodia's vast northeast provinces
25 and provide a liberated zone for the new Cambodian Communist

49

1 Front and, according to authoritative sources, was announced with
2 great fanfare in Hanoi on the preceding Sunday.

3 Do you have any comment?

4 A.Yeah, that report is correct. Indeed, on December 2nd, 1978,
5 according to the Vietnamese reports -- I don't know of any
6 independent journalist being present there -- the Vietnamese
7 media reported that in the Kratie province there was a resistance
8 -- Cambodian resistance organization called United Front for
9 National Salvation of Kampuchea was launched and they -- and it
10 was headed by Heng Samrin, who later on became the President of
11 the People's Republic of Kampuchea.

12 Q.Thank you.

13 Now, at a certain point it's already clear that Democratic
14 Kampuchea broke off diplomatic relations with Vietnam, and you in
15 fact refer to this in your book. At ERN 00192392 to 393 you
16 speak of this severing of diplomatic relationships, and in fact
17 there is a copy of the statement itself at 00169517 in English;
18 in Khmer, 00239632 to 00239633; and in French, 00238804.

19 Reading from the statement itself:

20 "The Foreign Ministry of Democratic Kampuchea on 31 December
21 1977 is reported as saying, first, that the Government of
22 Democratic Cambodia decides to temporarily sever diplomatic
23 relationships with Vietnam as from that date until the aggressor
24 forces of Vietnam withdraw from the sacred territory of
25 Democratic Cambodia and until the friendly atmosphere between the

50

1 countries is restored."

2 And secondly, the diplomats and embassy personnel of Vietnam

3 accredited to Democratic

4 Cambodia are given a deadline for leaving Phnom Penh.

5 Was this the first time that there was an open statement of the

6 policy of Democratic Kampuchea in relation to its relationship

7 with Vietnam?

8 A.It is my belief that that was the first time that a clear

9 statement was made denouncing Vietnam, I don't think the break of

10 relationship, at least suspension of relationship re Vietnam.

11 Q.And of course approximately one year later the Vietnamese

12 began their major and final attack on Democratic Kampuchea; is

13 that correct?

14 A.Yes, Your Honour.

15 [11.54.45]

16 Q.During the period of that major attack, did Democratic

17 Kampuchea take any steps to seek a diplomatic resolution with

18 Vietnam?

19 A.I don't believe so.

20 Q.Were you aware of a telegram dated 3 January 1979 from the

21 Deputy Prime Minister Ieng Sary, who was then in charge of

22 foreign affairs, to the President of the Security Council, asking

23 for its assistance?

24 A.I might have known about it but I do not recall at this point.

25 Q.That ERN Number is D60 00081225; Khmer, 00277203 to 00277204.

51

1 Between the date when Democratic Kampuchea severed diplomatic
2 relationships with Vietnam in December of 1977 and the final
3 incursion by Vietnam one year later do you know of any other
4 attempts to invoke the assistance of the United Nations or any
5 other diplomatic resolution of the dispute between the two
6 countries?

7 A.I do not recall anything that would have been more than
8 Performa that would have got the attention of the media because
9 there had been attempt in the past to negotiate directly with
10 Vietnam which had not produced results, and my hunch would be
11 that those -- the January 3rd letter or any other communication
12 that may have been sent to the UN later on was essentially for
13 the record, not meant to be taken seriously.

14 Q.Thank you.

15 [11.57.48]

16 Now, of course in your book Brother Enemy you discuss the capture
17 of Cambodian territory from the east, culminating in the capture
18 of Phnom Penh by the Vietnamese in January of 1979.

19 The accused does not dispute the fact of the severing of
20 diplomatic relationships culminating in the incursion by the
21 Vietnamese and the capture of Phnom Penh, but for the sake of
22 completeness, could you give us a very brief outline of the
23 events that culminated on the 6th of January 1979, from your
24 research?

25 A.I have talked to a whole bunch of people, Vietnamese, Khmer,

52

1 foreigners who were knowledgeable about the events at the time
2 and tried to reconstruct what happened in that period, January 6
3 and 7 in Phnom Penh and I -- what I had not written in my book
4 because I was unaware at the time, I learned later on that the
5 Khmer Rouge resistance, was pretty ferocious, the Vietnamese, I
6 don't think they expected that outgunned, outnumbered Khmer Rouge
7 would fight so ferociously.

8 And they had -- I had perhaps written in my book and others
9 thought so that the Vietnamese went through Cambodia like knife
10 in butter; that was not the case, Vietnamese had to fight very
11 hard and they used artillery tank and aircraft and the -- and I
12 suppose because of that fierce resistance by the Khmer Rouge, the
13 -- Phnom Penh was not evacuated till the last minute. I think
14 there was perhaps expectation that the Vietnamese would not be
15 able to take Phnom Penh.

16 [12.00.47]

17 So from what I gather that Pol Pot himself left in the morning of
18 January 7th, so the evacuation order was given on January 6th.

19 In fact earlier, on May 2nd some diplomats, Prince Sihanouk were
20 asked to evacuate Phnom Penh and go to Battambang and they were
21 brought back to Phnom Penh on January 4th or 5th because it was
22 seen Phnom Penh was safe. And then of course the Vietnamese
23 succeeded in breaching the Khmer Rouge resistance and captured
24 Phnom Penh on January 7th.

25 JUDGE CARTWRIGHT:

53

1 Thank you, Mr. President, I have no further questions at this
2 time.

3 MR. PRESIDENT:

4 Judges of the Bench, do you have any questions to be put to the
5 expert? If you have, the floor is yours.

6 BY JUDGE LAVERGNE:

7 Q.Mr. Expert, earlier on you spoke to us about the context that
8 preceded the period which we are focusing on now and you spoke,
9 in particular, about the relations that might have existed at the
10 beginning of the 1970s between the Communist -- Vietnamese
11 Communist Armed Forces and the Khmer Rouge Army.

12 [12.02.57]

13 And you told us that in 1971 in particular there had been major
14 military actions that were carried out together between both
15 armies. And then you mentioned a change that took place as of
16 1973. Can you therefore tell us what you believe is -- can you
17 tell us what you think were the reasons for this change, was it
18 because -- was this departure of the Vietnamese forces -- did
19 this happen in a smooth way or on the contrary did this give rise
20 to difficulties, and do you believe that in 1975 there were still
21 armed Communist Vietnamese forces in Cambodia?

22 [12.04.25]

23 A.The Vietnamese Communist movement and the Khmer Communist
24 movement have a long history of cooperation and conflict. There
25 are two periods when there was very close cooperation. One was

54

1 prior to the 1970 coup d'état against Prince Sihanouk and then
2 immediately after that the Vietnamese forces came in a large
3 number inside Cambodia and fought the Lon Nol regime which had
4 overthrown Prince Sihanouk.
5 And the two major operations launched by Lon Nol regime,
6 Operation Chenla I and Chenla II, these were defeated thoroughly
7 by the Vietnamese forces inside Cambodia. And after those
8 attacks Lon Nol was actually on the defensive.
9 In the meanwhile, on the international front, Vietnam was
10 negotiating with the United States for the end of the war and the
11 Paris peace talks which were going on, in the Paris peace talks
12 the United States wanted Vietnam to bring the Cambodians to the
13 table so that Cambodia conflict could be also resolved at the
14 Paris talks. And Vietnamese suggested that to the Khmer Rouge
15 and Khmer Rouge rejected because Khmer Rouge believed that
16 militarily they had now the upper hand and there was no reason to
17 go into talks with Lon Nol government or the Americans and they
18 could win a victory without such talks.
19 So as a result they rejected the Vietnamese offer and Khmer Rouge
20 thought that the Vietnamese were, again, more interested in
21 securing their control over all of Vietnam rather than helping
22 the Khmer Rouge to win. And that is one reason why they were
23 upset.
24 [12.07.08]
25 And so from '72 to '73 period, '73 January was when the Paris

55

1 talks were concluded, that one year turned out to be pretty
2 violent because many Vietnamese cadres at the time inside
3 Cambodia were killed and many were expelled. That was the
4 context in which Vietnam's relations with Cambodia really went
5 downhill from that point.
6 And that is why I have difficulty believing that after the
7 breakdown in '72/'73 period there could have been any Vietnamese
8 military presence inside Cambodia, which is significant. There
9 could have been perhaps some small groups or unannounced presence
10 but an official military presence in Cambodia in '75 would have
11 been unthinkable.
12 And another point I must mention is that the Khmer Rouge anger at
13 the Vietnamese was because once Paris peace talks concluded the
14 war at Vietnam, American Air Force turned its might against
15 Cambodia. And in the five and a half months of 1973 Cambodia
16 suffered massive bombing by the Americans. Khmer Rouge held
17 Vietnam responsible for those attacks because they signed a
18 separate peace deal with the United States and left Cambodia to
19 face the brunt of the U.S. attack.
20 Q. So what you're telling us here is that at that moment the
21 relations between both Communist armed forces from Cambodia and
22 Vietnam were particularly worsened -- tense.
23 And you also mentioned Vietnamese cadres who had been killed or
24 others who had been expelled. Do you have any particular sources
25 that you are relying on to provide us with this information or

56

1 are these just things that you heard?

2 A.When such events occurred in '72 I was not based in the
3 region, I was then living in Paris. So what I said was the
4 result of my research, interviews with, again, Cambodians and
5 Vietnamese who had experienced -- whose relations and friends
6 have been killed. So I have no reason to doubt about those
7 incidents involving Vietnamese and Cambodia in '72 that I heard
8 much later.

9 [12.10.47]

10 Q.Again, in relation to the context of this armed conflict you
11 told us -- we were talking about the "Black Book" earlier on this
12 morning and it seems -- unless I misunderstood, it seems that you
13 indicated that this Black Book contained certain analyses that
14 you qualified as racist, I believe. Were there similar ideas to
15 those in the Black Book -- did they -- were there any similar
16 ideas that had existed before the period of Democratic Kampuchea?
17 Are you aware of events that were liable to be qualified as
18 racist in the same way?

19 A.Historically, Vietnam and Cambodia had a pretty tormented
20 relationship, especially in the 19th century when the Nguyen
21 dynasty actually occupied Cambodia for a period and tried to
22 impose Vietnamese culture, language on the Khmers. So that is
23 part of the folk memory, Cambodians recall the period when the
24 Vietnamese were the masters of Cambodians. And there is many
25 sort of folk stories that people talk about to explain Vietnamese

57

1 cruelty towards the Khmers.

2 So there is no question in my mind that there is a sense which
3 you can call racist but which is a Khmer sense of the Vietnamese
4 being aggressor, expansionist, and brutal. And that was the
5 common sort of perception of the Vietnamese. So in that context
6 I am not surprised that the Khmer Rouge picked it up and gave it
7 perhaps somewhat more intellectual heft. If I may read just one
8 short passage from the black book, it says:

9 "Whether in the feudalist era, the French Colonialist period, in
10 the US Imperialist period, or in the H? Chí Minh period, the
11 Vietnamese have not changed their true nature. That is the
12 nature of the aggressor, and accessionists, and swallower of
13 other countries' territories."

14 So here, the Vietnamese is being characterized as the being
15 aggressor. So that was the reason why I thought it was racist.

16 MR PRESIDENT:

17 I think it is time to take an adjournment for lunch. So the
18 Court now takes an adjournment and we resume at 1.30 p.m.

19 [12.14.41]

20 The court official, could you please take the accused back to the
21 detention facility, while the court officials are instructed to
22 liaise with the expert so that he enjoy his lunch and be returned
23 to the courtroom by 1.30 p.m.

24 (Judges exit courtroom)

25 (Court recesses from 1215H to 1335H)

58

1 (Judges enter courtroom)

2 [13.44.10]

3 MR. PRESIDENT:

4 The Court is now in session.

5 We would like to once again give the floor to Judge Lavergne, who
6 would wish to put questioning to the expert, and he already
7 attempted to put some questions before the adjournment. So if he
8 would wish to continue some further questions, the floor is
9 yours.

10 BY JUDGE LAVERGNE:

11 Q.Sir, this morning you mentioned a number of incidents, to use
12 a neutral word, that occurred between Vietnam and Cambodia in
13 1975 and 1976, and of course the beginning of 1977. You
14 mentioned an incident involving a ship; I believe it's the
15 Mayagüez. You also mentioned incidents involving islands in the
16 Gulf of Thailand.

17 If you are able, could you provide us with more detail regarding
18 the importance of these incidents? For example, do you have any
19 idea whether there were any dead or wounded? Do you know whether
20 specific military ordnances or materials were used? What was the
21 strength of the troops used? What can you tell us about all
22 this? ...

23 A.As I said -- as I said before, that my memory of that period
24 is rather vague at this point but looking at the book, what I
25 wrote at the time, I do recall that some of the attacks were

59

1 conducted by the Khmer Rouge, not necessarily -- I don't think
2 that they had navy as such but they used the old regime's patrol
3 boat and armed men to go and seize the Phú Qu?c and Th? Châu
4 Islands.

5 And when they were finally expelled by the Vietnamese, the
6 Vietnamese found remains, human remains, suggesting people were
7 killed who were found in those islands. And if my memory serves
8 right, it was something like 80 remains were found, but I may be
9 wrong because it's a long time ago.
10 That's all that I can recall at this point.

11 [13.48.37]

12 JUDGE LAVERGNE:

13 Thank you, sir. I have nothing further.

14 MR. PRESIDENT:

15 Before the floor is given to the prosecutors, the Chamber would
16 like to raise an issue concerning the accused. The Trial Chamber
17 would like to read paragraph 88 of the Agreement on Facts by the
18 parties concerning the armed conflict:

19 "Immediately after the 17th of April 1975 the international armed
20 conflict between Cambodia and Vietnam erupted and lasted at least
21 to the 6th of January 1979.

22 Paragraph 16 of the Closing Order."

23 There is no description concerning this. Duch did not dispute
24 this armed conflict. Later on he did not maintain any position
25 and the defence would like to leave it to the Trial Chamber to

60

1 make a decision on this matter.

2 So the question to the accused is that the term did not dispute
3 the existence of the armed conflict due to the fact that you are
4 not aware of the fact or because you would like to exercise your
5 right to remain silent?

6 THE ACCUSED:

7 Mr. President, the clashes between the Communist Party of
8 Kampuchea and the Vietnamese Communist Party, I've heard it but
9 not in details. I would like to clarify that, first, my
10 knowledge of the event up to March '75 -- I'm sorry, until March
11 1976, I believe Le Duan still maintained his policies on the
12 Chinese federations, he's the father of the Indochinese
13 Federation, and for Pol Pot he did not want the Indochinese
14 Federation in Cambodia. And as a member of the Communist Party
15 of Kampuchea I believed that in the struggles to defend the
16 country Pol Pot is a clever person.

17 So the armed clashes, as I reported during the investigation
18 stage, were known only in two parts. One is at the Phle Sandauch
19 area. It is to the south of Mondulkiri province. And another
20 disputed location is at Line Brevié. So that's the two clashes
21 that I have known. This is my knowledge and this doesn't mean I
22 would like to maintain my rights to remain silent. Because I had
23 my trust in Pol Pot that he would leave the country and to
24 preserve the sovereignty and integrity of the country.

25 [13.52.52]

61

1 MR. PRESIDENT:

2 Do any Judges have any questions regarding this matter to be put
3 before the accused?

4 Next I would like to give the floor to the Co-Prosecutors to put
5 forward questions to the expert witness, Nayan Chanda, regarding
6 the armed conflict. If you have questions, please, the floor is
7 yours.

8 QUESTIONING BY THE CO-PROSECUTORS

9 MR. SENG BUNKHEANG:

10 Thank you, Mr. President.

11 [13.53.32]

12 BY MR. SENG BUNKHEANG:

13 Q.Good afternoon, Mr. Chanda. My name is Seng Bunkheang,
14 representing the prosecution, and I have the following questions
15 for you.

16 Were you aware of the Khmer Rouge dispute with the Lon Nol
17 soldiers? And if you were aware of it, when did it happen?

18 A.If I understood, you said Khmer Rouge dispute with Lon Nol
19 soldiers. I thought the Khmer Rouge were fighting Lon Nol
20 soldiers; cannot be any dispute. There was armed conflict
21 between the Khmer Rouge and Lon Nol forces.

22 Q.Can you recall, in your book -- I do not have the English
23 version but I have the Khmer version. At page 287 it reads:

24 "In 1977 the centre force of the Central Zone went to make an
25 arrest of the soldiers at the East Zone, including Kae Pok, who

62

1 led the force for the arrest."

2 Do you recall that?

3 A.Yes, I do.

4 [13.55.24]

5 Q.Do you know if any armed conflict existed at the time?

6 A.There has been armed conflict with Vietnam through the 1977

7 and this included --

8 Q.I want to emphasize whether there were any armed conflicts of

9 the force led by Kae Pok against the force of the soldiers at the
10 East Zone which was led by Sao Phim.

11 A.My information on those episodes actually come from Cambodia
12 experts who studied different Khmer Rouge documents and, from
13 what I recall, there was combat but Sao Phim himself committed
14 suicide when he realized that the central forces were approaching
15 his -- where he was taking shelter.

16 Q.In your book it states that when the force of Kae Pok went to
17 arouse the central office of the East Zone, Sao Phim at the time
18 ordered his force to fight against Kae Pok's force, was that the
19 fact?

20 A.Again, as I have no firsthand knowledge, this is learned from
21 analysis done by Cambodia scholars based on their reading of the
22 Khmer Rouge documents, so I can only say that I believe those
23 scholars who maintained that there was a fight.

24 [13.57.46]

25 Q.You have already informed the Honours that when the Khmer

63

1 Rouge immediately came into power they demanded certain islands,
2 especially the Tral and Koh Krachark Islands.

3 I would like to know when the Khmer Rouge took control of the
4 islands, when they went to attack at those islands whether people
5 or properties were destroyed or damaged.

6 A.Again, my memory is not very sharp on that but I recall that
7 there was considerable damage to property and also killing of
8 people during the attack.

9 Q.So after the attack on the islands did the Vietnamese and
10 Kampuchea leaders carry out any negotiations?

11 A.I think there was negotiation and as a result of those
12 negotiations the Vietnamese returned Koh Wai Island which they
13 captured in their push to expel the Khmer Rouge from those
14 islands. They had captured Puolo Wai, which was a Cambodian
15 island, and which they returned later on as a result of the
16 negotiation.

17 Q.Do you know why the Vietnamese withdrew from the Puolo Wai
18 Island?

19 A.Because I think it has been under Cambodian control all along,
20 I don't think it was ever in dispute as to the ownership of that
21 island. So the Vietnamese basically respected the sovereignty of
22 Cambodia or Koh Wai before and then they returned this as a
23 result of their policy.

24 [14.00.18]

25 Q.After the attack by Vietnamese on the Puolo Wai Island what

64

1 was the reaction or revenge by the Vietnamese government at the
2 time towards Vietnamese?

3 A.I'm not sure I understand the question; whether Vietnamese
4 revenge -- revenge on whom? I don't understand the question.

5 Q.Did the Khmer Rouge take any action toward the Vietnamese
6 people who lived in Cambodia as a revenge towards the Vietnamese
7 troop taking control of the Puolo Wai Island?

8 A.I have no way of knowing what was -- what the Khmer Rouge did
9 vis-à-vis the Vietnamese residents of Cambodia, whether it was
10 done as a matter of established policy not to have ethnic
11 Vietnamese in Cambodia or whether it was done in revenge, but my
12 guess would be that Vietnamese were expelled even before Puolo
13 Wai was captured by the Vietnamese. So I have doubt that there
14 is any direct relationship between these two.

15 Q.Regarding the Brevié Line, did the two countries recognize the
16 Brevié Line?

17 A.I think both countries did recognize the Brevié Line but the
18 Brevié Line was not a line to demarcate sovereignty; it was a
19 line -- it was clearly stated that that line established police
20 jurisdiction over these islands. And I think in 1939 there was
21 no law of the sea to determine what would be the territorial
22 waters or economic zone, all this concepts are more recent and so
23 the Brevié Line is in some ways inadequate to resolve the dispute
24 that came at that time.

25 [14.03.14]

65

1 Q.Previously you talked about the conflicts at Koh Tral Island
2 which was called Phú Qu?c Island by the Vietnam and the Kartsolo
3 (phonetic) Island called Hu Chu (phonetic) Island by Vietnamese
4 and the Puolo Wai Island. Were there any islands in dispute?

5 A.I think Cambodia has claimed Phú Qu?c Island before and if I
6 recall, under -- when in the Kingdom of Cambodia under Prince
7 Sihanouk there was an attempt to recover Phú Qu?c or Koh Tral
8 Island from South Vietnam and that effort didn't succeed.

9 Q.Previously there were discussions between Vietnam and Cambodia
10 regarding the friendship treaty and nonaggression policy. Were
11 you aware of that?

12 A.Friendship treaty between Kingdom of Cambodia and Democratic
13 Republic of Vietnam, is that what you are asking?

14 Q.That is correct.

15 A.Yes, there was. And in fact that was one of the reasons for
16 the Khmer Rouge opposition to the Vietnamese because Vietnam
17 considered that in order to carry on their struggle to liberate
18 South Vietnam, they had to have friendship and cooperation of the
19 Kingdom of Cambodia and that is why they maintained good
20 relationship with Prince Sihanouk's government. And that was
21 something that Khmer Rouge disliked because they wanted to fight
22 the Royal Government of Cambodia and not to have any compromise
23 with them and so they didn't like the Vietnamese position on
24 that.

25 Q.So it means the friendship treaty and nonaggression were not

66

1 respected by both sides; is that correct?

2 [14.05.52]

3 A.It seemed so.

4 Q.Let me go back to an appeal by the Phnom Penh radio broadcast

5 which was done on the 10 of May 1978 which appealed to kill the

6 Vietnamese ethnicity at the time. Can you recall that?

7 A.Yes, indeed. And earlier I mentioned that and I'd like to

8 correct the record. I said May 30th; it was actually May 10th

9 broadcast. And that broadcast is perhaps the most virulent

10 exposition of the Khmer Rouge policy toward Vietnam in the most

11 racist term, and the call to kill all 50 million Vietnamese. It

12 was absurd, but it showed the state of Khmer Rouge mind at the

13 time.

14 Q:Thank you. Another point that I would like to ask, do you --

15 can you recall Ros Saroeun? His name was mentioned in a letter,

16 in the, which entitled "Instructions from the Office 880." Do

17 you recall that letter of Ros Saroeun? It was a narrative.

18 A:Yes, I think the letter was from 870. And the letter, I do

19 remember very well, because that was one of the striking things I

20 learned. The letter that Ros Saroeun saw by accident asked the

21 committee to kill all the Vietnamese and anybody who was friendly

22 with the Vietnamese; essentially it was an order for the pogrom

23 of Vietnamese people.

24 [14.08.12]

25 Q:And the letter was to purge the Vietnamese ethnicity. Were

67

1 the Vietnamese people arrested and be brought to any location
2 such as security offices?

3 A:I do not know the details. The only detail I remember
4 learning from Ros Saroeun was that he knew one Khmer person who
5 was married to a Vietnamese woman, and he was sent out of the
6 village on some pretext, and when he came back he discovered his
7 wife had been killed and buried unceremoniously.

8 Q: In your book, it also states that the arrest of the
9 Vietnamese people, and that they were sent to the state security
10 offices. Is that true?

11 A: Yeah, I do not recall exactly what I wrote at the time, but
12 I am sure if I had written that, it was based on information that
13 I got from reliable sources.

14 Q:You have answer to Judge Cartwright that the attacks by the
15 Vietnamese deep inside Cambodian territories, about 15 miles; at
16 that time, where was the attack taking place in Svay Rieng or,
17 and besides Svay Rieng were the attacks taking place elsewhere?

18 A:I think the attack took place all along southwest, of -- no
19 sorry, Vietnam's southwest border and -- but Svay Rieng was the
20 area, I recall, where the Vietnamese forces had gone in and
21 stayed put for a period.

22 Q:When the Vietnamese troops went to attack inside Cambodia,
23 were the Khmer Rouge troops attacked or counterattacked?

24 A:I think that there are occasions when there was a pretty stiff
25 resistance fight, and there are other occasions when there was

68

1 very little resistance. So it was not uniform everywhere.

2 Q: Were there any casualties regarding the people and the
3 property, through your recollection?

4 A: I think there was considerable damage to property, but also I
5 recall that in many occasions, especially since end of '77, early
6 '78 when Vietnamese troops entered Cambodia, they often came back
7 with many Cambodians who wanted to escape with the Vietnamese
8 troops. The Vietnamese Army trucks brought back many Cambodians
9 who wanted to live in the safety of Vietnam. And I have visited
10 some camps where I met such Khmers who have been living in
11 Vietnam after being evacuated by the Vietnamese soldiers.

12 [14.12.22]

13 Q: When there was such fighting, were the Vietnamese troops
14 arresting Khmer Rouge soldiers?

15 A: Yes, I think they did capture quite a few Khmer Rouge
16 soldiers, and they were brought back and, again, I was told that
17 they were simple farmers and not really any committed Khmer
18 Rouge. And so they are being given reeducation as called, I'm
19 told that they are being given some political lectures, and
20 perhaps to turn them into fighters for liberation of Cambodia
21 later on; that was the purpose.

22 Q: Do you still remember that during the fighting's Khmer Rouge
23 soldiers were also arrested by the Vietnamese troops?

24 A: Yes, I think so. This is what I said, that the Khmer Rouge
25 soldiers were captured, and brought back to Vietnam. In some of

69

1 the camps, the Vietnamese had a setup to receive Khmer population
2 coming to Vietnam, as well as a specific area where those
3 captured Khmer Rouge soldiers were kept to be re-educated.

4 [14.14.03]

5 INTERPRETER

6 The interpreter may would like to correct also, the Prosecutor
7 asked that whether the Vietnamese troops were arrested by the
8 Khmer Rouge soldiers, during that time. My apologies.

9 MR. CHANDA:

10 I'm not aware of any Vietnamese being arrested. It is possible,
11 but I do not have any detail on that.

12 Q: In another clash in 1977 by Division 9, supported by the
13 arsenal unit of the Vietnamese, invaded on a massive scale into
14 Cambodia and a lot of Cambodians were wounded, and those people
15 was transported to Phnom Penh's hospitals. And they needed blood
16 for saving the life of the wounded soldiers. Were you aware of
17 where those blood were collected from?

18 A: No, I'm afraid I have no idea about what you mentioned about
19 wounded being brought to Phnom Penh or their being given blood
20 transfusions. I was unaware of that.

21 [14.15.45]

22 Q: According to your document, you stated that there were efforts
23 to take blood from generous people and from other people to help
24 the wounded soldiers. Do you still recall that the assertion is
25 correct?

70

1 A: Can you give me the page reference where -- I don't recall
2 that.

3 Q.I only have the ERN numbers in Khmer, but I think I make you
4 -- the reference page of the Khmer document which is page 234 but
5 I don't know the English version as reference.
6 In English the page is 206, ERN Number 00192391.

7 A.Yes, I see that. That was actually -- that information was
8 taken from a book written by Laurence Picq, "Au-delà du ciel :
9 cinq ans chez les Khmers rouges". It's an account by a French
10 woman who lived in Cambodia. She was married to a Khmer Rouge
11 cadre and she wrote that in her book, so I have taken that
12 information from her book.

13 [14.19.01]

14 Q.Have you ever heard the strategy, what we call the lightning
15 attack or strike, or the lightning victory or success? Are you
16 familiar with those terms?

17 A.Yes, I have heard that. That's a slogan.

18 Q.Do you still recall that these strategies were meant for and
19 who actually implemented these strategies?

20 A.I do not recall the exact context of those -- that slogan, but
21 clearly the Khmer Rouge attacks that happened along the
22 Vietnamese border, they were lightning attacks, surprise attacks,
23 and they did succeed in killing a lot of people. So if killing
24 civilians is a mark of success it was a very successful lightning
25 attack.

71

1 Q.Do you recall the conflicts between Vietnam and Cambodia and
2 how often did it take place?

3 A.Conflict between Cambodia and Vietnam, the period we are
4 considering, from '75 to '79, it has been taking place off and on
5 and with increasing frequency since '76 and rising in a crescendo
6 until the final Vietnamese attack in December '78.
7 So the attacks have been initially by the Khmer Rouge and
8 Vietnamese counterattacks began in '77, but until December '77
9 these conflicts remained hidden from public eye because both
10 sides did not publicize them.

11 [14.21.45]

12 Q.There is a statement that the fightings between Vietnam and
13 Cambodia intensified gradually. What do you think about this;
14 whether the statement is accurate?

15 A.Yes, I do believe that they intensified, certainly from 1977,
16 middle of '77.

17 Q.Do you know about the strategies of the Vietnamese that led to
18 the complete victory over the Khmer Rouge troops? And what were
19 the strategies behind -- used by the Vietnamese that they could
20 really have a major victory over the Khmer Rouge? Can you tell
21 us anything about it?

22 A.The Vietnamese strategy, looking back at how the operation
23 went off, was designed to use maximum force; armoured personnel
24 carrier, tank, artillery, and air support to destroy the Khmer
25 Rouge defences and capture Phnom Penh, and then from Phnom Penh

72

1 fan out to the provinces and to the island. I think Koh Kon was
2 the last place the Vietnamese captured and that was -- I think at
3 the time it was called the Blooming Lotus Strategy but they may
4 not have been what the Vietnamese called it, because that was the
5 strategy that was applied by Vietnamese General V?n Ti?n D?ng in
6 1975 in trying to -- in liberating South Vietnam. But given the
7 fact that it -- first attack went to Phnom Penh and then spread
8 out, it might look like a Blooming Lotus Strategy.

9 Q. Just now you mentioned about the Mayaguez ship of the U.S.
10 that the Khmer Rouge captured. When the Khmer Rouge conquered
11 the ship for a little while, what was the position of the U.S.
12 regarding the seizure?

13 A. I think the United States sent in jet fighters and they
14 actually used a lot of bombing to show the Khmer Rouge that that
15 was a mistake.

16 So I think I described that episode in my book and it was based
17 on the accounts I have read because I was not there, nor did I
18 witness this attack or American counterattack but there is a book
19 on the seizure of Mayaguez; a very well-written book. So that
20 was my principal source for that section.

21 [14.25.40]

22 Q. Do you still recall which was the base used by the U.S. to
23 attack or counterattack the Khmer Rouge troops?

24 A. No, I do not recall, but I know that the Thai -- U.S. had
25 bases in Thailand and that could have been easily useable, but

73

1 I'm not sure as to whether that was the case.

2 Q.Regarding Thailand, do you know that there were also conflicts
3 between the Khmer Rouge troops and the Thai soldiers?

4 A.Yes indeed, there were clashes along Thai/Cambodia border and
5 there was also an acquisition by the Khmer Rouge about Thai
6 airplane bombing inside Cambodia but I have no confirmation that
7 that was indeed the case of Thai bombing. But there were
8 definitely clashes along Thai/Cambodia border in the northwest.

9 [14.27.20]

10 Q.Do you know also that the conflicts at the border between
11 Thailand and Cambodia happened more frequently or else?

12 A.No, I don't think it was more frequent than with Vietnam. And
13 in fact, since 1978, since the visit of Vice Premier Deng Xiao
14 Ping from China to Thailand and Southeast Asia there was a
15 definite cooling down of tension between Thailand and Cambodia
16 because then the focus was on Vietnam and Cambodia.

17 Q.Earlier you said the armed conflicts between Cambodia and
18 Vietnam were informed to the international community. Do I
19 understand you correctly?

20 A.Vietnam/Cambodia conflict, until December 31st, 1977 was not
21 known in any detail. There were unconfirmed reports and
22 speculation in the press based on hints offered by the
23 governments but full knowledge of the extent of the conflict or
24 casualties came to be known only when the Khmer Rouge declared
25 that they're suspending relations with Vietnam.

74

1 Q.According to your statement earlier you said you met with
2 several leaders, especially the leaders of the Khmer Rouge and
3 the Vietnamese senior people. Could you tell us whether in such
4 meeting they discussed the conflicts between Cambodia and
5 Vietnam?

6 A.Yes, with -- with Mr. Ieng Sary in 1979, I had an interview
7 with him and he basically said what has been now said many times
8 about Vietnamese are being aggressive country and Cambodia is
9 trying to defend itself from Vietnam.

10 [14.30.50]

11 So I think the -- in conversations with Ieng Sary there was no
12 question that there was a conflict going on. And I had
13 interviewed Prime Minister Ph?m V?n ??ng in December 1977. At
14 that stage the conflict between Vietnam and Cambodia still was
15 not public because that was in mid-December, my interview with
16 Prime Minister Ph?m V?n ??ng and the announcement from Phnom
17 Penh came a few days later.

18 But I asked Prime Minister Ph?m V?n ??ng about conflict with
19 Cambodia and he was very cautious; he admitted there was some
20 problem and it could be resolved. But he was not willing to give
21 any detail about the kind of conflict that had occurred.

22 Q.As you have met the leaders of the two countries, how did you
23 assess the objectives of the two leaders whether they have the
24 willingness to resolve the countries -- between -- amongst
25 themselves?

75

1 A.I think the interviews are more for getting a little bit of
2 nuance or some nugget of information but I don't think whether
3 someone is genuinely interested to have a negotiated settlement,
4 I don't think it can be revealed in interview with a journalist.
5 What I do know is that the depth of feeling on the part of the
6 Khmer Rouge was such that it was extremely difficult, basically
7 they had no trust in the Vietnamese and the Vietnamese were
8 hopeful that some elements in the Khmer Rouge movement will be
9 more reasonable; those who had had previous cooperation with the
10 Vietnamese party, they were more understanding of the necessity
11 of working together.
12 So I suspect -- nobody has said this to me but I suspect the
13 Vietnamese were being cautious in responding to the Khmer Rouge
14 provocations in the hope that some elements, moderate or
15 reasonable elements within the Khmer Rouge movement would
16 eventually merge and make it unnecessary for the Vietnamese to go
17 into an open conflict with Cambodia.
18 [14.34.04]
19 So that, I think, was their expectation and hope but that didn't
20 happen.
21 Q.Thank you.
22 Now, I have no further question and I would like my international
23 colleagues to continue questioning if he has any questions to ask
24 you.
25 MR. PRESIDENT:

76

1 The international Co-Prosecutor, the floor is yours.

2 MR. BATES:

3 Thank you, Mr. President.

4 BY MR. BATES:

5 Q.Good afternoon, Mr. Chanda. My name is Alex Bates; I'm
6 together with Mr. Seng Bunkheang, I represent the Co-Prosecutors
7 and I have a few questions for you.

8 [14.34.55]

9 You've informed us that your memory is, perhaps not surprisingly,
10 a little hazy of the events that took place 30 or more years ago.

11 Can I ask you to say whether when you wrote the book Brother
12 Enemy your memory was a little clearer than it is now? Perhaps
13 an obvious question but can I start there?

14 A.Yes, surely. I wrote the book in -- basically in '85 and
15 although it was still several years after the conflict had begun
16 I was then still covering the region and was in touch with people
17 so memory was much fresher.

18 Q.Yes, thank you.

19 You wrote the book in 1985 and you've described in fairly
20 thorough detail in your footnotes the sources that you used to
21 write the book. In general terms do you consider the sources
22 that you quoted to be reliable or not?

23 A.Mostly reliable and sometimes I would quote a source not
24 necessarily because he was reliable but because it has a
25 documentary value. For instance, the May 10th broadcast of the

77

1 Khmer Rouge, that the broadcast was meant, in itself, is very
2 important to note whether the sentiments or information given
3 there are true or not, that's beside the point.

4 Q:Yes, thank you. Perhaps a follow-up question: Did you
5 knowingly cite any sources that you did not believe to be
6 accurate, other than those occasions that you just mentioned for
7 other reasons?

8 A:No, I would not do that.

9 Q:I would just like to ask a little about your own research
10 methods at the time you were a journalist and an editor. In the
11 1970s and 1980s, as a rule did you keep written notes of the
12 interviews you conducted? Were there cassette tapes or film
13 versions of your interviews? Perhaps you could just describe
14 your methodology for us, please.

15 A:The official interviews I would tape and transcribe. Other
16 interviews, very rarely, almost never used tapes because that
17 puts people off. And so I would take notes and consult my notes
18 while writing the book. That's what I did.

19 [14.38.27]

20 Q:And just to confirm; the notes that you made from which you
21 compiled your book, would it be fair to say that those notes of
22 the incident were at a time when the incidents were still fresh
23 in your memory?

24 A:Yes, indeed. These notes were taken at the time immediately
25 afterwards or while I was witnessing things.

78

1 Q:You've told us on a number of occasions that you had access to
2 some rather influential people at the time. Perhaps if you could
3 please explain for us how it came about that you had such
4 privileged access to such important people.

5 A:I think, you know it's very difficult to know why people would
6 be willing to talk to me, but I can guess that several factors
7 were at play. First of all, I was Indochina correspondent, and
8 later on diplomatic correspondent of the Far Eastern Economic
9 Review, which was considered to be the bible for the region; the
10 most influential paper. And being their reporter gave me a very
11 special position vis-à-vis everybody who wanted to get their
12 views or ideas out.

13 [14.40.16]

14 Secondly, I think, for me it was not just a reporting a story and
15 moving on to something different. I had been trusted in
16 Indochina as a scholar before I became a journalist. I worked in
17 Saigon for three years on a thesis, which I didn't finish, on
18 Cambodia, and so my background knowledge about the country, about
19 the problems, perhaps gave me a little bit of an edge over others
20 in understanding issues and asking the right questions. And so,
21 I found people were interested in talking to me because they
22 thought that I understood the issues and asked questions which
23 were relevant. So that will be my guess, why I had access.

24 Q:You've given examples of the types of people to whom you had
25 access. I wonder if you can, perhaps, expand on that just a

79

1 little. For example, you refer in various instances in the
2 footnotes to your book, conversations you had with editors of
3 regional newspapers. Perhaps starting there, and moving on to
4 any other influential sources that you can recall, could you help
5 us, please?

6 A: Sure. I think of the newspaper editors who proved invaluable
7 source was Mr. Hoang Tung. He was the editor of Vietnamese Party
8 Daily, Nhân Dân and he was a Central Committee member. As a
9 result, he was privy to a lot of information that ordinary cadres
10 wouldn't know. And because he had this role as an editor, he was
11 more approachable for journalists, so I had seen him many times.
12 And he had a great sense of humor and he enjoyed conversation,
13 and in the process gave information which turned out to be
14 correct, and so I was privileged to have that kind of sources.
15 As to government officials, I had access to government officials
16 in all the capitals from Beijing to Hanoi to Bangkok. Phnom Penh
17 was the only place I could not count in these four years. I had
18 seen Khmer Rouge diplomats outside the country.
19 And also I have to correct one thing I said earlier; I did see
20 Mr. Ieng Sary after he was out of power. I saw him in 1979 in
21 Colombo, after he had been removed from power in Phnom Penh. And
22 I saw him later on in 1980s as well, but this government
23 officials again were interested in finding out what I knew and
24 give me something more. So it was always a conversation which
25 perhaps helped both sides.

80

1 Q: This might be a little difficult for you to answer, in
2 specific terms, but trying to build up a picture of your
3 expertise, could you estimate for us how many interviews you had
4 conducted of people regarding the hostilities between Cambodia
5 and Vietnam over the many years that you have been studying and
6 working in the region?

7 A: It's very hard to say. It would certainly be, in terms of
8 people who are officials or people who have some way of knowing
9 information more than average person, I would say several dozens,
10 maybe a hundred. I don't know, it's very hard to guess.

11 [14.45.18]

12 Q: I'd now like to move on to certain specific sources that you
13 have quoted in your book to support the propositions that have
14 been put to you and that you have talked about in your evidence
15 so far. The first is a source that you quote at pages 32 to 33
16 of your book which bears a ERN of the English, 00192218 to
17 00192219 and that source that you refer in the footnotes as being
18 Ieng Sary's interview with Patrice deBeer, who was the Southeast
19 Asia correspondent of the French newspaper Le Monde and the
20 interview took place between Mr. deBeer and Ieng Sary in October
21 1975.

22 In particular at pages 32 to 33 you discuss from that interview
23 Ieng Sary's explanation regarding the pre-1954 French Colonial
24 maps and this, I think, relates to the question of the maritime
25 borders and the Brevié Line.

81

1 [14.47.26]

2 First of all, can you just confirm the source for us, that that
3 indeed was the source that you used to support your conclusions
4 regarding the attitude of both parties to the border in question?

5 A.Yes, sir. Patrice deBeer is a very dear friend and I do not
6 recall whether this was precisely the words he published in Le
7 Monde but he shared his notes with me and I quote from those
8 notes.

9 Q.Thank you. We haven't yet had it explained to us in full what
10 exactly the Brevié Line was. You referred to it briefly in
11 answer to your questions from my colleague. Perhaps I should
12 spell it for the transcript. It's B-r-e-v-i-é. Perhaps if you
13 could take a few moments to explain for us what the Brevié Line
14 was and why it was controversial for the Cambodians at that time.

15 A.Again, I have to ask you for your forgiveness in my somewhat
16 vagueness of my answering because this is, again, a very complex
17 issue. My memory is that in 1939 this line was drawn from the
18 land borders marking Vietnam and Cambodia, extended into the sea
19 in that angle of the border. And it was decided that north of
20 that line on the islands would fall under Cambodian police
21 jurisdiction and south would fall under Vietnamese. And since
22 the line sort of cut across Phú Quốc Island an exception was made
23 by a dotted line surrounding Phú Quốc so that Phú Quốc stays on
24 the Vietnamese side for the police jurisdiction.

25 [14.49.57]

82

1 And when this issue came up between Vietnam and Cambodia in '75
2 that line had acquired a different significance because there was
3 a search for oil and gas in the Gulf of Thailand and so the
4 question of sovereignty of the islands would affect what will be
5 the territorial waters and why one can have exploration for gas
6 and oil. And that is why the issue of who controls the north of
7 the Brevié Line or south of the Brevié Line and whether that
8 actually demarcated sovereignty became an important issue.

9 I had interviewed Vietnamese Deputy Foreign Minister, Mr. Pham
10 Nguyen and I asked him about whether Vietnam accepted Brevié
11 Line, and he indicated that Vietnam did but then in a caveat he
12 said when Vietnam agreed to Brevié Line there was no such
13 question of undersea resources of gas and oil. So I got the
14 impression that the issue of the Brevié Line was not closed and
15 it was subject to further negotiations.

16 Q.And in fact, just to complete what Ieng Sary was mentioning to
17 your colleague, Mr. deBeer, was that there was a problem also
18 with the pre-1954 maps for what reason? I can remind you of the
19 page again. It's page 32 and 33, if you could just perhaps
20 elaborate on that a little.

21 A.Yeah, this has been one of the Cambodian complaints about the
22 border demarcation. Because South Vietnam then was Cochinchina
23 -- was a French colony -- so why drawing the border demarcation,
24 the Cambodians complained that it was the Vietnamese side or the
25 French Colonial side was favoured. And that is what Ieng Sary is

83

1 referring to. And because Cochinchina was a direct French
2 colony, the border line was drawn which was favouring the
3 Vietnamese side rather than Cambodian side.

4 Q.Do you know the language in which Mr. deBeer spoke to Mr. Ieng
5 Sary?

6 A.In French.

7 [14.53.06]

8 Q.Perhaps I should have asked you this at the beginning. Which
9 of the regional languages do you personally speak, Mr. Chanda?

10 A.I speak -- my mother tongue is Bengali. I speak Hindi and
11 French.

12 Q.And the interviews conducted with the regional leaders, are
13 you able to assist us with whether you used generally a
14 translator or whether the leaders spoke in a mutually
15 intelligible language?

16 A.With Ieng Sary I spoke in French. With Mr. Ph?m V?n ??ng, it
17 was through an interpreter. The Prime Minister doesn't speak to
18 foreign reporters in any other language. But with other
19 Vietnamese officials I spoke French or English.

20 Q.Moving on to another source for a different point, the point
21 that you've discussed already relates to -- one point you have
22 discussed already, relates to the motivations for conflict on
23 both sides. And at pages 31 to 32 of your book which appear at
24 00192217 to 00192218 in the English, you refer in the footnotes
25 to a source from Norodom Sihanouk and the memoir "Le calice

84

1 jusqu'a la lie," and in the section in your book to which I have
2 referred Norodom Sihanouk recounts a story of his own trip to
3 Hanoi with Khieu Samphan and the refusal of Khieu Samphan to dine
4 together with Lao and Vietnamese Communists.

5 [14.55.36]

6 Could you perhaps explain a little what that passage of your book
7 relates to?

8 A. My passage relates to the Cambodian sensitivity, the Khmer
9 Rouge sensitivity to the notion of special relationship. This
10 has been actually the most important issue between the Khmer
11 Rouge and the Vietnamese party. The Vietnamese-dominated
12 Indochinese Communist party was formed to fight for liberation of
13 French Indochina including Cambodia and Laos and the Indochinese
14 Communist Party had members from Laos and Cambodia, though very
15 few but there were members. And when Indochinese Communist Party
16 was disbanded in order to have National Party set up, in 1951 --
17 Khmer Peoples Revolutionary Party, KPRP was founded in '51 and
18 Lao People's Party was founded the same time, but this was just
19 for the show. The Vietnamese maintained good relations, close
20 relationship with these two parties and believed that these three
21 parties should work together because not only Indochina was one
22 political unit under the French, but geographically,
23 strategically it made sense for them to work together in order to
24 protect their sovereignty and their social system.
25 And the Khmer Rouge were -- that was the big departure from the

85

1 previous Cambodian Party policy. When Pol Pot took over the
2 party first as Deputy Secretary in 1960 and then in '63 as
3 Secretary of the party, that was when also he decided that the
4 birthday of the party should be changed to 1960 rather than 1951.

5 [14.57.53]

6 And that action was again the purpose of severing connection with
7 the Vietnamese, that Cambodian party was something original,
8 founded by the Khmers, had nothing to do with the Vietnamese.

9 So this long explanation is to say that when Khieu Samphan
10 refuses to attend the dinner involving Vietnamese and Lao, he's
11 refusing to take part in anything that could be seen as Indochina
12 federation.

13 MR. BATES:

14 Mr. President, I wonder whether that is a convenient time to
15 break?

16 MR. PRESIDENT:

17 Thank you, Mr. Co-Prosecutor.

18 The Trial Chamber now takes an adjournment and resume at 3:15
19 p.m.

20 The court official is now instructed to make sure that the expert
21 is taken to a waiting room and take a good rest.

22 (Judges exit courtroom)

23 (Court recesses from 1459H to 1521H)

24 (Judges enter courtroom)

25 [15.21.20]

86

1 MR. PRESIDENT:

2 Please be seated. The Chamber is now back in session.

3 Now I would like to give the floor to the prosecution to continue
4 his questioning to the expert.

5 MR. BATES:

6 Thank you, Mr. President.

7 BY MR BATES:

8 Q.Mr. Chanda, we were talking about the age-old enmity and the
9 sources for that. I'd like to ask you, please, for a Vietnamese
10 source which may reference -- or who made reference to the enmity
11 between the two parties. This comes from your meeting in March
12 of 1978 with a Vietnam Vice-Foreign Minister -- you've mentioned
13 this already -- Mr. Vo Dong Giang, and you refer to this in your
14 book at page 60; Evidence Reference Number 00192245.

15 And the paragraph at the top of the page of page 60, Mr. Giang
16 talks to you about the conflict going back over two decades. I
17 wonder if you could perhaps shed a little more light on that
18 conversation, how it came about, and to perhaps illustrate a
19 little more fully what the vice-foreign minister was talking
20 about when he referred to the conflict going back over two
21 decades.

22 A.This meeting with Vice-Foreign Minister Vo Dong Giang was
23 extraordinary because in my reporting of Vietnam for all these
24 years, this was the first time that the Vietnamese Foreign
25 Ministry took a proactive step in inviting three foreign

87

1 journalists to a sort of private dinner with the deputy foreign
2 minister to explain the long historical context of the conflict.
3 This is a kind of unusual background briefing.
4 At the time I was -- we were not allowed to use his name. So
5 when I reported those conversations in the Far Eastern Economic
6 Review I said "senior Vietnamese official". So now Mr. Giang
7 essentially says what I have referred to in the past: the Khmer
8 resistance to the idea of Indochina unity. The Vietnamese
9 maintain that there was no desire to form an Indochina
10 federation. That was a body that was used by Vietnam's enemies.
11 What Vietnam was looking for was a close cooperation between the
12 three independent states of Indochina in order to foil all the
13 plots against socialism in that part of the world.
14 [15.26.16]
15 So going back, he mentioned a Geneva conference in which the
16 Cambodian side felt abandoned because they were not given a seat
17 at the table and the Geneva conference basically legitimized the
18 rule of Prince Sihanouk over the whole of Cambodia. There was
19 not one part of Cambodia that was given to the resistance forces.
20 And then throughout the seventies -- sixties when Vietnam was
21 advising the Khmer Rouge, not to take the part of armed rebellion
22 against Prince Sihanouk because Sihanouk was an objective ally,
23 because he was supporting Vietnamese revolution by allowing
24 Vietnamese to transmit arms to their liberated areas through
25 Cambodia from the Sihanoukville port to the Vietnam border, and

88

1 so it was for the sake of overall revolution in Indochina, it was
2 important that the Cambodians also cooperated with Prince
3 Sihanouk in that period.

4 [15.27.40]

5 And then when Sihanouk was overthrown, then the Vietnamese had no
6 obligation to support Lon Nol, and hence they actually threw
7 their support behind the Khmer Rouge fully and took part in the
8 military campaign against Lon Nol forces in '71. But then once
9 Vietnam started negotiations with the Americans on ending the
10 war, again the situation, like Geneva, awkward, because the Khmer
11 Rouge felt that they didn't want to negotiate; they wanted
12 victory completely on their own and they accused the Vietnamese
13 of abandoning them and allowing American Air Force to bomb
14 Cambodia.

15 But despite that, even before the capture of Phnom Penh in April
16 17th, 1975, Vietnamese provided arms and training to the Khmer
17 Rouge which enabled them to actually capture Phnom Penh in '75.

18 So Giang's position was that we have the tactical difference with
19 the Khmer Rouge but strategically we supported them, and the
20 example was that the Vietnamese did support them during the '75
21 operation. But since then the Khmer Rouge had turned against
22 Vietnam and the suggestion was that this was an anti-Vietnamese
23 plot with backing from China.

24 So that was the main thrust of his briefing.

25 Q.Thank you.

89

1 I wonder if you can tell us the names of the two other
2 journalists who accompanied you to the dinner?

3 A.One was Roland-Pierre Paringaux of "Le Monde."

4 Q.Is it possible to spell his name?

5 A.Yes. R-o-l-a-n-d, hyphen, P-i-e-r-r-e, P-a-r-i-n-g-a-u-x.

6 And the other journalist from a Dutch newspaper, Handelsblat,
7 H-a-n-d-e-l-s-b-l-a-t, and his name was Karel, K-a-r-e-l, van,
8 v-a-n, Wolferen, W-o-l-f-e-r-e-n.

9 [15.29.50]

10 Q.Thank you.

11 I'd like to move on to a source that you cited in your book when
12 you described the Cambodian attacks, the Khmer Rouge attacks on
13 Koh Tral, or Phú Qu?c in Vietnamese, on May the 4th, 1975. In
14 your book -- and I think this is a footnote annotating page 13,
15 ERN 00192198 -- you describe the source for the attack on Phú
16 Qu?c and Koh Krachak Ses Island to be a personal communication
17 with an Australian Foreign Service officer who, on the 5th of
18 April 1979 in Malaysia had interviewed a particular South
19 Vietnamese soldier who had lost his whole family of 12 in the
20 original Khmer Rouge attack. And I think you say that's in
21 relation to the Koh Krachak Ses Island.

22 Could you confirm the source you used and do you have any
23 comments on its reliability specifically?

24 A.Yes indeed. This was an Australian Foreign Service officer
25 and there was -- this was a conversation I had with his

90

1 experience of interviewing some of the refugees, and he had no
2 particular reason to invent that story and I thought that story
3 fitted with what I knew, so that's why I used the story.

4 [15.33.00]

5 Q.In general terms in your book there appears to be a lull in
6 the fighting in 1976, or a lull in armed incidents between
7 Vietnam -- committed either by Vietnam or Cambodia. You were
8 asked whether you had seen any telegrams, internal telegrams; her
9 Honour Judge Cartwright asked you about that.

10 Can I ask you the same question in relation to whether you had
11 seen any internal military reports, or whether you have seen any
12 internal Khmer Rouge military reports from the border area back
13 to the Party Centre in Phnom Penh?

14 A.I do not recall seeing it, and if I had seen it I would
15 certainly have mentioned it in the book. There would be no
16 reason, if I had such very important information, not to include
17 it. So I don't recall seeing that.

18 Q.Given the history of the conflict that you have outlined in
19 detail in your book and you've described for us in evidence,
20 would it have struck you -- or does it strike you as unusual or
21 likely or not that there may have been armed incidents in 1976
22 committed either by Cambodia or by Vietnam?

23 A.No, not at all. I think there was enough tension and now, in
24 the light of what we know regarding happenings in 1976, that the
25 fact of Pol Pot changing the date of the Party and certain

91

1 veteran members like Keo Meas, Meas Sarang (phonetic), who are
2 more in favour of keeping the date of the Party 1951 -- in other
3 words, they were seen as close to Vietnamese thinking -- those
4 are the people who are sent to S-21.

5 And given the fact that there was a turmoil going on inside
6 Cambodia regarding the new orientation of the Party, I'd be
7 surprised if there are some clashes as well on the border.

8 [15.36.16]

9 Q. Just a little clarification. I referred to military reports
10 internally -- internal military reports, and Her Honour Judge
11 Cartwright referred to telegrams. If you were writing your book
12 today would you avail yourselves of those sources if you had --
13 if you were able to consider them?

14 A. Absolutely, absolutely.

15 Q. This might be an obvious question but why would you use such
16 sources? ...

17 A. Because if the source is possible, is credible, that I am
18 convinced that that indeed was an internal document and the date
19 was accurate and the person who was sending it was someone in the
20 position or authority to be able to do so, it would be very
21 important part of evidence to show how the conflict was
22 developing in the border.

23 Q. Thank you.

24 [15.37.31]

25 I'm moving on to 1977 now, and in your book you describe how --

92

1 at page 87 of your book -- I'm sorry -- ERN 00192272, at page 87
2 you describe how Khmer Rouge forces had been raiding Vietnam's
3 border provinces since, "January 1977." Are you able to tell us
4 what sources you used for the date as early as January '77 and if
5 so, could you tell us?

6 A.I do not recall exactly how I came to that date, January '77,
7 but I would suspect that because I interviewed a whole lot of
8 people around the border during my trip in March 1978 I had asked
9 people about their history and where they moved and what
10 happened. So it's quite possible that it was from such
11 interviews that I realized that there was some attack in January
12 '77 as well.

13 Q.I've asked you about sources from -- can I say -- important
14 people in the region. In relation to the ordinary people on the
15 ground, the people who may have been directly affected by the
16 incidents along the border can you help us, please, with what
17 sort of interviews you conducted, how many there may have been,
18 and whether you cited a few, some or all of those in your book?

19 A.This was one of the most important part of my reporting, is to
20 actually give the government minder the slip and try to talk to
21 people directly. And when I could speak directly or have an
22 interpreter but who was not necessarily associated with the
23 government.

24 [15.40.22]

25 So I tried to talk to people independently in any/all locations I

93

1 had opportunity to talk to them and I may have used only a few
2 anecdotes just to provide some colour and human interest in the
3 otherwise dry political discourse. So by no means I used all the
4 interviews but these interviews provided a kind of very rich
5 background carpet on which I could place on the other major
6 political events that were happening.
7 So the interrelationship between life of a simple individual and
8 much larger forces operating beyond that person's reach is
9 something that personally I was very interested in finding out
10 and so I did interview quite a few people.

11 Q.Forgive me for seeking clarification of the general term
12 "quite a few people" and I appreciate you may not be able to be
13 specific but can you give us an example, an estimate of how many
14 people -- ordinary people you may have interviewed?

15 A.I would say in visiting at camps in Tay Ninh or Ha Tien,
16 depending on the time one has at one's disposal and depending the
17 time it takes to interpret, seek out details, follow-up
18 questions, I would say in any of these sort of visits I would
19 interview perhaps six, seven, eight people; that would be maximum
20 given the time constraint.

21 So again, I made so many visits it's difficult to remember as to
22 how many people I did interview.

23 Q.Thank you.

24 At the same page from which we have just quoted, page 87, you
25 refer to, in March '77 the Khmer Rouge army units in the eastern

94

1 regions were -- and I'm quoting you -- "taken off their
2 production duty to be combat-ready."

3 [15.43.16]

4 I can hear a phone, I wonder if somebody could turn it off.

5 Thank you.

6 Sorry, the quote that you -- that I cite from you is that in
7 March 1977 Democratic Kampuchea army units were "taken off their
8 production duty to become combat-ready;" can you help us, please,
9 with your sources for that particular assertion?

10 A.On page 87?

11 Q.The second line of page 87 -- sorry -- the third line of page
12 87 from the top.

13 A.I have no clear memory as to the source but it can be either
14 in Radio Phnom Penh broadcast and that is most likely that --
15 given the language I used it was most likely a Radio Phnom Penh
16 broadcaster saying that this is what is happening. But it could
17 also be Cambodian refugees whom I interviewed in Vietnam. But I
18 would guess it will be the first.

19 Q.Can I move on to the description of the Hungarian journalist,
20 Mr. Sandor Gyori, and I apologize if I pronounce his name
21 incorrectly. I can spell it; S-a-n-d-o-r new word, G-y-o-r-e --
22 i, sorry; G-y-o-r-i.

23 And the Hungarian journalist has been discussed but not yet named
24 previously in your evidence. You discussed this at pages 193
25 through 194 and I wonder if you could perhaps tell us a little

95

1 more of the story of Mr. Gyori, first of all confirm the source
2 from which you heard the story -- this story and, secondly,
3 perhaps talk about the invitation that Mr. Gyori received; what
4 happened to his notes and his papers and whether they were
5 eventually returned. If it is still fresh in your memory or if
6 not, refer to your book, thank you.

7 [15.46.26]

8 A.Certainly. I certainly remember very well. Sandor was --

9 MR. ROUX:

10 Mr. President, please?

11 MR. PRESIDENT:

12 The floor is yours, Mr. François Roux.

13 MR. ROUX:

14 Mr. President, forgive me for interrupting my learned friend, but
15 I'm losing patience.

16 What we are witnessing here is a very professional exercise in
17 what in common law is described as an examination or a

18 cross-examination. I congratulate my colleague for this
19 excellent exercise. However, I am not inclined to continue for
20 weeks and months to follow such proceeding.

21 [15.47.52]

22 I would like the Chamber to determine what we expect in terms of
23 the questions that the parties may put. I recall that these are
24 civil law proceedings. The Chamber has put very many questions
25 to the expert already and in his questions, my learned colleague

96

1 on the other side did recall that some of these questions had
2 been raised earlier this morning.
3 But with his usual professionalism, he is always seeking to go
4 further in an excellent common law exercise wherein everything
5 must be proven. This is why I am standing up. I am on my feet,
6 because for the nth time the expert is asked to prove his source.
7 It is absolutely of no consequence to me to find out that Mr.
8 Khieu Samphan did not wish to have lunch with such-and-such a
9 person, especially when I have before me an expert such as this
10 one.
11 I do not think it is necessary to justify every one of his
12 sources. This is tampering with the conduct of the proceedings
13 in two ways, and I would like to draw the Chamber's attention to
14 this. I have always said that in our international courts, my
15 wish is that we should draw on the best of the civil and common
16 law systems. But what we are doing here today is taking the
17 worst of both systems.
18 That is to say that the Chamber conducted a very detailed
19 examination under the civil law system and now we have a very
20 detailed list of questions put by the prosecutor under common
21 law. And I can assure you that if we continue thus we shall
22 still be conducting these proceedings next year. If each expert
23 who comes here involves checking for hours and hours what sources
24 the expert used, then we'll still be here next year.
25 [15.50.58]

97

1 I would like to recall once more that there was more than a year
2 of investigation. I would like the Co-Prosecutors who
3 participated in the investigation to follow the procedure.
4 Otherwise, it will have been useless to conduct the exercise. I
5 would like this to be on the public record.
6 Why is it that all the questions raised today were not put during
7 the investigation? Since morning I have not heard any reference
8 at all to the investigation stage. Does this mean that we have
9 finally set aside the fact that there was a year of
10 investigation?
11 On this first point, I would like the Chamber to decide whether
12 or not, for each witness, we are going to start with examinations
13 and cross-examinations. That is a common law system, which is
14 logical when there has not been a prior investigation, and which
15 is also logical when the Judges do not themselves put questions
16 to the witness. But today this common law proceeding has nothing
17 to add for the truth to be ascertained.
18 The second way in which the prosecution is misusing the
19 proceedings, I perfectly understand through the questions put by
20 the Co-Prosecutors that the aim sought is to accumulate evidence
21 for Case number 2.
22 Mr. Khieu Samphan was mentioned on several occasions; so was Mr.
23 Ieng Sary. As far as I know, these people are imprisoned a few
24 metres away from here. They are not in the dock.
25 I say that it is inappropriate today to register evidence against

98

1 people who are not present, and I fail to see how we as legal
2 practitioners can accept these inappropriate proceedings. We are
3 here because Duch is accused for crimes pertaining to S-21. I
4 have not heard about S-21 today except for a very minor reference
5 a few minutes ago.

6 [15.54.20]

7 Mr. President, these are the submissions I wish to make.

8 I respectfully draw to the Chamber's attention the fact that if
9 we continue at this rate, tomorrow the civil parties will put
10 their questions to the expert, following the same format, and at
11 4.15 tomorrow, the defence will not have been afforded the
12 opportunity to put even a single question. If that is what we
13 wish, then say so and we shall leave.

14 Thank you.

15 MR. PRESIDENT:

16 The Co-Prosecutor, you can now take the floor.

17 MR. BATES:

18 Thank you, Mr. President.

19 If we add up the number of times the defence has spent objecting
20 to questions, to evidence and to submissions made on behalf of
21 the Co-Prosecutors or the civil parties, we would see that we are
22 wasting time with these sorts of objections. The objection is
23 baseless and contains a number of allegations that I will not
24 respond to. They do not have -- they do not deserve the dignity
25 of a response.

99

1 [15.55.57]

2 But as I discussed last week, we are here in the Court to hear
3 evidence publicly. I remind Maître Roux, as well as Your
4 Honours, that Mr. Chanda did not have the opportunity of being
5 heard as a witness in the Investigating Judge phase. There is no
6 lengthy written interview of Mr. Chanda. He has not been spoken
7 to in the same way as a witness would be in other tribunals; as
8 an expert witness would be in other tribunals.

9 The Co-Prosecutors are seeking to establish Mr. Chanda's
10 expertise, which was the purpose of the series of questions I
11 asked at the beginning, and also designed to express Mr. Chanda's
12 knowledge of the policies of the two countries in question.

13 This is the nature of the questions that the Co-Prosecutors have
14 been asking. Such interruptions themselves are a waste of time,
15 in the submission of the Co-Prosecutors. I choose my questions
16 carefully and I do not ask this experienced witness about every
17 single source that he mentions, but the reason why we ask about
18 particular sources is to demonstrate the policy and the reasons
19 behind the policy, regardless of admissions that have been made
20 by the accused. And I note that the accused does not wish to
21 take a position before the 31st of December 1977. The
22 Co-Prosecutors still bear the burden of proving the case against
23 the accused.

24 I note the time that we have with Mr. Chanda. I note we have two
25 days. I have some more questions to ask him and I had hoped, had

100

1 it not been for any objections, to have concluded my questioning
2 by the end of this afternoon. But regrettably, that now cannot
3 take place. I invite the Trial Chamber to rule that this
4 objection is irrelevant and baseless.

5 [15.59.12]

6 MR. PRESIDENT:

7 The civil party lawyers, would you wish to make any comment in
8 relation to the objection of the defence counsel concerning the
9 questionings of the prosecution? The floor is yours.

10 MR. WERNER:

11 Your Honours, thank you. I will take 10 seconds of your time
12 just to put on the record that we do support the Co-Prosecutors'
13 position, and I would like to put on the record that as the
14 matter stands now, if that can help your determination, my group
15 has one question for this expert which, with the answer, should
16 take two minutes. That's what we have for this expert. If that
17 can help your determination, I'm grateful.

18 MS. STUDZINSKY:

19 Thank you, Mr. President.

20 First, I have noted that the defence repeats again and again
21 fundamental views on international proceedings and the role of
22 civil or relationship between civil and common law. I think
23 everybody has noted these observations and they need not to be
24 repeated again and again. That is the first preliminary remark.
25 Then to the content. Due to the fact that the Chamber has put

101

1 questions to the expert does not mean that the parties are not
2 allowed or are limited in their right to ask questions, and that
3 is really not the nature of civil law. Of course, and to prove
4 the case or to support the prosecution from the perspective of
5 the civil parties, the parties are allowed to ask questions, of
6 course if they are not repetitious, which was not the case so far
7 by the questions that the prosecutors have put to the witness.

8 [16.01.41]

9 And the issue -- I would like to remind that the issue that we
10 are talking here about is armed conflict, and of course regarding
11 this issue, it is not S-21 to which the questions should be
12 limited, and of course leaders and their role and their decisions
13 and their positions play a role to consider if here an armed
14 conflict took place between '75 and '79.

15 So that I request the Chamber to reject the objection by the
16 defence. Thank you.

17 MS. RABESANDRATANA:

18 Mr. President, if you please give me the leave just as for
19 information's sake to contribute to the debate here. I believe
20 that group number 3 will probably not have any specific questions
21 to put to the expert witness, so this to allow you to come to a
22 quick decision. Thank you.

23 MR. PRESIDENT:

24 Lawyer Hong Kimsuon, the floor is yours.

25 MR. HONG KIMSUON:

102

1 Thank you. Mr. President, Your Honours, as a lawyer of a civil
2 party of Group 4, I have noticed that and I also do not have many
3 questions to ask Mr. Nayan Chanda, but my observation at this
4 stage is that the objection by the defence not to have many
5 questions to be asked, or whether he thinks it's a waste of time,
6 is unreasonable because Nayan Chanda is an expert. We can't even
7 say that if what he wrote is historical information for Cambodia,
8 Vietnam and their relations with other countries which leads to
9 the war between Cambodia and Vietnam.

10 [16.04.31]

11 So it is my observation and understanding and suggestion that
12 questions shall be asked by the prosecutors, the civil party
13 lawyers, and of course the defence because we only have two days,
14 unfortunately, that we have to ask this witness. But what I want
15 is that for the Cambodian people, both inside the country and at
16 the international stage, to know what is the cause which leads
17 Cambodia to fight wars amongst themselves as written in his book,
18 "The War after the War".

19 So Mr. Nayan Chanda is an expert. He can shed light on the
20 questions that we want answered and the Cambodian people in the
21 whole country and the people in the world want to know today, and
22 I don't think it is a waste of time of anyone. And if the
23 defence thinks the questions are repetitive, then the President
24 would forbid such questions.

25 So even if thinking of the civil law proceedings or the common

103

1 law proceedings, this is the rights or the obligations of the
2 defence. However, it is my suggestion and submission that
3 questions must be asked clearly and fully so that Mr. Nayan
4 Chanda can shed light on this topic. And of course I support the
5 stance of the Co-Prosecutor.

6 MR. KONG PISEY:

7 I would like to seek the President's permission.

8 MR. PRESIDENT:

9 The floor is yours.

10 [16.06.16]

11 MR. KONG PISEY:

12 Thank you, Mr. President, Your Honours.

13 It is my observation that the defence has attempted to defend his
14 client. It is appropriate. However, he raised the issue that
15 this is the proceedings used in the civil law, not in the common
16 law system. So he said what we use is related to the common-law
17 proceeding but he has no real ground for his objection and it is
18 not only for today but it's from the start of the trial, from the
19 30th of March.

20 We are using the civil law system, that is, the judges play a
21 role in asking questions to the parties and to all the witnesses
22 but in the common-law system the judges do not put questions,
23 they just sit and all the other parties would ask questions and
24 that is the common-law system.

25 [16.07.01]

104

1 So here we are implementing the civil law system and it is
2 appropriate and I would like the Chamber to reject the objection
3 raised by the defence.

4 Thank you.

5 (Deliberation between Judges)

6 MR. PRESIDENT:

7 On this particular issue there is the objection raised by the
8 defence. First, the Chamber would like to thank all parties for
9 providing their observations regarding this objection.

10 [16.12.20]

11 And the Chamber decides that the objection by the defence is
12 unclear, is groundless, and it is therefore rejected. The
13 Co-Prosecutor can proceed with their questions to the expert but
14 the Chamber would like to remind the Co-Prosecutors that, please
15 be cautious in raising questions regarding the facts before this
16 expert, that is to avoid repetitive questions which might have
17 been already asked by the judges. And as I said, the
18 Co-Prosecutors should attempt to avoid these repetition.

19 The floor is yours.

20 MR. BATES:

21 Thank you, Mr. President.

22 And I will certainly take onboard the Trial Chamber's comments
23 and perhaps if I can be very specific in the following questions
24 I have for Mr. Chanda.

25 BY MR. BATES:

105

1 Q.Mr. Chanda, I would like to take you back to the Hungarian
2 journalist and rather than ask you to repeat the story or discuss
3 in detail the story, you mention in your book at page 194 -- ERN
4 00192379 -- that the pictures and cassettes and notes of the
5 journalist were confiscated by the Vietnamese Politburo, although
6 later returned to him and you give some explanation in your book
7 as to why after an invitation to look at the scene they may have
8 been confiscated.

9 Can you just help us with that precise point, please?

10 A.Sandor Gyori, the Hungarian journalist, he was invited --
11 assisted by officials in Saigon H? Chí Minh City and it was at
12 the initiative of General Chen Man Chow (phonetic) who was the
13 senior general of all Vietnamese origin and clearly General Chen
14 Man Chow acted on his own initiative. He was outraged by the
15 brutalities and he wanted the world to know but the Politburo had
16 a different idea; the Politburo did not want to reveal this news
17 without considering the implications of this explosive news going
18 out to the world because they were looking at Cambodia incident
19 as part of an overall strategic picture involving China,
20 involving other countries and they wanted to be sure as to how to
21 reveal this information that would be best for Vietnam strategic
22 interests and that is why, I think, that having been given the
23 opportunity to go and see the massacre, his films and cassettes
24 were confiscated by the security people.

25 [16.16.11]

106

1 And it was returned to him only after December 31st, 1977 when
2 the conflict was public so that Vietnamese had no then reason to
3 hold on to that -- those information.

4 Q.Thank you.

5 Can I turn you to page 196 of your book which is at ERN 00192381?

6 You discussed this already but I have a specific question. You
7 talk about, after months of planning, the Vietnamese Army
8 launching an important but unpublicized military operation
9 against Democratic Kampuchea. This is in October 1977.
10 In your expert opinion, can you tell us why such an attack may
11 have not been publicized; why it was deemed -- why it had to be
12 unpublicized?

13 A.I think the Vietnamese calculation was that an open conflict
14 with Cambodia would inevitably involve other countries, their
15 response to that kind of attack, and so like the Khmer Rouge have
16 done in the past -- they also have attacked without telling
17 anybody that they're attacking -- the Vietnamese played along,
18 giving the counterpunch and hoping that they would get the lesson
19 and perhaps either negotiate or this defeat would inspire
20 internal rebellion.

21 And that was something that I have heard several times Vietnamese
22 officials say; that this conflict can be resolved either by Pol
23 Pot coming to his senses and changing policy or people within the
24 Party removing him. And the third option that was never
25 mentioned to me, but that was the option they had to take, invade

107

1 Cambodia directly. But this was -- in order to keep those
2 options open they wanted to make this thing secret.

3 [16.19.01]

4 Q.Can I turn you to page 381 of your book, ERN 00192503, in
5 which you discuss how in June 1978 Vietnam began its unpublicized
6 aerial bombing of Cambodia. You describe flying as many as 30
7 sorties a day.

8 A similar question: why, after war had officially been declared
9 or at least diplomatic relations severed in December '77, would
10 the Vietnamese not publicize the aerial bombing that you
11 describe?

12 A.Again, I'm not knowing for sure as to what was the
13 calculation. My guess would be that Vietnamese did not want to
14 -- unless the Khmer Rouge themselves publicized the fact that
15 they're bombing, and since they did not, the Vietnamese did not
16 see any reason for them to tell the public that they're stepping
17 up the pressure on the Khmer Rouge, because that might again
18 bring protests from other countries -- and because this is an
19 expansion of the war, not only on the ground but on the air.
20 So that could have been the reason why they did not publicize it.

21 [16.20.47]

22 Q.Thank you.

23 You were asked by my colleague some questions concerning a
24 Cambodian man by the name of Ros Saroeun, R-o-s S-a-r-o-e-u-n,
25 and you refer to this in page 86 of your book, which is ERN

108

1 00192271, and in the footnotes for that passage you refer to an
2 interview that you had with him personally on the 14th of January
3 1981 in Phnom Penh.

4 Can I first ask you to confirm the interview and how it took
5 place; but more particularly, how credible you found his story to
6 be, and whether you had or sought any corroboration?

7 A.I had met Ros Saroeun during one of my trips and talked about
8 his experience during the Khmer Rouge period. And among many
9 things he recounted this story, and the fact that he himself was
10 raised by a Vietnamese person as an orphan, he's had -- his wife
11 was Vietnamese -- and the account he gave sounded extremely
12 plausible, and later on I found out that 870 was indeed the code
13 name for Central Committee. And this is something that someone,
14 so simple person, would have no way of knowing what would be 870;
15 that he actually saw that letter and remembered it was 870.

16 So I had no reason to doubt the accuracy of the story he told me,
17 and it fitted very well with other sources I had about that
18 period.

19 [16.23.15]

20 Q.When you wrote your book, Mr. Chanda, were you aware of any
21 confessions made by Vietnamese nationals at S-21? I'm not asking
22 for the detail, just your knowledge of whether there existed such
23 confessions when you wrote the book.

24 A.Yes, I think I knew there were confessions. I had personally
25 seen sheafs of paper on my first trip to Tuol Sleng and there

109

1 were -- of course I could not read them but I read some which
2 were written in French and some in English, but mostly they were
3 in Khmer. But I was told that there were some confessions by
4 Vietnamese.

5 Q.Can you tell us who told you that, if you can remember?

6 A.No, I don't remember, because at that time there were several
7 people who were looking after the papers in Tuol Sleng, a
8 second-floor office. I do not recall who told me that.

9 Q.Do you recall or did you take a note of the dates of any of
10 the confessions from Vietnamese at S-21?

11 A.No, I don't.

12 Q.Returning to the apparent lulls in the hostility between
13 Cambodia and Vietnam, or certainly a lull in the reporting of any
14 hostility, was there any significant shift in policy between --
15 from the Cambodians or the Vietnamese in that period of 1976
16 going through 1977?

17 A.I think the '76 period was the period when Pol Pot first saw
18 opposition within the Party, and again my recollection is that
19 there were many references to reactionaries, enemies within the
20 Party, and the fact that Pol Pot decided in '76 to actually
21 withdraw temporarily from the Prime Minister's position was kind
22 of seen by experts as indication of some difficulty he's having
23 inside the Party, and also the fact that the name of the Party
24 was changed. ...

25 These indications of internal trouble could perhaps be one reason

110

1 why the focus was not so much on the border. Ensuring Pol Pot's
2 control over the Party at that point was more important than
3 fighting the border, but at the same time I recall Ieng Sary made
4 a speech in December '76 in which he had very clearly alluded to
5 aggression against Cambodia would be resisted, and loss of
6 territory, so kind of the words used were clearly indicative of
7 Vietnam being the enemy.

8 So that would be my hunch.

9 [16.27.46]

10 Q.And on the Vietnamese side was there any significant shift in
11 policy throughout 1976 and through into '77?

12 A.'76 was an important year for Vietnam because that was the
13 first year after the unification of the country. They were
14 drawing up their four- to five-year plan and preparing for the
15 Party Congress in December, so in that context Vietnamese were
16 more preoccupied with the domestic issues.

17 But I would not be surprised if the Vietnamese were aware of the
18 internal opposition Pol Pot was facing, and they might have
19 thought that would be the way Vietnam would like to see, if Pol
20 Pot was removed and friends of Vietnam came to power; that would
21 be part of the ideal outcome from the Vietnamese point of view
22 and that could be also the reason why there was perhaps not much
23 activity along the border.

24 MR. BATES:

25 Mr. President, it's half-past four. I don't know whether you

111

1 wish me to continue or whether this is a convenient moment.

2 MR. PRESIDENT:

3 We cannot continue. You have more questions.

4 So the Chamber is adjourned now and will resume tomorrow,

5 starting from 9.00 a.m.

6 Security Officer, take the accused back to the detention facility

7 and bring him back to the Chamber before 9.00 a.m. tomorrow

8 morning.

9 And Court Officer, you're instructed to take the expert back to

10 his residence and invite him back to the Chamber before 9.00 a.m.

11 tomorrow.

12 Mr. Nayan Chanda, the Chamber would like to thank you for your

13 effort and time to provide testimony. However, because of your

14 expertise in varieties and various fields that other parties

15 would like to ask you for clarification, so the Chamber will need

16 another day to have your presence and you will be finished

17 tomorrow.

18 And the parties, you can participate in the hearing tomorrow from

19 9.00 a.m.

20 (Judges exit courtroom)

21 (Court adjourns at 1631 hours)

22

23

24

25