



## **TWO EXPERTS TESTIFY; ONE BARELY SPEAKS**

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### **Armed Conflict Between Vietnam and Cambodia**

The public gallery was quite crowded with Cambodian college students and villagers this morning as expert Nayan Chanda, former correspondent for the *Far Eastern Economic Review* and author of *Brother Enemy: The War After the War*, finished his testimony regarding the armed conflict between Vietnam and Cambodia.

Chanda described his experiences at refugee camps on the Vietnamese side of the border. After willingly escaping from Cambodia along with Vietnamese soldiers, Chanda reported, Cambodian refugees lived in total fear, but also remained hopeful that they would return home once Cambodia was “liberated” by the Vietnamese. Chanda described local arrangements resulting in the forced repatriation of Cambodian refugees who were traded for livestock on a one-to-one basis. Acknowledging he lacked direct knowledge, Chanda opined that Vietnamese forces who sent refugees back to Cambodia must have suspected that those refugees would be executed upon their return.

Cambodian defense counsel Kar Savuth posed only one question after stating that the armed conflict was between states and had essentially nothing to do with The Accused Person, Kaing Guek Eav (Duch). International defense counsel Francois Roux then requested that Duch be given an opportunity to respond to Chanda’s testimony. In a lengthy speech, Duch seemed to directly address Chanda while Chanda stared intently in a different direction. Duch praised Chanda’s achievements in detailing important events and in bringing to light “major concepts” about Vietnam, which Duch then outlined. Specifically, Duch said that Vietnam wanted the Communist Party of Kampuchea (CPK) to follow its way and if Vietnam could not succeed, it planned to allow the Khmer people to topple Pol Pot. If that failed, then Vietnam planned to attack from the outside. He acknowledged that the “long and protracted” conflict between Cambodia and Vietnam caused great bloodshed among civilians. He said Pol Pot was not a “great patriot,” but rather the murderer of more than one million people. Within that large number, Duch said his hands were stained with the blood of 12,380 people from Tuol Sleng prison, also known as S-21.

Following Duch's remarks, Roux sought to impress upon Chanda the significance of his testimony. Roux explained that the prosecution sought to establish that the war waged from April 1975 to January 6, 1979, so Duch could be convicted of war crimes with regard to all Vietnamese prisoners sent to S-21 during that time period. Noting that Duch confesses knowledge of the conflict as of December 1977 and recalling Chanda's testimony from yesterday that major Vietnamese counterattacks commenced at the end of 1977, Roux pressed Chanda to define the boundaries of the conflict narrowly. Chanda explained that he was not a lawyer and had no knowledge regarding whether war must be declared or not in order for "war" to wage. Chanda acknowledged, however, if war can commence without declaration, the war started in 1975. If war requires a declaration, he continued, then it started on December 31, 1977 when diplomatic relations between Vietnam and Cambodia were severed. Roux appeared very pleased with Chanda's response.

### **Expert Testimony with a "Grain of Salt"?**

After lunch, the Trial Chamber again called to the stand Khmer Rouge expert Craig Etcheson to discuss the implementation of CPK policy at S-21. It seems that every time Dr. Etcheson enters the courtroom, procedural issues follow. During his three hours on the stand today, Dr. Etcheson had the opportunity to answer only two questions. Dr. Etcheson testified that in Duch's capacity as head of S-21, he studied confessions and prepared lists of people to be purged. Such lists of names were forwarded to the upper echelon which considered the lists and ordered the cooperation of lower echelons in the purge of listed individuals.

Interpretation and translation issues arose when international co-prosecutor Alex Bates sought Dr. Etcheson's reaction to two-pages of Khmer Rouge meeting minutes. While the scene described below is not of particular significance, perhaps it will illustrate how interpretation and translation issues often complicate and delay the proceedings. Bates and Etcheson are both native English speakers with the English version of the relevant document in front of them. Since the original document is in Khmer, at Roux's insistence, the document was read aloud in Khmer, rather than English, by a Khmer-speaking court clerk. The Khmer reading is translated immediately into English, and then the English is translated into French. Due to some confusion, the document is read aloud several times. French-speaker Roux listens to the interpretation in French while at the same time reading the French version of the document previously translated by ECCC staff. Roux stands to announce inconsistencies between the French spoken version and the French written version. Under the impression he can end the confusion, one of the civil party lawyers who is a native Khmer speaker reads the document aloud. Duch provides several minutes of commentary in Khmer about the meaning of the document. Judge Lavergne asks Duch a few clarifying questions in French. Bates asserts that Duch is not an expert translator and will have the opportunity to comment on the document at a later time. Bates confirms that the original document in Khmer should be authoritative. Finally, after roughly forty-five minutes, the expert is given the opportunity to answer the question. I was told by a native Khmer speaker that Khmer Rouge documents are even difficult for him to understand because they are written almost in shorthand with subjects

and verbs often omitted. While interpretation and translation difficulties are commonplace and understandable in this trial, they consume a great deal of time and energy.

Minutes after the translation issues were put to rest, another procedural battle began. Bates sought to put questions to Dr. Etcheson regarding nine letters from Division 502 Secretary Sou Met to Duch apparently discussing enemies that had been arrested from Division 502 and sent to S-21. Roux objected to the use of six of the nine letters which were not cited in Dr. Etcheson's expert report. Echoing his comments from last Thursday, Roux argued that because of Dr. Etcheson's affiliation with the office of co-prosecutors and involvement in the investigation phase of the case, he should not be allowed to comment on material he became aware of after July 2007 when he submitted his expert report. Roux insisted a "gentlemen's agreement" had been reached on this issue during the closed trial management session last Thursday; no one agreed with him. Bates pointed out that other international criminal tribunals allow witnesses paid for or employed by a party to testify.

After a recess, Judge Lavergne inquired whether Roux would allow questions to be put to Dr. Etcheson regarding post-July 2007 material if the Chamber agreed to evaluate Dr. Etcheson's answers with an appropriate "grain of salt" given his affiliation with the prosecution. Roux said he was amenable to the "grain of salt" solution, but further debate continued and the Chamber adjourned for the day before ruling on the matter.

Dr. Etcheson will take the stand again tomorrow. Hopefully, he will be able to beat today's ratio of one question per one-and-a-half hours.