



WAR WITH VIETNAM AND CONFLICTS WITHIN THE ECCC

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Vietnamese Civilians, Spies, and POWs at S-21

Kaing Guek Eav (alias Duch) completed his testimony today regarding the armed conflict between Cambodia and Vietnam, which arguably was waged during the entire Khmer Rouge period from April 17, 1975 to January 6, 1979.

Based on his current knowledge, Duch does not deny the war started in April 1975, but he claims a very limited knowledge of the conflict before January 6, 1978. Duch's superior, Son Sen, with whom he spoke nearly everyday, went off to the battlefields due to the necessity of the conflict in August 1977 and Duch still maintains he knew nothing about what was going on. Judge Silvia Cartwright, the prosecution, and one civil party sought to pick apart this assertion throughout the day, but Duch maintains his superiors only gave him instructions about how to manage Tuol Sleng prison (S-21) and did not share information about current events with him.

Duch explained that Vietnamese prisoners were categorized as civilians, spies, or combatants by his superiors and he admitted he did not check the accuracy of their designations since anyone sent to S-21 was killed as a general policy. While Duch acknowledges that some Vietnamese civilians and spies came to S-21 before 1978, he explains that Vietnamese prisoners of war (POWs) started coming in large numbers in January 1978. Before 1978, Duch said he was ordered to focus his interrogations on spying, whereas when the POWs started arriving he was ordered to focus on extracting confessions to be broadcast for the propaganda purposes of the Communist Party of Kampuchea (CPK). Duch admitted to ordering interrogators to use whatever means necessary to achieve the CPK objective of getting usable confessions. Duch also said the confessions were often amended by his superiors to make better propaganda. On a few occasions, Duch sent S-21 staff to the battlefields to bring POWs back to S-21.

Yesterday, Duch confirmed a statement that at least 400 Vietnamese were victims at S-21; however, today he confirmed a Vietnamese prisoner list of 345. While Duch did not so order, cadre apparently did not include Vietnamese children on the lists or take their photographs, so these figures are inaccurate at best. Children of “enemies” were considered enemies as well and were therefore “smashed” – interrogated, tortured, and killed.

Regarding his knowledge of international law governing POWs, Duch claims he did not become aware that his actions were against international law until the introductory submissions at the beginning of his case. He admits that if he looks at the international laws now, it is clear that his acts were “completely wrong.” Noting that Duch was not aware of international law at the time, Judge Cartwright pushed Duch a bit further, “What about common sense?” Unapologetically, Duch explained that at that time Cambodians killed Vietnamese and Vietnamese killed Cambodians. He simply implemented the orders he received.

Much of the questioning today was off-topic, focusing on S-21 operations with regard to Vietnamese prisoners rather than Duch’s knowledge of the international armed conflict itself. With international defense counsel Francois Roux away at the Special Tribunal for Lebanon this week, no one stepped up to enforce the boundaries of topic and relevancy. After one question from a civil party lawyer, Duch himself said the question was off-topic and refused to answer it. No one disagreed. I am confident Roux would have objected several times today and the proceedings would have benefited from it.

An Expeditious Road Ahead in the Duch Trial?

Instead of holding a regular hearing tomorrow, the Trial Chamber will convene a closed trial management meeting with all the parties, including the civil parties who were excluded from the last such meeting. The meeting’s overall purpose is to ensure the trial can proceed as expeditiously as possible and President Nil Nonn set out an aggressive agenda.

The parties will discuss the estimated duration of trial proceedings, which days the court will sit, trial recesses, and time allocation for civil party testimony. They will also discuss any problems that have arisen regarding the availability of lawyers for the parties as well as other staffing and administrative issues. Finally, revisiting the topic of the trial management meeting two weeks ago, the judges will propose an amendment to Internal Rule 87.3 regarding how a party can properly put a document before the court. The Chamber will make the very practical proposal that, aside from providing a detailed summary or reading a document aloud, a document may be “appropriately identified in court.” Judge Cartwright mentioned the Chamber will also propose a new Internal Rule, 87.6, which would allow the Chamber to consider a fact as proven when neither the co-prosecutors nor the defense contest that fact in the indictment.

This meeting comes after the testimony of two witnesses scheduled to discuss operations at S-21 was postponed because the proceedings continue to progress slower than expected. Several times this week the judges have expressed their desire to move expeditiously and they have even started returning on time from daily recesses – a change which allows for an extra hour of testimony each day.

Weekly Press Conference

Defendants Push for Fair Trial Standards

Richard Rogers, head of the ECCC Defence Support Section (DSS), was the guest speaker at the press conference today. Rogers described the DSS mandate to promote defendants' rights by providing assistance to the defense lawyers. He reminded a packed press room that international assistance is aimed at ensuring fair trial standards are met and that those standards are in the interest of the accused as well as the victims because they allow judges to make correct decisions.

Rogers explained the professional obligation of the defense to raise fair trial issues and provided some recent examples from Case 002, including a defense request for the release of a confidential report by the UN Office of Internal Oversight Services (OIOS) which is currently on appeal before the Pre-Trial Chamber and defense letters to the co-prosecutors and co-investigating judges regarding possible political interference with their work. Addressing common "misconceptions" of these defense actions, Rogers argued the defense had not raised these issues to obstruct or delay the proceedings, noting fair trial concerns are never obstructive and the investigation is continuing regardless. Further, Rogers argued the defense is not shying away from the merits of the case as these fair trial efforts complement rather than replace defense work on the evidence.

Rogers explained the defense's view that the Pre-Trial Chamber mechanism of settling disagreements between co-investigating judges or co-prosecutors is not a solution to potential political interference. Under international law, a defendant's right to be tried by an independent tribunal is absolute and a lack of independence is not cured simply because the dispute is sent to the Pre-Trial Chamber.

Airing some other concerns, Rogers described the lack of medical information defense lawyers have about their elderly clients and how the lawyers are consistently denied access to their clients when they are hospitalized. Further, Rogers argued that a defendant has a right to an expeditious trial and as such the multiple-month lags between the hearing and decision on an issue is unacceptable.

“Waterlilygate”: No Foul Play

Over the last few weeks, there has been a great deal of discussion about a confidential defense document from Case 002 – a letter to newly-appointed ECCC Victims Unit head Helen Jarvis – that was found in a pond near the ECCC after it was allegedly discarded into a box of items to be shredded. While an internal ECCC investigation has been completed and a report is being drafted that will provide more details regarding what the media calls “waterlilygate,” Public Affairs insisted that there is no evidence to substantiate any allegation of foul play or theft of documents. In the report, ECCC security personnel will be offering recommendations aimed at reinforcing existing document disposal guidelines.

Regarding a related controversy, Public Affairs announced that the Deputy Director of Administration Knut Rosandhaug has responded to a letter from Ieng Sary’s counsel expressing concern about Helen Jarvis’ recent appointment to head the Victims Unit in light of information that surfaced about her involvement with a group called the Leninist Party Faction. Apparently, Rosandhaug’s response letter explains that all ECCC employees have a right to freedom of association, Jarvis’ political affiliations were known in advance, and he fully supports her appointment. Public Affairs said there will be no further statements on the issue.