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Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

**Declassified to Public
25 January 2019**

Interoffice Memorandum

21 March 2018

TO: Hon. Judge NIL Nonn, President of the Trial Chamber
FROM: Isaac Endeley, Chief of Defence Support Section
COPY: All Trial Chamber Judges; Trial Chamber Senior Legal Officer; All Parties; Case 002
SUBJECT: **Status of International Co-Counsel in Case 002/02**



1. Further to your memorandum of 14 March 2018 [E378/8], I have the honor to inform the Trial Chamber that, as directed, I wrote to Mr. Victor Koppe on 19 March 2018 seeking clarification regarding his bar membership status outside of Cambodia. Mr. Koppe responded on 20 March 2018 and his response can be summarized as follows:

- On 23 October 2007, Mr. Koppe met with Mr. Nuon Chea for the first time at the ECCC detention facility and at that meeting Mr. Nuon Chea formally requested Mr. Koppe to represent him as international legal counsel before the ECCC.
- In February 2008, the Bar Association of the Kingdom of Cambodia (“BAKC”) advised Mr. Koppe that he was not authorized to represent Mr. Nuon Chea in any capacity whatsoever if he was not first sworn in as a member of the Cambodian Bar. Mr. Koppe was told that since the ECCC is first and foremost a domestic court, his membership of the Cambodian Bar was a *condition sine qua non* for the legal representation of Mr. Nuon Chea. Mr. Koppe was also explicitly instructed by the Dean of the BAKC at the time that his 18 years of experience as a practicing Dutch attorney were irrelevant and that only registration in the BAKC would allow him to formally represent Mr. Nuon Chea.
- In fact, the first hearing on the pre-trial detention of Mr. Nuon Chea was postponed until after Mr. Koppe was formally sworn in and admitted to the Cambodian Bar.
- In the ten years that have elapsed since then, not once has the BAKC requested Mr. Koppe to show any proof that he was still a member of a foreign bar association. Mr. Koppe was also never instructed that continued membership of a foreign bar was a prerequisite for continued membership of the Cambodian Bar. He believes this means his membership of a foreign bar is and has always been irrelevant to the Cambodian Bar other than at the time of admittance.
- In addition, Mr. Koppe states that the Legal Services Contract he signed with the United Nations does not stipulate that he needs to remain a member of a foreign bar after being admitted to the Cambodian Bar. He argues that it is only a prerequisite to be initially admitted to the list of foreign lawyers maintained by the Defence Support Section (“DSS”). Moreover, Mr. Koppe points out that in the past ten years he has never received a request from DSS to show any proof of membership in the Amsterdam Bar. He argues that this is in accordance with the practice at international tribunals such as the ICTY and ICTR where membership of a

bar is not a formal requirement for inclusion in the list of lawyers and professors of law or former judges are able to act as legal representatives of accused persons.

- Mr. Koppe also states that when he assumed full-time representation of Mr. Nuon Chea in January 2013, he initially maintained his law office in Amsterdam because at the time, *communis opinio* was that there was only going to be one trial in case 002. However, when it later became clear that there would be a second trial (in addition to the appeal against the first trial judgment), he gave up his law practice in Amsterdam and formally requested the Amsterdam Bar, by letter of 23 December 2013, to authorize him to maintain an office in Phnom Penh only. The Amsterdam Bar granted him special permission for a period of two years, starting on 1 January 2014 and ending on 31 December 2015. Subsequently, when the Amsterdam Bar advised Mr. Koppe that he would need to fulfill additional administrative requirements in order to maintain his office in Phnom Penh for another period of two years, he decided to end his membership of the Amsterdam Bar while continuing to practice before the ECCC. He notified the Amsterdam Bar of his decision by letter of 15 May 2015 and his membership ended automatically on 1 January 2016.
 - Finally, Mr. Koppe asserts that he has always maintained his membership of the Cambodian Bar and that this makes him fully eligible to continue representing Mr. Nuon Chea before the ECCC. He adds, however, that if the Trial Chamber – after consultation with the BAKC and DSS – were to decide that he needs to be a member of a foreign bar in order to continue working at the ECCC, then he will request renewed membership from the Dutch Bar. He states that he still fulfills all the necessary requirements to be quickly readmitted. He also argues that in such a scenario, his Legal Services Contract with the United Nations would need to be amended accordingly since that is the primary legal framework under which he operates.
2. Regarding the Trial Chamber’s directive that I should inform it “of any steps that may be required to be taken by DSS as a result of this situation,” I note that pursuant to Rules 11 c) ii) and 11 d) ii) of the ECCC’s Internal Rules, DSS is required to maintain lists of “foreign lawyers admitted to the bar in a United Nations Member State who have been registered by the BAKC.” Further, under Internal Rule 4 c) i) and Regulation 2.2 i. of the DSS Administrative Regulations, in order for a foreign lawyer to be included in the UNAKRT list of lawyers eligible to represent indigent defendants before the ECCC, he or she must “be a current member in good standing of a recognised association of lawyers in a United Nations Member State” other than Cambodia.
 3. The general practice at DSS over the years has been to verify a foreign applicant’s membership of a domestic bar association outside of Cambodia before admitting him or her to the list of lawyers. The proof of membership is then forwarded to the BAKC prior to the applicant’s admission to the Cambodian Bar. In other words, proof of foreign bar membership is only required at the time of application for admission to the DSS list and to the BAKC, but not thereafter. None of the foreign lawyers practicing before the ECCC has ever been required to provide proof of membership in a domestic bar association outside of Cambodia *after* admission to the DSS list or to the BAKC.
 4. Mr. Koppe has indicated that if the Trial Chamber determines that he needs to maintain a foreign bar membership as well as his BAKC membership in order to continue practicing before the ECCC, then he is willing to renew his Dutch Bar membership quickly. However, it would be best if such a requirement were made applicable not only to Mr. Koppe but to all the foreign lawyers admitted to practice before the ECCC. It may also be necessary to amend the relevant provisions of the Internal Rules, the DSS Administrative Regulations, and the Legal Services Contract signed by the defense lawyers so that they explicitly require each foreign lawyer at the ECCC to periodically provide proof of membership of a domestic bar association outside of Cambodia.

Respectfully submitted. *T.E.*