



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

ឯកសារដើម
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Sann Rada
CMS/CFO:.....

TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC
Case File N° 002/19-09-2007-ECCC/TC

09 July 2013
Trial Day 207

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

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
JUDGE CARTWRIGHT	English
MR. HEDER	English
MR. KHIEU SAMPHAN	Khmer
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
JUDGE LAVERGNE	French
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. NUON CHEA	Khmer
MR. RAYNOR	English
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer
MR. VERCKEN	French

1

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

2 (Court opens at 0902H)

3 MR. PRESIDENT:

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

5 Mr. Duch Phary is now directed to report to the Chamber on the
6 current status of the parties to the proceedings today.

7 [09.03.45]

8 THE GREFFIER:

9 Good morning, Mr. President and Your Honours. Parties to the
10 proceedings are all present.

11 Mr. Nuon Chea is present in his holding cell downstairs, as ruled
12 by the Trial Chamber, due to his health concerns.

13 During today's sessions, we have a reserve witness, TCW - TCE-33.

14 This witness is available to be called in the afternoon. This

15 witness already confirmed that to the best of his knowledge, the

16 witness is not in a relationship with an Accused or a civil

17 party. The witness will take the oath before the Chamber when the

18 witness appears before the Chamber.

19 Thank you, Mr. President.

20 MR. PRESIDENT:

21 Thank you, Mr. Duch Phary.

22 Next the Chamber would like to now hand over to counsels for Mr.

23 Nuon Chea to continue making observations regarding their

24 responses to the presentation of the key documents presented by

25 the Co-Prosecutors and the Lead Co-Lawyers for the civil parties

2

1 on the 24th to 27 of June. You may now proceed.

2 [09.05.11]

3 MR. SON ARUN:

4 Good morning, Mr. President and Your Honours. I would like to
5 continue from what we left off yesterday late afternoon regarding
6 our responses to the key documents presented by the
7 Co-Prosecutors. Today I am discussing about S-21.

8 Your Honours, I would like to turn now to S-21. I would like to
9 first repeat the objections made by my colleague Mr. Koppe
10 yesterday morning. It makes no sense that we were talking in this
11 document presentation hearing about Nuon Chea's role at S-21,
12 which is outside the scope of this trial. This Chamber has twice
13 refused the Prosecution's request to include S-21 within the
14 scope of this trial.

15 Nuon Chea's role at S-21 is not about his role in relation to an
16 alleged CPK policy. It is about his role at a crime site. There
17 is not enough evidence before this Court to make any findings on
18 this subject. There are several topics on which this Chamber
19 would need to hear live testimony in order to make findings about
20 Nuon Chea's role at S-21. Those topics include, for example,
21 Duch-

22 [09.07.50]

23 MR. PRESIDENT:

24 Counsel, can you please hold on?

25 And, Mr. Co-Prosecutor, you may now proceed.

1 MR. LYSAK:

2 Thank you, Mr. President. Good morning to everybody.

3 If counsel is again straying from the purpose of this present -
4 of this hearing, which is to respond to the documents that have
5 been presented, he is now making an argument relating to whether
6 or not S-21 is part of the case, whether testimony - additional
7 testimony would be required about S-21. He's not responding to
8 the documents.

9 I would refer him to - also to Closing Order, paragraphs 877,
10 878, and 879, which are part of this case. All three paragraphs
11 directly concern one subject, Nuon Chea's responsibility for
12 S-21.

13 [09.08.48]

14 Nevertheless, the purpose of these hearings is not to argue about
15 the scope of trial. The purpose of these hearings is for the
16 Defence to respond to the documents we presented.

17 MR. SON ARUN:

18 Mr. President, please allow me to respond to the comment made by
19 the Co-Prosecutor.

20 This is just part of the introduction before I proceed to our
21 response to the Co-Prosecutors' submissions, because first we
22 should begin with the introduction before we come to the body and
23 the conclusion.

24 With that, may I ask for your leave to proceed, please?

25 (Judges deliberate)

4

1 [09.10.16]

2 MR. PRESIDENT:

3 Counsel Son Arun, please be informed that the Chamber has already
4 informed the parties to the proceedings regarding the topic for
5 the hearing. And the Chamber has just indicated that counsels for
6 Mr. Nuon Chea would proceed to make observation regarding their
7 responses to the key documents presented by the parties to the
8 proceedings, including the Co-Prosecutors and the Lead Co-Lawyers
9 for the civil parties, documents presented during the hearings on
10 the 24 to the 27 of June 2013. It was a week ago. So the message
11 is clear.

12 Could you please now be directed to frame your observation to be
13 in line with the agenda? The Chamber has already notified the
14 parties.

15 And please refrain from making things that are not relevant to
16 this part. Otherwise, you are straying away from the main agenda
17 of today's hearing.

18 [09.11.35]

19 MR. SON ARUN:

20 I am rather stunned by this, because Co-Prosecutors would also
21 need to go through some introduction before they could proceed to
22 the body.

23 MR. PRESIDENT:

24 Indeed, it is - on your side, you appear to be Irrelevant
25 regarding this. Yesterday, you were (sic) already been reminded

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1 regarding the general scheme of your observation. And you
2 mentioned about some five key documents; then you dwelled on
3 other general aspects before you went through these five
4 documents. People understood your position differently.
5 So, to make sure that we are not misled, then please proceed to
6 only the relevant part of the observation regarding the responses
7 to the Prosecution and civil party lawyers.

8 MR. SON ARUN:

9 Thank you, Mr. President.

10 I would like to now proceed to the actual responses.

11 [09.13.02]

12 The Co-Prosecutors' evidence about Nuon Chea's role at S-21 was
13 almost entirely about S-21 confessions. The Prosecution described
14 26 confessions with annotations which allegedly show those
15 confessions were sent to Nuon Chea. Then they showed you six
16 confessions with annotations which they claim were made by Nuon
17 Chea. The Prosecution says that these documents show that Nuon
18 Chea had a role at S-21.

19 Your Honours, we submit that the documentary evidence presented
20 by the Co-Prosecutors does not support that claim in any way. In
21 fact, we would submit that if their evidence shows anything, it
22 shows that Nuon Chea had no role at S-21 at all.

23 In order to prove that, I will first discuss the six confessions
24 which the Co-Prosecutors claim contain annotations made by Nuon
25 Chea. I will then discuss the confessions which were allegedly

6

1 forwarded to Nuon Chea.

2 [09.14.43]

3 I would like to begin examining the Prosecution's claim that Nuon
4 Chea annotated six S-21 confessions by examining one of those
5 confessions in detail. That confession from a cadre named San
6 Eap. The document number is E3/175.

7 According to the Prosecution, Duch has testified that one small
8 annotation on the side was made by Nuon Chea. Is that true?

9 To answer that question, I would like to show the Chamber a
10 document. The document number is E3/359. It contains Duch's
11 answer to certain written questions. This is a document in which
12 the Prosecution claims Duch identifies the annotation on San
13 Eap's confession as belonging to Nuon Chea.

14 I would refer the Chamber to ERN English 00434339, Khmer ERN
15 00408224. At the bottom of that page, at point 11, Duch writes
16 the following about that confession - document D43/4 in Case File
17 002: "I have just received document D43/4 in Case File 002, and
18 it is the sole Zone 801 Special Branch document that I have ever
19 seen."

20 [09.17.08]

21 So Duch has not, in fact, testified that Nuon Chea made this
22 annotation. He has not testified that fact because he had never
23 seen the document before the day the Investigating Judges showed
24 it to him. Rather, Duch is only able to tell this Chamber whether
25 the annotation on this document looks like Nuon Chea's

1 handwriting. Now, as the Chamber knows, Duch is not an expert in
2 handwriting. He is not able to give this Court his opinion about
3 whether two different handwriting samples look alike. He is only
4 able to tell the Chamber whether he specifically remembers and
5 can personally identify Mr. Nuon Chea's handwriting.

6 Your Honours, in interpreting the Prosecution's claim that Duch
7 personally remembers what Nuon Chea's handwriting looks like, we
8 would like to invite you to exercise some common sense. Duch
9 claims he last saw Nuon Chea in 1979. Duch was interviewed by the
10 Investigating Judges for the first time in 2007. Almost 30 years
11 passed in between.

12 [09.18.55]

13 We would ask Your Honours to put yourselves in Duch's position.
14 We would like to invite the members of the public gallery to do
15 the same. Would you remember what your boss's handwriting looks
16 like 30 years after you last saw him?

17 As this Chamber knows well, Duch is an intelligent and well
18 informed witness. He studied the Case 001 case file extensively.
19 He followed the developments surrounding this tribunal very
20 carefully.

21 Your Honours may be aware that earlier this year, former
22 Investigating Judge Marcel Lemonde wrote a book about his
23 experience at this tribunal. Even Judge Lemonde recalls that it
24 was often difficult to figure out whether Duch was testifying
25 from memory-

8

1 MR. PRESIDENT:

2 Could you please hold on, Counsel?

3 Mr. Co-Prosecutor, you may now proceed.

4 [09.20.27]

5 MR. LYSAK:

6 Thank you, Mr. President. I would object to counsel's
7 presentation of this document which was rejected by the Trial
8 Chamber.

9 And it's entirely inappropriate for counsel to be standing here,
10 making representations about what Judge Lemonde's views were, in
11 any event.

12 So, this is not a document that has been admitted and not a
13 document that can be presented to Your Honours.

14 MR. SON ARUN:

15 Mr. President, would you wish me to skip to another paragraph or
16 would you wish me to respond to the Co-Prosecutor's comments?

17 MR. PRESIDENT:

18 It is your sole right to respond to the Co-Prosecutor's remarks,
19 because the Chamber would wait for this moment before we finally
20 rule upon this objection. If you would like to skip to the next
21 paragraph, then you can do that on your volition.

22 [09.21.47]

23 And, again, this document, as indicated, is - or has never been
24 presented before the Chamber by any parties of the proceedings,
25 including the Co-Prosecutors, the Lead Co-Lawyers for the civil

1 parties, during the entire time in the courtroom in document
2 hearing, in particular on the 24 to 27 of June 2007 – rather,
3 2013.

4 MR. SON ARUN:

5 With that, Mr. President, I may skip the part on Judge Marcel
6 Lemonde and I would proceed to another paragraph.

7 [09.22.35]

8 Mr. President and Your Honours, again, we ask you to exercise
9 some common sense. Is it more likely that Duch actually remembers
10 what Nuon Chea's handwriting looks like 30 years after the last
11 he saw it or is it more likely that he inferred that the markings
12 on the confessions belonged to Nuon Chea because he was told so
13 many times about Nuon Chea's role in the interview – rather, in
14 the intervening years?

15 Your Honours, we think the answer to this question is obvious. We
16 think it is extremely unlikely that Duch has an independent
17 recollection of Nuon Chea's handwriting.

18 However, the Chamber need not rely on our opinion. It need not
19 even exercise its own common sense. Duch himself has told this
20 Tribunal that he cannot recognize Nuon Chea's handwriting.

21 [09.24.08]

22 And to show that, I would like to display document number E3/355.
23 This document is a written record of interview of Duch in Case
24 002. It was taken the day before Duch answered questions which we
25 saw just a moment ago. In that interview, Duch talks about the

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1 same confession belonging to San Eap, at ERN in Khmer 00239834,
2 and English ERN 00242876. Duch notes the annotation which the
3 Prosecution says is written by Nuon Chea. He says the following:
4 "I don't know who wrote that, but it was not Pol Pot, whose
5 handwriting was similar to mine, like Son Sen's and Vorn Vet's.
6 Perhaps Nuon Chea wrote it, but that is just my assumption
7 because I did not see this handwriting often."
8 Your Honours, this is a statement of the man whose evidence is
9 the only basis this Tribunal has ever been given to conclude that
10 Nuon Chea annotated any S-21 confessions. We would – we would ask
11 the Chamber to take note of the fact that Duch has specific
12 recollections of the handwriting of Pol Pot, Vorn Vet, and Son
13 Sen, yet he is unable to make any independent determinations
14 about Nuon Chea's handwriting. It would seem, then, not only that
15 Duch was not accustomed to receiving written instructions from
16 Nuon Chea, it would also seem that he interacted more often with
17 other senior members of the Khmer Rouge regime.
18 [09.27.08]
19 In other documents in which the Prosecution says Duch identifies
20 annotations as belonging to Nuon Chea, it is equally clear that
21 he has no real basis on which to make that conclusion. For
22 example, in document E3/1547, another written record of
23 interview, Duch discusses the confession of Meak Touch, alias Kem
24 – my apologies, Mr. President and Your Honours; I would like to
25 read this number of document again. This document is E3/1547,

11

1 which is another written record of interview. Duch discusses the
2 confession of Meak Touch, alias Kem.
3 There was another one of the confessions presented by the
4 Prosecution last week, at ERN Khmer 00174100, and English ERN
5 00771346. Duch claims to know that Nuon Chea made the annotation
6 "Comrade Van" - quote unquote - on the side of the confession.
7 How does he say that he knows that? The only way he says he knows
8 that is, he claims, that if Son Sen had addressed Ieng Sary, he
9 would have written - in quote - "Brother Van" - end of quote -
10 instead of - quote - "Comrade Van" - end of quote.
11 [09.29.25]
12 But only seconds later, on the same page of the interview up on
13 the screen, he admitted - and I quote: "I do not know the details
14 of how the superiors worked together."
15 As we have seen, he also concedes that he rarely saw Nuon Chea's
16 writing. The obvious truth is that he has no idea how either Nuon
17 Chea or Son Sen spoke to Ieng Sary.
18 In the three other documents in which the Prosecution claims Duch
19 identifies annotations as belonging to Nuon Chea, Duch provides
20 no explanations at all for his conclusion. And for the benefit of
21 the Chamber; those are document numbers: E3/1546, Khmer ERN -
22 rather, English ERN 00173049, and this document is in relation to
23 the confession of Mok Sam Ol, alias Hong; document E3/1548, in
24 Khmer ERN 00174132, and English, 007677463, in relation to the
25 confession of Sin Phal (phonetic); and E3/1098, Khmer ERN

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1 00406602, and English, 00524161-

2 [09.31.45]

3 MR. PRESIDENT:

4 Mr. Arun, you haven't given the ERN number in French. Because,
5 look, parties to the proceedings would include French nationals
6 as well, so you should also refer to the French ERN number if you
7 can.

8 MR. SON ARUN:

9 (Microphone not activated)

10 MR. PRESIDENT:

11 Please turn on your mic.

12 MR. SON ARUN:

13 My apology, Mr. President; I do not have the French ERN with me
14 at the moment. I only have English and Khmer ERN.

15 MR. PRESIDENT:

16 You may now resume-

17 Judge Jean-Marc Lavergne, you may proceed.

18 [09.32.54]

19 JUDGE LAVERGNE:

20 Counsel Son Arun, I understand that today you did not have the
21 time, of course, to prepare your hearing properly; this is why
22 you were not able to find the French ERN numbers.

23 But could we hope maybe that sooner or later you will provide
24 this information to the Chamber? Thank you.

25 MR. SON ARUN:

1 My apology, Your Honours; I am going to provide these relevant
2 numbers at a later stage.

3 JUDGE LAVERGNE:

4 Can we say, Counsel Son Arun that you will be able to give us
5 this information within two days? Within two days, would that be
6 possible?

7 MR. SON:

8 Yes, of course, Your Honour. Now I continue, Mr. President.

9 Only one thing is clear in those documents: Duch has no specific
10 recollection of any of those confessions or any actual knowledge
11 at all about any of those annotations.

12 [09.34.35]

13 Your Honours, obviously this is an important allegation. Mr. Nuon
14 Chea has always consistently denied it. The evidence supporting
15 the allegation comes from only one witness, and for the reason we
16 have already stated, that witness testimony is not reliable.

17 Under these circumstances, the Chamber should, at a minimum,
18 engage a handwriting expert before concluding that the
19 annotations belong to Nuon Chea. If it does not choose to take
20 that venue, which is available to it, it would be unable to
21 conclude beyond a reasonable doubt that the handwriting belongs
22 to Nuon Chea.

23 Your Honours, that concludes our discussion of the confessions
24 which the Prosecution alleges contain annotations written by Nuon
25 Chea, and I will now discuss the rest of the confessions, the

14

1 ones which the Prosecution says were sent to Nuon Chea.

2 [09.36.10]

3 I would like to begin by quoting something the Prosecutors
4 recently said. The Co Prosecutors recently filed a submission
5 with the Supreme Court Chamber about the severance of the Closing
6 Order. It was a response to an appeal we lodged against this
7 Chamber's second decision to sever the Closing Order. That was
8 document number E284/4/3; ERN: Khmer, 00921840; and English,
9 00921816. In that response, at paragraph 21, the Co Prosecutors
10 tried to show that Nuon Chea had a role at S 21, and in doing
11 that, they talk about the confession.

12 I'll quote a sentence from their submission, which is at
13 paragraph 21. Quote: "The Co Investigating Judges found at least
14 27 confessions with annotations indicating that a copy was sent
15 to Nuon Chea and another six S 21 confessions bearing Nuon Chea's
16 handwriting." End quote.

17 Mr. President, here is what we find interesting about this quote.
18 The Co Prosecutors tried to convince the Chamber of this tribunal
19 that because Nuon Chea supposedly saw 33 confessions – that he
20 must have had a role at S 21.

21 So, our question is this: What is the 33 confessions? Is 33 a
22 lot? Thirty-three of how many confessions? How many confessions
23 are on the case file?

24 [09.38.56]

25 We also concur with the prosecutor that these may have some

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1 relation with military structure and this confession was sent to
2 Nuon Chea. And the mere fact that this document was sent to Nuon
3 Chea, it was not because he had any role in S 21, but this
4 document was to be sent from the military authority, and Mr. Nuon
5 Chea might have already forgotten this information. And this
6 document has been sent to Nuon Chea, and the prosecutor claims
7 that Mr. Nuon Chea had a role the in military structure and he
8 was involved in the purges of the military personnel. This was
9 the quote that the Prosecutor brought up on the 27th of June.
10 Your Honours, to be clear, Mr. Nuon Chea did not concur with the
11 allegation that he had a role in purges of military personnel in
12 the Central Zone. And I would like to draw attention of the
13 Chamber that even the prosecutors themselves failed to explain
14 consistently the reason for the submission of these statements to
15 Nuon Chea. Was this statement sent only from S 21 or it was sent
16 for other purposes? The document failed to enlighten the Chamber
17 on this, and I believe that the prosecutors themselves did not
18 know. And for this reason, the Chamber does not have any basis
19 for the decision.

20 [09.41.21]

21 Mr. President and Your Honours, I do not have any additional
22 observation and I would like to request to Mr. President and the
23 Chamber that - my client would like to make an observation on the
24 various key documents presented by the Prosecution. We are
25 seeking permission from the Bench.

16

1 MR. PRESIDENT:

2 Yes, he may proceed.

3 Mr. Nuon Chea, the Chamber grants you the opportunity to respond
4 to the various key documents that have been put before the
5 Chamber by the Co Prosecutors and Lead Co-Lawyers for the civil
6 parties. You may proceed, Mr. Nuon Chea.

7 MR. NUON CHEA:

8 I thank you very much indeed, Mr. President-

9 (Short pause, technical problem)

10 [09.46.35]

11 MR. PRESIDENT:

12 AV booth, can you advise the Chamber as to what problem we are
13 facing technically? It is important that we are informed so that
14 we can proceed or decide how we - how to proceed.

15 MR. NUON CHEA:

16 Mr. President and Your Honours, I am Nuon Chea. I would like to
17 make some statement in response to the key documents presented by
18 the Co Prosecutors on the 24th through the 27th of June 2013.
19 Your Honours, during the past few days, commencing from the 24th
20 to the 27th of June, from my holding cell downstairs, I
21 attentively paid attention to the presentation of several
22 documents by both the National and International Co Prosecutors.
23 Though I sometimes got what the Prosecution submitted, there were
24 times that I could not follow what's being discussed, due to my
25 poor health condition. Nonetheless, I understood enough to

1 believe that what were raised by the Prosecution appeared to be
2 neither accurate nor corresponding to the actual events that had
3 happened during that period.

4 [09.49.00]

5 I would therefore like to crave Your Honours' indulgence, for I
6 wish to enlighten the Court on these matters. With that, I would
7 like to contest the entirety of the content and the form of
8 documents presented by the Prosecution as follows.

9 First of all, I'd like to address the issue of:

10 A. Evacuation of the people.

11 A few years ago, I already testified that after the liberation
12 day of the 17th of April 1975, all city dwellers were evacuated,
13 and it is obvious. In any event, the evacuation was not forced.
14 The leadership had to make such decision based on two main
15 reasons.

16 First, it was fear that Americans would drop bombs on cities
17 after Lon Nol's government was defunct. This made the leadership
18 believe that the aerial bombardments would be carried out again
19 onto the cities, especially the City of Phnom Penh.

20 [09.51.10]

21 Your Honours, it is well known that the Americans supported Lon
22 Nol's regime and South Vietnam, while North Vietnam was in
23 support of the Democratic Kampuchea against South Vietnam and the
24 Americans. As a consequence, the Americans believed that North
25 Vietnam and the Democratic Kampuchea were its enemies. For a

1 period of 300 nights and days, the Americans had dropped several
2 million tonnes of bombs onto Cambodia. The destruction caused by
3 the bombings was of mind-boggling scale, when properties, homes,
4 pagodas, cattle were hit and several thousands of innocent lives
5 were killed. Noting this unfortunate tragedy, which would most
6 likely happen again, and to ensure safety and security for the
7 people, the leadership of the Democratic Kampuchea, Pol Pot in
8 particular, decided to evacuate people from the cities.

9 Second of all, Cambodia had gone through war for over five years
10 already. This made the country face several challenges, including
11 food shortages. Food shortages were the primary concern to be
12 addressed very urgently. At that time, Cambodia did not receive
13 any aid or assistance from foreign countries. In the light of
14 these dire circumstances, people were required to take part in
15 rice production by themselves to support their livelihood and to
16 build the country.

17 [09.53.57]

18 In spite of the above-mentioned reasons, the evacuation of the
19 people at that time was done on a voluntary basis, without any
20 coercive measures, violence, or killing of the people. To
21 maintain this principle, people were educated and well-explained
22 about the danger of the Americans' aerial bombardments on cities
23 and the need to resolve food shortages for the livelihood of the
24 people and for building the country ourselves.

25 At that time, people appreciated the danger the country faced and

1 its need. In particular, people supported and loved the
2 Revolution. Eventually, people gradually had left the cities
3 after they had received our appeal and explanation to do so.
4 Your Honours, I would wish to bring to your attention some
5 documents that are improper and that cannot be used as the basis
6 for the Chamber's consideration in its ruling to find justice for
7 me and the victims.

8 These documents include, first, the "Revolutionary Flags".

9 [09.55.44]

10 The Co Prosecutors submitted based on some information regarding
11 the "Revolutionary Flags" as the inculpatory evidence against me.

12 Factually, the "Revolutionary Flags" had nothing to do with me.

13 The reason I say so: because the "Revolutionary Flags" were the
14 medical messages - rather, the political messages by the senior
15 leaders of the regime. These magazines were not legal documents
16 that had to be applied.

17 Before the victory on the 17th of April 1975, as well as the
18 aftermath of that liberation, that message - the political
19 message in the magazines - were very important to gather the
20 forces of the Democratic Kampuchea because Cambodia, during that
21 period of time - indeed, after the internal war was over, there
22 were wars in which neighbouring country, including Vietnam,
23 invaded Cambodia. Vietnam never wanted Cambodia to be - to be in
24 peace. They used or employed all dirty tricks and tactics to
25 topple Cambodia. For that reason, Pol Pot had to release

1 political messages in the magazines to show the people that the
2 leadership was still strong, firm, and that most of the time the
3 information is not accurate.

4 [09.57.42]

5 If we look carefully into the content of the "Revolutionary Flag"
6 magazines, we can note that the majority of the articles
7 published in these newspapers or magazines were mainly the
8 statements by Pol Pot and the report collected from each sector
9 or zone across the country. This has already been confirmed in
10 the references the Co Prosecutors referred to in hearings from
11 the 24th to the 27th of June 2013.

12 As a principle, the "Revolutionary Flag" magazines were examined
13 by the Standing or the Central Committee. Nonetheless, it was Pol
14 Pot alone who made all the decisions before any articles could be
15 published. So, all in all, the decision was made not by
16 collective but by Pol Pot. He himself had his own personal
17 assistant who was fully in charge of writing the articles and
18 publication of these magazines. I still remember that there is
19 another person by the name of Kim Vun, alias Chhaom, who worked
20 in this group.

21 [09.59.14]

22 At that time, even though the members of the Central Committee
23 didn't see the right thing being saved, no one would dare to
24 challenge such a decision. Pol Pot had all the power, absolute
25 power. Whatever he said, he meant business. In the socialist

1 regime, the people who had all - the most power had the decision
2 on the fate of the country, and it was only one person who was
3 behind all these decisions; it was the secretary of the Party.
4 Your Honours, I am interested in the accuracy of the documents
5 being put by the Co Prosecutor regarding these documents,
6 including the "Revolutionary Flags". And the main point that I
7 wish to draw your attention to is the original documents the
8 prosecutor put before the Chamber. On this point, I already made
9 my submission time and again, from the very beginning, that
10 documents of original source had to be placed before the Chamber
11 or showed to me, but all to no avail. I don't understand much
12 about the rule of evidence, but I fully understand what justice
13 is.

14 So far, the Co Prosecutors presented some documents which were
15 mainly inculpatory documents, and they were the copied versions.
16 I believe it is not fair for me to be presented such copied
17 documents, because after all, no one knows whether these
18 documents are genuine or they were the fake ones.

19 [10.01.33]

20 On top of that, if the Chamber allows such documents to be
21 examined, there were chances that the documents could be
22 fabricated or changed easily, and justice will be compromised,
23 and the truth will never be found.

24 So I would like to absolutely take issue with all the documents
25 presented by the Co Prosecutors against me.

1 Secondly, the citation of documents from books. According to – or
2 in these proceedings, I have also noted that several articles
3 from books were quoted by the Co Prosecutors against me. These
4 books include the books from Mr. Philip Short, Mr. David
5 Chandler, Mr. Ponchaud Francois, and Mr. Ben Kiernan, etc. When
6 it comes to this point, I feel – I am stunned and I don't
7 understand why the Co Prosecutors resort to using such documents
8 as the core documents against me.

9 [10.03.05]

10 Factually, these books, although there are pieces of documents
11 inside, they are – they are not 100 per cent true. The quality of
12 truth in there is questionable. In general, in order to make sure
13 the book can be – can convince the readers, the authors had to
14 apply some of their methodology and techniques in making sure
15 that people want to read their books. With that, the truth is
16 compromised. And I believe that these hearings before us is not
17 part of a theatre, is not a play, so we need to have all the
18 reasons – genuine reasons – to be examined and to be used for the
19 consideration of the final decision in the case.

20 Above all else, if we look more deeply into this aspect, the
21 information gathered by all the authors in their books, these
22 pieces of information were collected from interviews with
23 individuals the authors believed could provide important
24 information to them. To that effect, who can assure or can
25 guarantee that whatever that individual says in the interview is

1 true? Authors and the reporters are not different; they cannot
2 claim whether the information they obtained through interviews
3 are - is 100 per cent true. They can only say that they have
4 obtained these pieces of information from A or from B - that's
5 all. Other than that, they would not be able to comment further.
6 And if we would like to know more about this, we have to really
7 meet those individuals personally to obtain further information
8 or to verify the content of the information.

9 [10.05.27]

10 Nonetheless, there are still some shortages, so it is really
11 important that witnesses that appear before the Chamber had to
12 take the oath before he or she is examined. Otherwise, the
13 information from them would not bear any probative value before
14 the Chamber and, after all, cannot be used.

15 Also, authors of the books are foreigners. They don't speak
16 Khmer. So the information they obtained is gathered through the
17 interpreters. Therefore, it lacks integrity and truth.

18 In conclusion, the information obtained from interviews is
19 nothing short of the hearsay pieces of information or evidence.

20 And as it says in Khmer - there is a folktale about one - from
21 one crow to 10 crows, and this is the same: when you hear a piece
22 of information from one person, this information can exaggerated
23 to 10 times bigger than the original information. And the Khmer
24 folktale is meant to educate people not to believe in hearsay
25 pieces of evidence, and it has been here in Cambodian society for

1 all along. And if the Chamber were to rely heavily on the hearsay
2 pieces of evidence, I'm convinced that this Court would not be
3 able to find proper justice for every one of us.

4 I, therefore, would like to reject and would like the Chamber to
5 reject all the evidence that is quoted from those books, as I
6 cited.

7 [10.07.51]

8 Third, minutes of the meetings and the documents that I was
9 forwarded. Regarding this, the Co-Prosecutors also referred to
10 these documents against me, and the references mainly refer to my
11 presence in meetings, or the document's sometimes entitled "Copy
12 to Uncle Chea" or "to Nuon Chea".

13 On this I wish to also make observation that I do not remember
14 how many times I attended a meeting where Pol Pot attended,
15 during the time when I had worked with him. I feel, however, that
16 some information is not true or is still questionable.

17 Nonetheless, even though I attended any of the meetings, that
18 doesn't mean that I engaged in decision making. There were
19 several meetings that other people attended, but it was not
20 necessary that they had to make any decision. And most of the
21 time attendees did not challenge a decision made in the meeting.

22 [10.09.26]

23 With that, the Co-Prosecutors cannot conclude that because I was
24 present in the meeting, I also engaged in decision making.

25 Likewise, there were other documents entitled - in which I was

1 copied. That means I did not attend such meetings or engage in
2 any of the decision making. Although I was copied, sometimes I
3 did not receive such documents. Although I may know about them, I
4 had no authority to do anything about this. I had no authority to
5 stop people from implementing the decision.

6 I, therefore, would like to attest any attempt to bring these
7 pieces of evidence against me.

8 B. The supervisory role and my role.

9 Once again, I would like to make it clear that during the
10 Democratic Kampuchea, I was holding three roles in particular.
11 First, Deputy Secretary of the Democratic Kampuchea. In this
12 position, I was tasked with the roles of propagating and educate
13 people about the policy among the members of the Party. At that
14 time, there were not many member parties (sic).

15 [10.11.12]

16 With regard to the content of the education session, I never
17 educated members of the Party to be bad people or to be -
18 misconduct or to behave improperly, for example. I educated only
19 to people to love the nation, and country, and others. I never
20 educated any member of the Party to kill, mistreat, starve, or to
21 commit an act of genocide, even once. I never did that.

22 Factually, I already mentioned that in the sessions, I educated
23 people on how to strengthen security and safety against the
24 enemy. I think it is not uncommon, because the leadership of all
25 country in the world would have to bear this responsibility to

1 ensure that the country is well protected and security is well
2 preserved for its own people. For example, recently, America has
3 announced that it is hunting Edward Snowden and they would like
4 to send this person for prosecution, as he is accused of
5 violating the security methods of America.

6 [10.12.37]

7 Second, the deputy chairman of the committee to negotiate with
8 the Labour Party of Vietnam. In this role, I did my best to
9 coordinate, negotiate with Vietnam to strengthen our relationship
10 and peace with this neighbouring country, but it was not
11 successful because Vietnam really would like to wage war and
12 invade Cambodia.

13 Three, I was the President of the People Representative Assembly
14 of Cambodia. As you know, that - during the Democratic Kampuchea,
15 like in the other Communist countries, the Party leads the
16 country, but the State was in full control of the state. And at
17 that time the institutions or the management of the state was
18 seen in clear division of power: first, the executive body,
19 legislative body, and the judiciary. Pol Pot was in charge of the
20 executive body, when I myself was in charge of - the President of
21 the People's Representative Assembly. And in this role I was in
22 charge of making sure that the laws was passed. And also, since
23 Cambodia were - had just recovered from war torn phenomenon with
24 Vietnam in particular, we did not have enough time to adopt any
25 new laws.

1 [10.14.35]

2 Regarding another role, I did never perform that role. I would
3 like to take issue with the assertion that I used to be the
4 deputy - the acting prime minister, rather, or the person in
5 charge of Military Committee or I was involved with the
6 supervision of S-21 because I was implicated. Please be informed
7 that Pol Pot was the deputy prime minister - rather, Pol Pot had
8 his deputy prime ministers, who was Mr. Ieng Sary, Son Sen, and
9 Vorn Vet. So there was no reason that Pol Pot would like to
10 appoint me as the acting prime minister, apart from the deputy
11 prime minister that I just mentioned. And it is true that he
12 would not do that when he was absent.

13 I would also like to solemnly declare that I engaged in the
14 Democratic Kampuchea for the purpose of liberating Cambodia and
15 protect Cambodia from being invaded by the neighbouring country.
16 We know that this neighbouring country would like to swallow
17 Cambodia all along. I love my own people and I have no reason to
18 mistreat or commit any crime of genocide against my own people.

19 [10.16.13]

20 Finally, I would like the Court to kindly consider my request
21 regarding my rejection of all the documents that presented by the
22 Co-Prosecutors. And it is really important for the purpose of the
23 truth and justice for me.

24 Thank you very much, Mr. President and Your Honours.

25 MR. PRESIDENT:

1 Thank you, Mr. Nuon Chea.

2 (Judges deliberate)

3 [10.17.10]

4 Before the morning break, I would like to ask the prosecutor -
5 yesterday the Chamber received an immediate request filed by the
6 prosecutor to respond to document E288/4, filed by the defence
7 team for Mr. Khieu Samphan, dated on the 5th of July 2013. The
8 Chamber would like to know the position of the prosecutor,
9 whether or not you are ready to respond to this document.

10 If so, you may proceed.

11 MR. ABDULHAK:

12 Thank you Mr. President. Good morning, Your Honours. Good
13 morning, Counsel and everyone else in the courtroom. Thank you
14 for this opportunity to make brief submissions on the filing that
15 we all received yesterday.

16 And let me say at the outset that we are all - certainly on this
17 side of the courtroom - stunned by this latest and very belated
18 change of position by the Khieu Samphan team and, of course, by
19 the Accused himself.

20 [10.18.40]

21 If you permit me, I will, for context, briefly outline five
22 requests which the Khieu Samphan team says have been rejected and
23 which have apparently - or supposedly - resulted in the decision
24 which we've been informed of.

25 Firstly - and this is all in E288/4, at paragraph 7. Firstly, we

1 are informed that the first primary reason for Khieu Samphan's
2 decision not to testify is that the Chamber has refused to give
3 him a list of questions – a list of questions by topic to which
4 he will be required to respond in Court.

5 Secondly, he says that the Chamber has failed to order the
6 provision of a list of documents which would be used in that
7 examination, such list to be limited to what Khieu Samphan
8 considers reasonable.

9 Thirdly, that they have been denied a request to have three weeks
10 for preparation prior to the commencement of examinations.

11 Fourthly, that issues in relation to counsel's access to the
12 Detention Unit on weekends have not been adequately resolved.

13 And finally, even though this clearly was not refused, a request
14 to have – to give testimony only half day for each day of Court
15 sitting.

16 [10.20.42]

17 So those are the five grounds as we understand them. Of course
18 there are other procedural complaints raised. We take issue with
19 all of them. We find them wholly unconvincing and misleading in
20 numerous respects and we will file a formal written response. But
21 those are the five key procedural concerns that, apparently, have
22 led to this last-minute change of heart.

23 Now, it is important, I think, given the significance of this
24 decision, that we review briefly the procedural history of this –
25 of this matter. It's important to say here in open Court, with

1 the Accused present, with the victims watching, and with the
2 Cambodian people watching this proceeding, that Khieu Samphan has
3 stated consistently, from well before the start of this trial,
4 that he will testify. He said that on the 13th of December 2011,
5 when he was instructed by Your Honours to state his position. He
6 said it earlier, in fact, also on the 23rd of November 2011, in
7 unequivocal terms, that he will respond once he hears the
8 evidence. That also was a position echoed by his counsel. That
9 position remained unchanged, and in fact, Khieu Samphan has made
10 statements, thereby giving evidence during the proceedings, and
11 he has also - more recently, commencing on the 27th of May 2013 -
12 specifically answered questions from civil parties, thereby,
13 again, giving evidence before Your Honours.

14 [10.22.48]

15 Before I continue with the procedural history, I will pause here
16 to observe that the legal implications of Khieu Samphan's
17 position, his statement, and his giving of evidence are that he
18 has unilaterally and unequivocally waived his right to remain
19 silent in this trial. He has not exercised his right to remain
20 silent. He has, in fact, elected to give evidence and has given
21 evidence, and that has implications for his decision now to stop
22 testifying. And we will come to that in a few moments.

23 Now, turning to some of the conditions that have been raised by
24 the Defence, the discussion of these conditions commenced on the
25 27th of May 2013. Your Honours will recall that you had

1 instructed the Accused to state their position in relation to
2 testifying in the final stages of the trial and you, in fact,
3 gave them a weekend – a period of three or four days – to consult
4 with counsel. And then, on the 27th of May, in Court, Khieu
5 Samphan confirmed that he will be testifying, that he will be
6 answering questions.

7 He did at that point – and this is at time marker 9.08.01 – say
8 that he would like to know the content of the questions he will
9 be asked. Mr. President then informed him that that would be
10 unlikely – that an accommodation of that request would be
11 unlikely because you can't write questions that will be asked, as
12 you would do on a blackboard in a school – that that is
13 impossible in an adversarial process and of course, we would add,
14 certainly departs from any international or domestic practice
15 known to any legal system that we are aware of.

16 [10.25.03]

17 Following that exchange, at 9.12.15, Mr. Vercken clarified the
18 issue and said that Mr. Khieu Samphan was not, in fact, asking
19 for a list of questions but instead – and I quote him – "a
20 general-" all they want is "general topics that will be brought
21 up, as well as a list of documents." That was the position on the
22 27th of May. And let me say here that we – whilst a request for a
23 list of documents and a request for topics exceed accepted
24 international standards, we take no issue with them, and we will
25 come back to that point when we invite Mr. Khieu Samphan to once

1 more reconsider, perhaps for the final time, his position.
2 These additional requests for a list of questions emerged only on
3 the 11th of June 2013, in preparation for the Trial Management
4 Meeting. And this is in document E288/2 – E288/2 – where a list
5 of questioned was raised for the first time. It's interesting
6 that at the Trial Management Meeting itself, on the 13th of June
7 2013, that issue was not again raised by the Defence; there was
8 no request for additional documents to be provided, at that
9 point. The requests at that point were for a break of three weeks
10 in proceedings to enable the Accused to prepare, and of course,
11 the request had previously been made for a list of documents and
12 a list of topics.

13 [10.27.16]

14 In relation to the complaint about – which is also made in this
15 latest pleading as to unlimited time for questioning, Your
16 Honours will recall that you had invited the parties to provide
17 indication as to how much time they required. We estimated
18 approximately six Court days for the examination of Khieu Samphan
19 and we asked for some flexibility.

20 Your Honours, in our opinion, quite wisely, elected not to place
21 time limits but instead decided to, obviously, allow the
22 proceedings or the examination to continue for as long as they
23 remain pertinent, and for as long as questions were relevant, and
24 for as long as the Accused were able and willing to participate.
25 And that, in our view, is an entirely reasonable position at this

1 stage of the proceedings.

2 Coming back to the specific requests that have been made, I want
3 to state clearly, on the behalf of the Office of the
4 Co-Prosecutors, that even though these requests exceed what is
5 accepted international practice, even though they exceed the
6 Accused's actual rights, we want to make sure that every
7 reasonable opportunity is given to him to answer questions, as he
8 has been promising now for almost two years.

9 [10.28.52]

10 From our side, we are prepared to give him a list of documents,
11 which is something Your Honours have already accommodated. We're
12 also prepared to give them a list of topics that will be
13 discussed in the examination, on the understanding that,
14 obviously, the list of documents or the list of topics cannot be
15 entirely exhausted; it can only ever be indicative, because as
16 Mr. president has indicated, examinations or adversarial issues
17 can be raised by the Accused, and it is impossible to provide an
18 exhaustive list of every sub-topic that may come up. But
19 certainly we are prepared to give him a relatively detailed list
20 that would give him a clear indication as to what topics will be
21 discussed. That, of course, is in addition to the list of topics
22 that is in - available in the Closing Order, which could not be
23 clearer as to the issues that the Chamber is concerned in this
24 trial. But we are prepared to provide that, and we will provide
25 it within 24 hours, provided - if the Accused now agrees to

1 answer questions.

2 [10.30.12]

3 As for the extra time to prepare, we're in agreement with Your
4 Honours that having had access to this file for five years and
5 having participated in the trial for a year and a half, the
6 Accused is well on notice of the issues that he will be asked
7 about. There is really no need for extra time.

8 But again, if Your Honours consider that that accommodation
9 should be made, if you consider that that is something that
10 should be attempted, then we will, obviously, not object; we want
11 to make sure that he is given every conceivable opportunity and a
12 reasonable opportunity to prepare and to answer questions as he
13 has promised from the beginning.

14 And here I come to the legal implications of a decision to refuse
15 to answer questions.

16 We, in fact, feared as early as February 2012 that we may reach
17 this juncture and we filed a request, which is document E174, the
18 17th of February 2012, in which we invited the Chamber to notify
19 the Accused as to the implications of a selective exercise of
20 decisions as to whether or not to testify.

21 [10.31.50]

22 The Chamber, having received that request, then did in fact
23 inform all Accused as to the implications of selective decisions
24 on testimony. And Your Honours did that on the 18th of April
25 2012. The transcript is E1/63.1, and the specific instruction or

1 direction is given at time marker 11.12.32. And there Your
2 Honours clearly state that "the relevant international
3 jurisprudence indicates that adverse inferences from selective
4 decisions to remain silent may be drawn".
5 That instruction is entirely consistent with international
6 jurisprudence. Once an Accused gives evidence, as Khieu Samphan
7 has done in this trial, a refusal to answer questions can lead -
8 and in our respectful submission, now must lead - to adverse
9 inferences being drawn on the evidence against him. And we want
10 to state that now because we have, in fact, reached a stage where
11 this is not a hypothetical scenario, but in fact an apparently
12 firm decision now by the Accused to reverse his course.
13 And I will refer Your Honours to only two or three authorities on
14 this matter.

15 [10.33.18]

16 The first authority comes from the International Criminal Court.
17 It's a decision of the 13th of September 2011, in the Case of
18 Katanga, and the relevant paragraphs are paragraphs 7 and 8,
19 where it is made clear that once an Accused testifies or gives
20 evidence, his or her decision to decline to answer further
21 questions may lead to adverse inferences being drawn - again,
22 consistent with Your Honours' ruling.

23 The second authority is Prosecutor and Blagojevic, an ICTY
24 decision of the 30th of July 2004, where the Trial Chamber of the
25 ICTY gave certain - gave notice of rights to the accused. And you

1 will find at paragraph 24 that this position is stated in
2 relation to obverse inferences.

3 More broadly, this principle applies in domestic legal systems
4 and has been upheld also by the European Court of Human Rights.
5 And you will find, Your Honours, in the Decision of Murray and
6 the United Kingdom, a decision of the 8th of February 1996, that
7 the principle is upheld that a right to silence is not an
8 absolute right and that in certain circumstances, an adverse
9 inference can be drawn on the evidence against the accused.

10 [10.34.50]

11 So our respectful application is in two parts, Your Honours.

12 One is that Your Honours consider allowing these additional
13 accommodations - that we have now indicated - as to lists of
14 questions and as to lists of - or, rather, lists of topics and
15 lists of documents, as well as, if Your Honours consider it
16 appropriate, a period of time - two or three weeks, as Your
17 Honours find suitable - for preparation, so that there can be no
18 suggestion that any opportunity to prepare was denied and that
19 the Accused now be requested to state once and for all, clearly,
20 in Court, with these accommodations having been made, whether or
21 not he will answer questions.

22 And our second - the second part of our application, Your
23 Honours, is that if he then states that he will not testify, that
24 Your Honours confirm your prior notice and, in fact, now
25 specifically warn him that adverse inferences will be drawn

1 against him on the evidence when you deliberate in your
2 consideration of a judgement in this case.

3 Those are our respectful submissions. We are at your disposal, of
4 course, if there are any questions that you wish us to address.

5 Thank you.

6 [10.36.31]

7 MR. PRESIDENT:

8 Thank you, Mr. Prosecutor.

9 And, Madam Lead Co-Lawyer for the civil party, you may proceed.

10 MS. SIMONNEAU-FORT:

11 Yes. Thank you, Mr. President. I would like simply to add a few
12 words in the interests of the civil parties, following the
13 decision taken by Khieu Samphan and his defence team.

14 It's obvious that we regret this decision which was announced to
15 us yesterday, and we regret it because after the hearing that
16 took place at the end of May, at the beginning of June, the civil
17 parties were able to gauge the importance of the fact that Mr.
18 Samphan had accepted to ask the - to answer the questions put by
19 the civil parties. So we were perfectly aware of the importance
20 of such an act then. Now Mr. Khieu Samphan is now presenting
21 himself as a voiceless accused person obliged to remain silent.

22 [10.37.38]

23 Of course we accept this right to remain silent, but we'd like to
24 remind you of Khieu Samphan's statements that we were reminded by
25 the prosecutor. Mr. Khieu Samphan always said that at the end of

1 the proceedings he would speak and he would answer questions. And
2 we believe, as the prosecutor, that in terms of preparation for
3 these questions, Khieu Samphan should not be considered
4 differently. This trial has been going on for five years, with an
5 investigation which allowed Mr. Khieu Samphan to prepare his
6 defence, and to prepare his responses, and to prepare his
7 explanations at the end of this trial. And we believe that the
8 obstacles he's speaking about at the end of the request are the
9 same for everyone here – problems of staff, problems of numbers
10 of documents; and this is what we all are facing here.

11 Now, regarding the time for the questioning that the Khieu
12 Samphan team understands as being very, very long – and I
13 understood something like four weeks – well, I don't think that
14 this is accurate. I understood that the Chamber's decision not to
15 limit time was also something that would be in the interest of
16 the Accused, that is to say that the Chamber would allow the
17 Accused to take the time to rest, if necessary, and to remain
18 silent if they felt it was necessary. So I do not believe that
19 the fact that the Chamber has said that the time is illimited is
20 something that is contrary to or that is against – that
21 contradicts the rights of the Accused.

22 [10.39.23]

23 I also would like to stress that as far as I'm concerned,
24 answering questions does not mean only meeting the interests of
25 the Prosecution and of the Civil Parties, but it's also in the

1 interest of the accused persons. And here I would like to support
2 what the prosecutor said before. And beyond that, even, I think
3 that it's the moment for someone who states to be innocent to
4 come provide answers and explanations, and it is in his interest
5 and is certainly, obviously, an important opportunity for him, as
6 well.

7 And I will finish now returning to what I said at the start of my
8 submission: I thought that I had understood that Khieu Samphan
9 wished to answer the Civil Parties originally, and therefore I am
10 almost convinced now that he wishes still to answer questions,
11 insofar as that is possible. And I believe that this is an
12 important moment that is granted to him, and granted not only to
13 the civil parties, but also to Cambodia at large, and therefore I
14 think it would be a pity if he did not accept this opportunity.

15 And I would like to let you know that we will provide our list of
16 questions ahead of time, and of course we intent to put these
17 questions within a reasonable amount of time and we will not, of
18 course, dwell on topics that are useless. So, therefore, we're
19 perfectly aware that it is out of the question to question the
20 Accused during an indefinite amount of time, which would be
21 useless.

22 So I hope that Mr. Khieu Samphan will be in a position to
23 reconsider his decision. In any case, that is what we hope.

24 [10.41.22]

25 MR. PRESIDENT:

1 Thank you.

2 We would like to hear from counsels for Mr. Khieu Samphan and Mr.
3 Khieu Samphan himself, what they would like to respond to the
4 observations made by counsels across the bench.

5 MR. VERCKEN:

6 Well, we've filed a notice explaining our position in a very
7 clear way, so I don't believe that you expect me to repeat what I
8 already filed in this 11-page submission.

9 When I listen to the Prosecution and to the Civil Parties, I
10 don't feel that we're in a trial anymore; I feel that we're now
11 partaking in an international conference on the history of
12 Cambodia. And I don't understand why Khieu Samphan would have the
13 slightest inhibition about expressing himself. That is, of
14 course, a circumstantial opinion.

15 [10.42.44]

16 The truth of what's happening here is that we are in a trial and
17 we have made simple requests, and all of these requests have been
18 rejected by the Chamber, and we believe that this is - violates
19 the most elementary rights of our client. And therefore, on this
20 basis, continuing to accept to participate in this - in these
21 hearings does not mean anything for him right now.

22 Mr. Khieu Samphan took his decision on his own and maybe he will
23 share a few words about this with you, but as far as the detail
24 is concerned, in our submission E288/4 everything is very clear.

25 MR. PRESIDENT:

1 Thank you, Counsel.

2 Mr. Khieu Samphan, would you wish to respond to the observations
3 made by the Co-Prosecutors and Lead Co-Lawyer for the civil
4 parties?

5 MR. KHIEU SAMPHAN:

6 Good morning, Mr. President and Your Honours, and good morning,
7 everyone in and around the courtroom. I would like to inform you
8 that I have reasons that I had decided to exercise my right to
9 remain silent.

10 [10.44.42]

11 The reasons are because the Court has failed to respect my rights
12 and the rights of my defence counsels. At the beginning I had
13 faith in this Court, but after that, until the last moment, I
14 have no faith in this Court. That is all, Mr. President. Thank
15 you.

16 MR. PRESIDENT:

17 Thank you, Mr. Khieu Samphan.

18 It is now appropriate moment for adjournment. The Chamber will
19 adjourn until 11 o'clock.

20 The Court is adjourned.

21 (Court recesses from 1045H to 1110H)

22 MR. PRESIDENT:

23 Please be seated. The Court is now back in session.

24 During this following session, the Chamber would like to hear
25 from counsels for Mr. Khieu Samphan regarding the documents

42

1 presented by the Co-Prosecutor and the Lead Co-Lawyers for the
2 civil parties during the key documents presentation on the 24th
3 to the 27th of June 2013.

4 Before handing over to counsels for Mr. Khieu Samphan the Chamber
5 wishes to ask a question to Mr. Khieu Samphan.

6 Mr. Khieu Samphan, can you please rise?

7 The question is: If the Chamber applies the conditions as
8 requested by the - by the Co-Prosecutor regarding time allocation
9 for the defence counsel and certain documents so that counsel can
10 be prepared and that questions can be put to them, could you
11 please tell the Chamber what your reaction would be? Would you
12 maintain your position as always? In other words, would you wish
13 to exercise your right to remain silent or would you like to
14 respond to such conditions if they are offered, as I already
15 mentioned?

16 [11.12.38]

17 MR. KHIEU SAMPHAN:

18 Mr. President and Your Honours - and good morning again, everyone
19 in and around the courtroom - the reason I have exercised my
20 right to remain silent - this exercise does not limit to the fact
21 that the Court has not entertained my requests, as indicated.
22 There are other legal implications behind this decision, and I
23 may only refer to one of them.
24 There have been attempts to prevent my counsels from properly or
25 fully and meaningfully represent me in this courtroom, for

1 example that my counsels are allowed to write in the closing
2 statement up to 100 pages only. And this is, to me, part of the
3 Court intention to prevent my counsels from properly represent me
4 in the courtroom. I think that is only one of the reasons behind
5 it.

6 And I thank you very much.

7 [11.14.18]

8 MR. PRESIDENT:

9 Thank you.

10 I would like to know whether Judges of the Bench would wish to
11 have any questions for Mr. Khieu Samphan.

12 Judge Lavergne, you may now proceed.

13 JUDGE LAVERGNE:

14 In the interest of perfect clarity, this morning we have heard
15 some suggestions made by the Office of the Co-Prosecutors. The
16 suggestions would tend to allow the Khieu Samphan defence team to
17 prepare for questioning of their accused client. With respect to
18 the additional allocation of time for the questioning of the
19 Accused, this would allow for advance notice to be given to the
20 Accused with respect to the subjects to be addressed, in addition
21 to the list of documents. I hope that this has been taken into
22 account by the Khieu Samphan defence.

23 [11.15.33]

24 I also trust that the defence team has heard the request of the
25 Co-Prosecutors which consists of reiterating the ruling of the

1 Chamber on the possible consequences of a refusal to answer
2 questions at this particular stage of the proceedings. What I
3 mean by that is that the defence of Mr. Khieu Samphan, as well as
4 Mr. Khieu Samphan, has stated that some of their rights have not
5 been respected.

6 (No interpretation) – and that they indicate exactly which rights
7 have not been respected and demonstrate how this is the case, as
8 well as an indication of the total number of pages was raised –
9 how this particular issue is at all related to Mr. Khieu
10 Samphan's willingness to answer questions.

11 [11.16.55]

12 MR. VERCKEN:

13 I shall endeavour to answer that host of questions.

14 Obviously, my position has been developed through all of our
15 written filings, as well as our oral submissions. Over the course
16 of these proceedings, we may have made many applications, as well
17 as arguments. I've stated today – as I've stated earlier, if the
18 Trial Chamber were – is not to cut off my microphone, well, I
19 shall show you that Mr. Khieu Samphan's fair trial rights have
20 been violated.

21 You have determined a threshold for the admissibility of
22 documents, a threshold that is extremely low. You have abided by
23 only a prima facie principle. We have had at least four hearings
24 on the admissibility of documents. Thousands of documents have
25 been declared admissible on a prime facie basis.

1 I provide one example: footnotes of the Closing Order have been
2 attributed a value of authenticity simply by virtue of the fact
3 that they were cited as footnotes in the Closing Order. During a
4 hearing, the President even went so far as to state that such
5 documents had been used during the judicial investigation; based
6 on that, it would be permissible to admit those documents without
7 argument or debate.

8 [11.19.05]

9 Concurrent to the hearings on the admissibility of documents,
10 Your Trial Chamber ruled that in the interests of public
11 education, their edification - that it was necessary to schedule
12 hearings on key documents. The Trial Chamber specified that the
13 specific set of hearings - and there were four hearings on key
14 documents - had a purpose of not to deal with admissibility,
15 since admissibility hearings had taken place already. And for the
16 first three hearings, you proceeded to inform the parties that we
17 were not to address the probative value of documents which were
18 being presented by the parties during the hearings on the key
19 documents. During the first two hearings (no interpretation) did
20 not have the right to speak. This is crystal clear.

21 Following that, the key documents hearings unfolded, and over
22 time and slowly, over the course of the third hearing, we were -
23 we were told that we would have the right to reply. However,
24 there was a condition on this, and we were privy to this
25 yesterday. The Chamber told us that not only were we barred from

1 talking about the probative value of the key documents being
2 presented by the parties, the Trial Chamber had prohibited my
3 colleagues from the Nuon Chea team to talk about the authenticity
4 of the documents. They prohibited them from contextualizing the
5 documents presented by the Co-Prosecutors and the Civil Parties
6 either through the summoning of witnesses who took the stand or
7 through documents that had a historical value or by citing their
8 own work, such as previous written filings to Your Honourable
9 Chamber.

10 [11.21.30]

11 We consider that this diversion, this slip, is a sort of trap.
12 And we are being told that since the last hearing on key
13 documents, we have been given the message that - "You may speak",
14 and I believe this is the clincher, if you will. Let's call a
15 spade a spade; this is a form of manipulation. You've told us,
16 "You may speak." And I would quote Judge Cartwright on this, "You
17 may speak on probative value." However, as we saw yesterday,
18 these proceedings have absolutely nothing to do with an
19 adversarial debate on probative value.
20 Nevertheless, at the same time, in the Trial Chamber memorandum
21 that was issued just before the January - the June 3rd Trial
22 Management Meeting, we were told that were the Khieu Samphan team
23 were - to refuse to participate in the hearings on key documents,
24 the Trial Chamber-
25 Pardon me; I'll repeat my words in order to be completely clear.

1 In a memorandum that was issued to the parties prior to the June
2 13th Trial Management Meeting before the key documents hearing,
3 we were told that if the Khieu Samphan team were to refuse to
4 partake in the hearings on key documents – that the Trial Chamber
5 would be entitled to refuse any request for an increase in the
6 number of pages for closing arguments, both written and oral.

7 [11.23.37]

8 As a way of consolidating the sort of trap, in paragraph 10 of
9 the same memo, four paragraphs on from the previous paragraph,
10 the Co-Prosecutor said that, "in any event, the number of final
11 pages for the final arguments as well as the time allocated shall
12 not be amended."

13 Therefore, the question that we ask ourselves is when – when is
14 the adversarial proceedings as provided for under Internal Rule
15 27 – when will the adversarial hearing actually take place? When
16 will we be able to defend Mr. Khieu Samphan based on the – after
17 the 20 months of proceedings, after the hearing of some 12
18 experts who have appeared here, after some 6,500 documents have
19 been considered as admitted into evidence, some tens of thousands
20 of pages admitted into the proceedings? We cannot summarize all
21 of this in some 100 pages of our closing arguments or make our
22 final pleadings in one (sic) hour and 40 minutes.

23 There comes a time – there was a time when we must confide our
24 trust in the Trial Chamber, and we have asked to take the floor
25 in acceptable conditions, we have asked for extensions – which

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1 are acceptable in all other jurisdictions. However, one can only
2 draw the conclusion based on what has happened in reality; that
3 is, in practice, in reality, the defence for Mr. Khieu Samphan
4 has been muzzled. Our team has been gagged from representing him,
5 from speaking on the hundreds and hundreds of testimony.

6 [11.25.55]

7 And based on those facts, are we to consider that we are actually
8 taking part in a trial as – or, as the Co-Prosecutors and the
9 Civil Parties have showed, this is simply an international
10 conference at which Mr. Khieu Samphan is asked to speak and give
11 his opinion on what happened some 30 years ago?

12 I believe that the answer is abundantly clear for us. We have
13 developed these arguments on many an occasion. We have never
14 diverted from this position. We have always been crystal clear.
15 We have always stated where we were going, what we wanted, and
16 what our analysis was.

17 Today the trial is drawing to an end in perhaps one or two weeks.
18 The moment has come to draw the consequences of the decisions
19 that you have made. We will reach our own conclusions; you will
20 reach your own.

21 That is it.

22 (Judges deliberate)

23 [11.32.10]

24 MR. PRESIDENT:

25 Mr. Prosecutor, you may proceed. Please be brief.

1 MR. ABDULHAK:

2 I'm grateful, Mr. President. I will be very brief. I rose because
3 I want to correct the record. And in the interests of calling a
4 spade a spade, to quote my friend, I do want to make sure that
5 the record is clear, both for everyone in the courtroom and for
6 the public.

7 What Your Honours are being treated to here is a complete and
8 utter charade. You're presented with a series of false
9 explanations and excuses, supposed breaches of fair trial rights.
10 You're accused of engaging in manipulation and placement of
11 traps. None of this bears any, any basis in reality whatsoever.
12 And to address a couple of the specific points, firstly, my
13 learned friend alleged that Your Honours had admitted documents
14 referred to in the Closing Order without permitting debate or
15 objections. That is plainly false. Your Honours indicated that
16 documents referred to in the Closing Order are entitled to a
17 presumption of reliability, but in relation to all of those
18 documents, Your Honours permitted the Defence to make written and
19 oral objections, which they did. Your Honours heard the
20 objections in a series of extensive hearings. Your Honours heard
21 our responses, and then decisions were made in relation to
22 admission. So that claim is simply not true. It is not based in
23 fact.

24 [11.33.50]

25 As to the opportunity to make responses to documents, if my

1 friend takes the issue with additional directions being given or
2 if he notes those additional directions being given to make
3 submissions on probative value, then it was open to him to take
4 the same course that our learned friends counsel for Nuon Chea
5 took. They have been given time, they were asked to provide
6 estimates of time that they need to make their responses - that
7 time has been allowed. And so the claim that they've been
8 prevented from speaking or engaging in an adversarial debate is,
9 again, simply false. It is an untrue statement.

10 As to the extension of the final trial brief, we see absolutely
11 no relation - no relationship between a limitation on the length
12 of the final trial brief and an accused's decision as to whether
13 or not he wishes to testify, assuming he genuinely wishes to
14 testify, a position which surely now has been negated.

15 [11.35.04]

16 Now, 100 pages for the Defence, 200 pages for the Prosecution in
17 relation to two Accused. How does that amount to a breach of any
18 right? How does that disserve the equality of arms? If anything,
19 if the Accused takes the view that a limitation of pages impinges
20 on his ability to present his case, well, then, here is the
21 perfect opportunity, before Your Honours, and before the parties,
22 and before the people of Cambodia to whom Mr. Khieu Samphan has
23 pledged a promise to give responses to the allegations - ere is
24 an opportunity to state his case and respond to questions and
25 give his versions of the facts. They have not been gagged. Every

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1 procedural right has been respected, meeting international
2 standards and, in our respectful submission, going well beyond to
3 ensure that this Accused and his counsel are able to state their
4 case and that they are able to respond to the allegations.

5 [11.36.04]

6 Your Honours are being presented with a false series of excuses.
7 If the Accused wishes or has elected to not testify, then that is
8 his right. Our position is that it is not a legitimate exercise
9 of a right to remain silent, for the reasons that I stated. But
10 if he does not wish to answer questions, that is his right, and
11 he can stick to that right, but it is disrespectful to this
12 Court, and it is disrespectful to Your Honours, and it is a
13 completely misstatement of the record to allege that, somehow,
14 this decision is based in supposed procedural breaches, of which
15 there have been none.

16 Those are our respectful submissions.

17 UNIDENTIFIED SPEAKER:

18 (Microphone not activated)

19 MR. PRESIDENT:

20 Counsel, it is now done with this matter. The Chamber will
21 deliberate on this issue.

22 (Judges deliberate)

23 [11.37.51]

24 MR. PRESIDENT:

25 I hand over the floor to Judge Silvia Cartwright to enlighten

1 this matter to – for all parties. Judge, you may proceed.

2 JUDGE CARTWRIGHT:

3 Yes. Thank you, President.

4 The Chamber has heard the various arguments on the question of

5 whether Khieu Samphan wishes to exercise his right to remain

6 silent and it understands that he is declining to answer

7 questions even were the Trial Chamber to agree to the suggestions

8 made by the prosecutors to allow more time for preparation.

9 Instead, he is claiming some breach of his fair trial rights.

10 However, the Chamber has afforded Khieu Samphan and his defence

11 team precisely the same opportunities to respond to all issues at

12 trial and it does not accept this is a reason for declining to

13 exercise his right to remain silent – for exercising his right to

14 remain silent.

15 [11.39.18]

16 Now, the point has now been reached where Khieu Samphan or his

17 defence team has the opportunity, which was scheduled and

18 notified some time ago, to comment on the key documents presented

19 by the prosecutors or to raise their own key documents. And the

20 President has asked me to invite the Khieu Samphan defence team

21 to begin that presentation.

22 Thank you, President.

23 MR. VERCKEN:

24 Well, the first thing that I would like to do is answering an

25 oral submission that was made by the Co-Prosecutors during the

1 hearing of 24 June 2013, which regarded the presentation of key
2 documents. And this oral submission presented by Keith Raynor was
3 asking for document "Cambodia Fact Sheets" dated 17 March 1975,
4 apparently prepared by the National American Security Council for
5 a certain Mr. Bill Kendall - asking for this document to be
6 admitted pursuant to Rule 87.4 of the Internal Rules. And the
7 document presented by the prosecutor is D366/7.1.366.

8 [11.41.40]

9 During this hearing of 24 June, Anta Guissé, also counsel for
10 Khieu Samphan, opposed the presentation of this document which
11 had never been put on the case file and which necessitated a
12 submission based on 87.4.

13 The prosecutor acknowledged that this was a new document, and
14 therefore he asked for the - for leave to form an oral submission
15 to have this document put before the Chamber. And the Chamber
16 authorized the prosecutor to present his oral submission, and you
17 informed us that we could react to this later.

18 [11.42.36]

19 Well, this is what the prosecutor said on the 24th of June -
20 [free translation] I quote - on page 85-86 of the French draft
21 version of the transcript - and this was at 15.10 to 15.12. And
22 this is what the prosecutor said:

23 "This document is not in the footnotes of the Closing Order, nor
24 in the final statements, nor in the list pursuant to Rule 80, so
25 all I can do is ask to have this document presented pursuant to

1 Rule 87.4 because this is in the interests of justice. So, in
2 short, in this document," the prosecutor continues, "there are 15
3 examples under the heading 'Communist Terror in Cambodia'. There
4 are examples of forced transfer and examples of executions, and
5 this is classified as refugee accounts and also in various
6 American newspapers such as the ... "Washington Star News" and in
7 reports of the American Embassy and in a Laotian paper. According
8 to us," the prosecutor continues, "this document is particularly
9 relevant for this trial. So I hope, therefore, that I have laid
10 the foundations for my submission." End of quote.

11 [11.44.12]

12 So, today, we, of course, challenge or contest the written - the
13 oral submission of the prosecutor, and for various reasons: the
14 first is that the submission on 24 June does - is not in line
15 with the rules that you have stated to make such submissions; the
16 second reason is that the admissibility criteria required by and
17 defined by Rule 87.4 are not met.

18 So the first part, therefore, we believe that the written
19 submission does not comply by the rules issued by the Chamber.

20 And I'd like to remind these rules: submissions presented based
21 on 87.4 must be presented prior, and not at the last minute; and,
22 second rule, these submissions must be presented in writing, and
23 not orally; third rule, the document must be available in the
24 three official languages of the ECCC.

25 So, regarding the time frame, I will refer to a transcript of 18

1 July 2012, E1/91.1, on pages 6 and 7. And this is what it said
2 [free translation] by the Chamber:

3 "The Chamber has already indicated that any document who - that
4 the parties wish to use during the proceedings and that has not
5 received an E3 index or that appears on no document list proposed
6 to be put before the Chamber must then address the conditions
7 announced in Rule 87.4."

8 [11.46.26]

9 And the Chamber also stated that, pursuant to the principles
10 established in terms of fair trial, the minimum condition in
11 order to refer to a document that has not yet been put before the
12 Chamber or - or whose inclusion has not yet been requested is to
13 be presented within proper time a request to place this document
14 or to ask for it to be put before the Chamber pursuant to the
15 provisions of this rule.

16 And I would like to quote now, to support this first quote, an
17 excerpt of your Court's memorandum of August 3, 2012, indexed
18 E218. And I'm going to quote a passage from paragraph 22. This
19 memorandum is titled "Organization of a Trial Management Meeting
20 in View of Programming the Remaining Phases of the First Trial",
21 and the excerpt that I'd like to quote is the following: "The
22 requests presented at the last minute pursuant to Rule 87.4 will
23 be, as of now, rejected." End of quote.

24 [11.47.57]

25 And often you have applied this rule, in particular during a

1 submission that was presented one week before a witness came to
2 testify. And you can see that on the hearing on 8 August 2012
3 indexed E1/104.4, pages 2 and 3 - that you rejected such a
4 document and you also rejected, during the hearing of 3 October
5 2012 indexed E1/129.1, pages - pages 78 and 79, a request that
6 was presented the day before one of the witnesses came to
7 testify. And finally speaking, you also rejected a request made
8 during the day of the hearing, and this was the hearing of the -
9 the hearing requesting the release of Khieu Samphan. And these
10 were the excerpts of the book of the Investigating Judge Marcel
11 Lemonde, who - we were told that this book had already been
12 rejected wrongfully in order to prevent Son Arun from taking a
13 look at this book and comparing it to other documents, whereas
14 this is not at all the case. We have not seen any official
15 decision from your Chamber rejecting the request that I had
16 formulated to put this book before the Chamber, which seems to me
17 essential to discuss the probative value. And we're returning to
18 this issue of the probative value of the different elements
19 collected during the investigation, and especially the conditions
20 in which this information was collected.

21 [11.50.17]

22 And up - and to date, two weeks before the end of the trial, we
23 have no formal decision on this; we simply have a general idea in
24 which a senior legal officer is announcing that this request will
25 be rejected. So this is my third example. So, to date - or that

1 day [corrects the interpreter] the request had been presented
2 prior and it had been rejected.

3 Now I'd like to turn to the written nature of the request based
4 on 87.4, which is necessary. And I'm going to quote a transcript
5 from the hearing of 23 May 2012, E1/75.1, pages – page 25. It is
6 the President speaking here – and let me quote:

7 "I would like to say that in order to present a new document to
8 be placed on the case file or to be put before the Chamber, it is
9 necessary to make a written submission pursuant to Rule 87.4. The
10 Chamber will only – will not make – will not issue a decision –
11 will issue no decision on a document that has not been the object
12 of a written submission."

13 [11.51.39]

14 And now I'd like to turn to a quote of the hearing of 24 July
15 2012, E1/95.1, page 119. It is Judge Cartwright speaking here,
16 and she says the following:

17 "Thank you, Mr. President."

18 (No interpretation) – and Judge Cartwright continues:

19 "You must present your request in writing. And one of the reasons
20 why we're asking you for written submission is that the article
21 involved – this particular document whose admissibility was
22 requested – (no interpretation) and it will be impossible to take
23 a decision before such a document has been translated because
24 this document was only in one single language so that the
25 document (sic) may take a decision in regard to that document."

1 End of quote.

2 [11.52.38]

3 And now I'd like to turn to the third condition regarding the
4 availability of the documents in all three official languages of
5 the ECCC.

6 And now I'd like to refer in - to examine this condition to your
7 memo titled "List of Witnesses Called to Testify during the First
8 Phases of the Trial, the Delay for Filing Documents", in response
9 to request E109/5, and this is a memo dated 25 October 2011,
10 indexed E131/1, on page 3. And the Chamber is - states that in -
11 states that "the documents put before the Chamber should be
12 available in all three official languages of the ECCC. Therefore,
13 it is up to the party asking for the admissibility - asking for
14 this document to be put before the Chamber to make sure that this
15 document is available in all three official languages of the
16 ECCC.

17 [11.54.02]

18 "Further," it is written, "the Chamber requested all parties to
19 indicate which document it wishes to put before the Chamber
20 during the first phases of the trial and to make sure that these
21 priorities are communicated to ITU so that these documents - or
22 to make sure that these documents are transmitted to ITU within a
23 reasonable amount of time. And therefore the ability to use a
24 document will be limited if it is impossible to translate this
25 document within due time." End of quote in this memo, E131/1.

1 So, therefore, I'd like to summarize. The request formulated by
2 the Co-Prosecutors during the hearing of 24 June 2013 was
3 presented at the last minute - that is to say, the very same day
4 of the hearing - and orally. And the document put - that they are
5 requesting to put before the Chamber is only available in
6 English. It's a 26-page document. And therefore, given the rules
7 issued by your Chamber and the rules that I have just reminded
8 you, the request of the Co-Prosecutor should be simply rejected.

9 [11.55.37]

10 But also, and once again, this request must be rejected because
11 the requirements set by Rule 87.4 are not met, and the
12 admissibility criteria required by this article, therefore, are
13 not met. And I quote the article in question:

14 "During the trial, either on its own initiative or at the request
15 of a party, the Chamber may summon or hear any person as a
16 witness or admit any new evidence which it deems conducive to
17 ascertaining the truth. Any party making such a request shall do
18 so by a reasoned submission. The Chamber will determine the merit
19 of any such request in accordance with the criteria set out in
20 Rule 87.3 above. The requesting party must also satisfy the
21 Chamber that the requested testimony or evidence was not
22 available before the opening of the trial." End of quote.

23 [11.56.46]

24 So, in view of this rule, therefore, a request has to be reasoned
25 and also prove that there was - all necessary diligence was

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1 exercised. And, of course, the document must meet the
2 admissibility criteria of Rule 87.3, which here is not the case.
3 First of all, I will speak about - unless you want me to do so
4 after the lunch break, because I see that it's almost 12 o'clock,
5 and I still have a lot to say.

6 MR. PRESIDENT:

7 Thank you, Counsel.

8 The time is now appropriate for lunch break. The Chamber adjourns
9 now and will resume by 1.30 this afternoon.

10 Security guards are instructed to bring Mr. Khieu Samphan to the
11 holding cell downstairs and have him returned to this courtroom
12 before 1.30.

13 The Court is now adjourned.

14 (Court recesses from 1158H to 1333H)

15 MR. PRESIDENT:

16 Please be seated. The Court is now back in session.

17 We would like to hand over to counsel for Mr. Khieu Samphan to
18 make some observation or comments in response to the key
19 documents presented by the Co Prosecutors and lead co lawyers for
20 the civil parties during the hearing on the 24th to the 27th of
21 July - rather, of June. You may proceed, Counsel Vercken.

22 MR. VERCKEN:

23 Thank you, Mr. President.

24 Just before resuming my response to the application made by the
25 Co Prosecutors regarding the admissibility of D366/7.1.366, I

1 wish to clarify a point that I raised twice this morning that can
2 be rendered even clearer regarding the applications that we have
3 submitted. This morning, I referred to one single request, which
4 is why it could have led to ambiguity. This was the two requests
5 concerning the admissibility of a book written by a former Co
6 Investigating Judge of this Tribunal.

7 [13.34.54]

8 To be utterly clear, we submitted a first request prior to the
9 hearing of the release on bail of Mr. Khieu Samphan. The request
10 was dismissed on the 11th of April 2013 from the basis that the
11 request was made belatedly, that is, just prior to the hearing
12 scheduled for the release on bail of Mr. Khieu Samphan.

13 The second request to tender into evidence Mr. Marcel Lemonde's
14 book, was an application reasoned by the potential of this book
15 to discuss, debate, and assess the probative value of evidence
16 into this trial. The document I am referring to is E280, and that
17 particular application has not been dismissed, but Annex 4, that
18 involves a table that we have conveyed to the senior legal
19 officer, states that the Chamber intends to reject our request on
20 the basis that it is void of any relevance, yet to this day we
21 have received no further information. That, Your Honours, is the
22 first clarification that I deemed important to raise before you
23 as there seemed to be an impression that our team had only
24 submitted one single request.

25 I shall now resume my presentation where I left off just prior to

1 the lunch break and address the criteria of admissibility as
2 pursuant to Rule 87.4. Based on our reading of this provision,
3 any request made pursuant to this rule must not only be reasoned
4 but it also must show that all due diligence was exercised and
5 that the document fulfils all criteria of admissibility as
6 outlined in Internal Rule 87.4.

7 [13.37.38]

8 In the absence of due diligence and the absence of due diligence,
9 as I stated this morning, the few lines with which the Co
10 Prosecutors had justified their request before this Chamber, the
11 only reason that we were able to extract from their explanation
12 that the document would help ascertain the - ascertain justice,
13 was not made evident. We were not given any reasons why, and at
14 no time whatsoever did the Co Prosecutors explain how they
15 actually discovered the said document. Was the document revealed
16 earlier with the practice of all due diligence required? That is
17 what your Chamber must determine, based on the rule that Your
18 Honours have prescribed, as well as in your decision, E290, under
19 paragraphs 22 and 23, according to which the Party making the
20 request must demonstrate before the Chamber that all
21 admissibility criteria had been fulfilled and that it was
22 impossible for them to practice due diligence prior to the start
23 of proceedings.

24 [13.39.14]

25 Therefore, there may be a few exceptions to this requirement as

1 required by the administration of justice where other documents
2 that have already been admitted into evidence and with which
3 there is a close relationship. This is in paragraph 32 of E290.
4 Nevertheless, the request of the Co Prosecutors does not square
5 with this particular predicament that has been drawn out by the
6 Trial Chamber and therefore no exception could be made. Indeed,
7 the Co Prosecutors had knowledge of the existence of the Kendall
8 Report well before the start of the hearings on key documents,
9 well before the proceedings that took place during the week of
10 June 2013 from the 24th to the 27th of June.

11 In May 2010, or rather, even as early as February 2010, the Co
12 Prosecutors asked the Co Investigating Judges in document D260 to
13 admit into evidence this particular document, and it was on the
14 4th of May. This was request was made more than three years ago.

15 [13.41.08]

16 The Co Prosecutors failed to provide an explanation as to why
17 this document was not on their initial list, as pursuant to the
18 internal rule, with the filing in April 2011 under 80. And with
19 respect to key documents on joint criminal enterprise, a request
20 was made by the Co Prosecutors. This is just clear demonstration
21 that there was a clear and unequivocal absence of due diligence
22 on the part of the Co Prosecutors. I question as to whether this
23 document is admissible under Rule 87.3, which stipulates that a
24 document shall not be admitted if it is of a repetitive nature or
25 if it is unlikely to demonstrate what it seeks to - what it

1 purports to prove.

2 I wish to emphasize that firstly the said document is a mere
3 scan. What I mean is that the document is an electronic
4 photocopy. There's absolutely no possibility to verify its
5 authenticity or reliability. It is repetitious. In the Co
6 Prosecutors' request, they cited that it may contain some
7 examples of executions, forced transfer, as well as accounts from
8 refugees. I am of the opinion that your Chamber has already heard
9 an ample amount of refugee accounts in order to consider that
10 this document is in effect repetitious.

11 [13.43.23]

12 In conclusion, I wish to point out that this document contains
13 subjective and biased information. It comes from a security
14 entity or a security organization from the United States opining
15 on what happened in Cambodia before April 1975. This document
16 does not contain an objective and impartial analysis of the
17 facts. The organization that produced the document had very clear
18 interest in exhibiting its own version of the events or
19 disseminating its own reading of the events. I can cite that the
20 report says that the American bombings took place with the
21 support of Norodom Sihanouk.

22 The report also denies that the Americans had not participated in
23 the deposition of Prince Sihanouk in support of the Lon Nol
24 Government. This particular telegram or this particular document
25 had been drafted by an officer who worked for the National

1 Security Council of the United States. In the context of armed
2 conflict, the United States was heavily involved in the armed
3 conflict with General Lon Nol, and the author of the document has
4 not been summoned to testify before this Court.

5 [13.45.10]

6 I therefore believe that it is entirely reasoned to say that this
7 document brings absolutely nothing to these proceedings since the
8 sources it cites on the crimes committed by the Khmer Rouge are
9 unknown. It is a document that merely lists refugee accounts,
10 media clippings, and reports; therefore, for all of those reasons
11 we respectfully request your Chamber to dismiss the request of
12 the Co Prosecutors to admit into evidence document D366/7.1.366.
13 The microphone seemed to turn itself off.

14 I wish now to raise an additional point concerning the five
15 policies that have been commonly referred to in the Closing Order
16 as policies that were implemented by the Khmer Rouge between 1975
17 to 1979. After having seen the transcripts of the hearing on key
18 documents as well as the statements made by the civil parties,
19 there are actually many more policies at issue and that were
20 defined as such during the key documents hearing in June.

21 Although I will not be addressing those.

22 [13.47.39]

23 Following your decision, this trial has been severed into a
24 multitude of trials and those trials serve to try facts and
25 crimes that are outlined in the Closing Order - forced transfer

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1 as well as the treatment of former officials of the Khmer
2 Republic. Based on our analysis of what has occurred, what has
3 unfolded, and since your decision – and I know that I am not
4 alone in considering this – since your Chamber issued its
5 Severance Order, it has been difficult to establish the criteria
6 as well as the exact contours of this first trial. I refer now to
7 policies that do not fall within the scope of this first trial,
8 that is, the establishment of cooperatives and forced labour
9 camps, the treatment of enemies from within and abroad, the
10 treatment of the Vietnamese, the Cham, the Buddhists, as well as
11 the regulation of marriage.

12 [13.49.13]

13 The reason why the Trial Chamber has not provided all of the
14 legal certainty that we are entitled to, in my mind, reposes on
15 the fact that there are problems that emanate from your decision
16 to sever this case and to deal only in this first trial with
17 modes of responsibility, that is to say, joint criminal
18 enterprise, and the legal uncertainty also manifest in the
19 successive applications made by the
20 Co Prosecutors' Office in order to broaden the scope of this
21 trial.

22 The Supreme Court had undertaken an analysis the debate was
23 rather progressive-

24 MR. PRESIDENT:

25 Counsel, could you please hold on, and Mr. Co Prosecutor, you may

1 now proceed.

2 MR. ABDULHAK:

3 Thank you, Mr. President.

4 I'd like to object to my friend's submissions which have nothing
5 to do with document presentations or in response to our document
6 presentations. For the same reasons that Counsel Son Arun was
7 directed this morning to refrain from these submissions, we
8 invite Your Honours to issue the same direction to Mr. Vercken.

9 [13.50.58]

10 The purpose of these hearings, as we understand them is to deal
11 with documents and respond - to give the accused an opportunity
12 to respond on the documents we have presented. My learned friend
13 is veering into issues of alleged uncertainties as to scope of
14 trial, which - submissions with which we disagree. I'm not going
15 to make submissions on that because I object to my friend dealing
16 with them other than to note that from that from the very
17 severance order itself, in September 2011 onwards, the scope of
18 the trial has been clearly delineated, both in relation to
19 paragraphs of the Closing Order and specifically in relation to
20 topics.

21 But I do object to my friend dealing with these issues at this
22 point. They've been adjudicated. They are the subject of an
23 appeal before the Supreme Court and they're not the purpose and
24 the subject of these hearings.

25 [13.51.53]

1 MR. VERCKEN:

2 The objection lodged by the Co Prosecutor provides me with the
3 opportunity to point out a further uncertainty which has been our
4 uncertainty as we have endeavoured to prepare for the proceedings
5 on key documents. It is an uncertainty that is defined by the
6 fact that the Khieu Samphan defence team must raise this today.
7 I would make two of the following references, and the first Mr.
8 President is yours. At the opening of this hearing you stated
9 that we would have the right of reply to the key documents that
10 had been presented some two weeks ago by the Co Prosecutors as
11 well as by the civil parties. And there's a second reference that
12 I believe must be understood in a broader context, and I refer to
13 your memo, E288/1/1 from the 17th of June in paragraph 6 in which
14 you state - and I quote:

15 [13.53.28]

16 "The Chamber subscribes to this decision and will allocate a half
17 day to the Khieu Samphan defence team during the key documents
18 proceedings in order to present their objections to the key
19 documents presented by the other parties during that week of
20 hearings."

21 And this is exactly what you have said at the start of this
22 afternoon's session in order to address all other documentary
23 evidence regarding the accused, Khieu Samphan.

24 I do not seek to raise a dispute. I do not seek to serve as a bad
25 example to junior colleagues and lawyers in this courtroom, but

1 what is my role in this courtroom today, because ultimately I am
2 at a loss?

3 (Judges deliberate)

4 [13.58.13]

5 MR. PRESIDENT:

6 The Chamber would like to hand over to Judge Lavergne to address
7 the issue concerning the observations by counsels for Mr. Khieu
8 Samphan regarding the key documents presented by the Co
9 Prosecutors and the lead co lawyers for the civil parties during
10 the previous hearing.

11 Judge Lavergne, you may now proceed.

12 JUDGE LAVERGNE:

13 Thank you, Mr. President.

14 Counsel Vercken, in order to address your questions, the Chamber
15 asked me to indicate the following to you: This afternoon's
16 hearing is focused on allowing you to present your comments on
17 the documents that were presented by the Prosecutors as well as
18 by the civil party co lead lawyers during the last hearing on
19 documents. And the point of this hearing as well is also to
20 present your own key documents which you feel you should present
21 to the Chamber.

22 And given what - given the fact that you did not take advantage
23 of the opportunities that were given to you previously to present
24 comments on key documents that were presented during previous
25 hearings on documents, you also have the possibility now, if you

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1 wish to do so, to make comments on the totality of the key
2 documents that were presented since the beginning of this trial.
3 So I hope that this is sufficiently clear for you.

4 [14.00.20]

5 MR. VERCKEN:

6 It's very clear, Your Honour, and I'd like to remind Your
7 Chamber, however, that during the hearings on the key documents
8 that took place in January, February, in March 2012 the point -
9 the parties were not asked to respond but only the defendants and
10 only within very strict confines. I spoke about this earlier when
11 I answered the question that you put to me earlier. And my
12 analysis of the situation is the following - is that when you say
13 publicly that we did not wish to take advantage of the
14 opportunity given to us during the previous hearings to react
15 within the confines set by your Chamber to the key documents
16 presented by the other parties, well I would say that the reality
17 of such a reaction did not exist, purely did not exist. That is
18 exactly the core of the problem that I tried to bring up earlier.

19 [14.01.45]

20 And then I would like to tell the Prosecutor that today's hearing
21 regards JCE, and therefore, the question that I am referring to
22 now on the treatment - on the way these policies were implemented
23 and to answer what you just brought up - that is to say, that
24 apparently today I have the possibility of making observations on
25 all documents that were presented by the civil parties as well as

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1 the Prosecutors during the previous hearings on key documents.

2 Well, I can simply remind you in that regard that 847 documents
3 have been presented during the four hearings that took place to
4 date on key documents; 89 during the first in February 2002; 139
5 during the second hearing in October 2012; 282 during the third
6 hearing; and 337 during the last hearing.

7 So as you can see, when I'm told that today the opportunity is
8 given to me to respond in two and a half hours of time to the
9 presentation of 847 documents, well it's a bit like if I was
10 being told that I would be able to challenge the probative value
11 of 6,500 documents covering 20 months of trials and 92 experts
12 and 100 pages in a final brief, and within 9 hours and 40
13 minutes. Well, this seems to me unrealistic. I am not a magician.
14 I cannot accomplish such a miraculous task.

15 [14.04.19]

16 So, to date, I believe that, if you give me the leave, I'm going
17 to conclude my observations on the policies I think that directly
18 pertain to today's hearing. And I don't think that anyone will
19 challenge this - unless you ask me to stop speaking - and that
20 will be it, because 847 documents - as you can see, I don't think
21 it will be possible for me manage this.

22 MR. PRESIDENT:

23 Mr. Prosecutor, you may proceed.

24 [14.05.02]

25 MR. ABDULHAK:

1 Thank you, Mr. President. I rise to make sure, again, that the
2 record is clear, particularly against the submissions we heard
3 this morning about supposed breaches of Khieu Samphan's
4 procedural rights. At this very stage, the Chamber has allotted
5 time the Khieu Samphan Defence to both respond to documents
6 submitted by the OCP and to conduct their own presentations.
7 Rather than use that opportunity, they've spent considerable time
8 dealing with - responding to one document that we've proposed to
9 have admitted - an additional document - and otherwise making
10 general submissions that have nothing to do with documents. Now,
11 if I understood my friend correctly, he seemed to be saying that
12 he would need more time to deal with 847 documents. So, our
13 respectful submissions is; he should be given time. In fact, I
14 understand that that was the purpose of today's proceeding.

15 [14.06.00]

16 But, perhaps, if his original estimate of half a day was
17 inaccurate - well, Your Honours, can give him a second
18 opportunity to correct that estimate and give him more time. If
19 he needs more time, then we're here. We're quite happy to listen
20 and take note of his submissions and to hear the documents and to
21 see the documents that he wishes to present. So, let there be no
22 confusion and let there be no misleading representation about
23 supposed lack of opportunities to make presentations. He should
24 be asked if he needs more time, and your Chamber, in our
25 respectful submission, should look upon that request favourably,

1 if it's reasonable. Thank you.

2 MR. VERCKEN:

3 May I answer this very quickly? And I'd like - in order to remind
4 my colleague of the definition that was - of how your Chamber
5 defined these hearings on key documents. These are documents with
6 an educational purpose. We were told that these were hearings
7 that should inform the public of everyone's position. And this is
8 why, during the first hearings that took place on these issues,
9 we were completely forbidden from making observations on the
10 documents that were presented - on the hundreds of documents that
11 were presented.

12 [14.07.26]

13 We were told - well, this is not the object of today's hearing.
14 The object of this hearing is educational. That will allow each
15 party to present its case, but especially it is geared to the
16 public, that might not understand what's happening here, given
17 the importance of the - given the enormous size of the documents.
18 And I have put this in writing, successively, that for us; these
19 hearings were maybe interesting - why not? - but that they did
20 not have any connection with the trial itself. And that we should
21 not mix up these hearings with the trial itself. And this is why
22 we did not start a real discussion on the probative value of the
23 documents. We saw this yesterday, and even before, with the
24 objections that were formulated by the Prosecution against the
25 examination of the probative work that Nuon Chea's team tried to

1 do.

2 [14.08.36]

3 And, each time, this was rejected. An examination of probative
4 value, which requires discussion among professionals in order to
5 stress the relevant points -to compare the relative points to
6 work on the totality of the evidence presented during the trial.
7 And this is why we always said that this work - this discussion
8 on the probative value - had to take place after the - after the
9 evidence had been presented. Tomorrow, or later, if I'm
10 interrupted. A witness is going to come to testify in order to
11 speak to us about what? To speak to us about, indeed, the
12 evidence. The evidence that he collected over years for the
13 Court. So, today we're expected to talk about the probative value
14 of 847 documents even before having heard the testimony of Mr.
15 Stephen Heder, who is scheduled to come and speak to us about the
16 way that he gathered the evidence for this Court.
17 This is not reasonable. Come on. This does not correspond to
18 anything. These documentary hearings are not the trial itself.
19 The trial itself is the discussion on the probative value of the
20 totality of the evidence that will be - and we will discuss this
21 after the tendering of this evidence. So you have limited it in
22 our final brief to 100 pages, and in our final statements to nine
23 and a half hours. So, on that basis I don't see how a true trial
24 can take place under these conditions.

25 [14.10.28]

1 MR. PRESIDENT:

2 Mr. Prosecutor, you may proceed.

3 MR. ABDULHAK:

4 I apologize, Mr. President, for rising again. I know you prefer
5 us not to reply, and I'm not rising to reply. I have a proposal
6 to make. Again, if my friend needs more time, let him make that
7 application. If he wishes to make a presentation of documents,
8 perhaps following the testimony of the next witness – perhaps
9 your Chamber can consider that. Again, we have not heard an
10 application – a reasoned application – for extra time or for an
11 opportunity to respond to the 800 documents.

12 [14.11.07]

13 Of course, we have been in trial for a year and a half, so one
14 would have thought that the Defence have actually done their work
15 over that period of time. If they haven't – if they need more
16 time – they can make a reasoned application. So, again, to ensure
17 that these earlier claims about supposed lack – a lack of
18 opportunity to present – are addressed once and for all, let him
19 make an application for extra time. And perhaps Your Honours can
20 consider that application, instead of a general series of
21 complaints that are completely unspecified and rather
22 far-fetched.

23 (Judges deliberate)

24 [14.14.40]

25 MR. PRESIDENT:

1 Judge Jean-Marc Lavergne, you may proceed.

2 JUDGE LAVERGNE:

3 Yes, thank you, Mr. President. Counsel Vercken, the Chamber has
4 given you time in order to respond to the key documents. However,
5 we are getting the impression that we are just hearing complaints
6 in a repetitious way since yesterday. So, we would like to know;
7 why? Why didn't you make any request prior, for extra time to
8 respond to the key documents? And, to date, do you expect to ask
9 for extra time in order to present your observations on all of
10 the key documents or not?

11 [14.15.44]

12 MR. VERCKEN:

13 Well, I have the feeling, I'm sorry to say, that we are basically
14 talking in circles. For the past months, and often in many
15 submissions I presented, I explained - I asked for clarification.
16 And this is not the first time. So, maybe you think that today
17 I'm just repeating the same thing. It's true; yes, indeed, I am
18 only repeating the same thing. That is to say that, if we do not
19 - well, since - if we do not ask for extra time to respond to the
20 key documents that were presented by the prosecutors and the
21 civil parties, it is because these hearings on key documents are
22 not the trial itself. These are hearings that you, as a Chamber,
23 has defined as educational hearings, whose object is not to be
24 the forum of a debate.

25 [14.16.50]

1 MR. PRESIDENT:

2 Counsel, please hold on. Judge Jean-Marc Lavergne, you may
3 proceed.

4 JUDGE LAVERGNE:

5 Yes, Counsel Vercken, I think that we have perfectly understood
6 what you're telling us. We're simply asking for answer; yes or
7 no. Do you intend to take advantage of the proposition made by
8 the Prosecution to have extra time to make comments on the key
9 documents that were presented? Any other comment seems to me to
10 be completely superfluous. We are not deaf. We are not dumb. We
11 have understood what you are saying.

12 [14.17.25]

13 MR. VERCKEN:

14 My reply will be very short. We have asked for extra time in
15 order to have an adversarial debate on evidence in the final
16 brief and during the final statements.

17 JUDGE LAVERGNE:

18 Counsel Vercken, I was particularly clear. We're not speaking
19 about extra time for the final statements. We're speaking about
20 extra time to respond to the presentation of the key documents.

21 Is it yes or no?

22 [14.17.50]

23 MR. VERCKEN:

24 Your Honour, the President himself has signed a memo in which it
25 is stated - and I quoted it - that if we refuse to participate in

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1 these key document hearings, the Chamber will therefore be
2 entitled to refuse to allow us extra time for our statements and
3 for our final brief. So your Chamber itself is doing it today
4 clearly. It has stated in a memo. You are connecting these key
5 document hearings that are - with the trial itself. Whereas these
6 hearings are only for the public and only for the media. We
7 refuse to take part in this masquerade. We want time for a
8 debate. We want time for our statements. We want time to discuss
9 the evidence.

10 MR. PRESIDENT:

11 Mr. Prosecutor, you may proceed.

12 MR. ABDULHAK:

13 Well, Mr. President, then if - unless my learned friend corrects
14 me on this, I guess the answer to our question is no. They're not
15 asking for extra time to present documents. And therefore all of
16 the submissions you heard this morning about supposed denials of
17 opportunities to present their case are clearly not only false,
18 but entirely disingenuous. Thank you.

19 MR. PRESIDENT:

20 Thank you, Mr. Prosecutor. Now, the International Counsel for Mr.
21 Khieu Samphan, you may resume commenting on the key documents
22 presented by the Co-Prosecutor. And Lead Co-Lawyers for the civil
23 parties - the documents that were put before the Chamber. You may
24 now proceed.

25 [14.19.54]

1 MR. VERCKEN:

2 Well, in order to avoid being interrupted while - I'd like to
3 know if you allow me to continue my argumentation on the five
4 policies and on JCE, because I don't want to start and be
5 interrupted once again. Do you consider that the Prosecution's
6 objection, therefore, is overruled or sustained?

7 (Judges deliberate)

8 [14.21.36]

9 MR. PRESIDENT:

10 Judge Jean-Marc Lavergne, please proceed.

11 JUDGE LAVERGNE:

12 Yes, thank you, Mr. President. Counsel Vercken, the Chamber has
13 already held various hearings on this issue of severance and on
14 the impact of severance on this trial - on the conduct of these
15 proceedings. And I believe that we have heard enough about this.
16 So, general observations on the consequences that the severance
17 may have on the examination of the policies that you are talking
18 about does not seem relevant to us. I would like to know if you
19 have any observations to make on the documents that were
20 presents, and observations that are specific. If this is the
21 case, you can continue. Otherwise, I think that we should just
22 stop here. So we must conclude that you have no specific
23 observations to make on the documents that were presented in
24 their totality.

25 MR. VERCKEN:

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1 I have a lot of observations to make, but I consider that it's
2 not the moment to do so. That's all. That's all. Because the
3 evidence has not been entirely debated, and you're telling us
4 that today - well, these key hearings are an adversarial hearing
5 on probative value, which is something that I completely
6 challenge. It's just a question of principle.

7 (Judge deliberate)

8 [14.24.17]

9 MR. PRESIDENT:

10 Judge Jean-Marc Lavergne, you may proceed, please.

11 JUDGE LAVERGNE:

12 Yes, thank you, Mr. President. Counsel Vercken, the Chamber would
13 like to know what is the legal - specific legal ground that
14 allows you to assert that today is not the appropriate moment to
15 have an adversarial debate on the probative value of the evidence
16 and of the key documents that were presented until - to date.

17 What is the legal ground - the specific legal ground, that leads
18 you to state this? It seems that the Chamber should organize an
19 adversarial hearing, and I would like to know why you refuse to
20 take part in it.

21 (Short pause)

22 [14.25.33]

23 MR. VERCKEN:

24 Well, I'll - let me try to find the text - well in any case, this
25 is 87.2. Rule 87.2. And as I explained, I don't understand why,

1 suddenly, during today's fourth hearing on key documents,
2 suddenly - whereas my colleagues for Nuon Chea were censored in
3 their desire to take part in the adversarial hearing today. Why,
4 suddenly, are you claiming - whereas the three first hearings on
5 segments of this trial did not lead to an adversarial hearing and
6 to the possibility of analyzing the evidence - why suddenly now,
7 during the fourth hearing on documents, two weeks before the end
8 of substantive hearings, you are telling us "now you can do it"?
9 "Now is the time for the adversarial hearing"? The examination of
10 the evidence is not completed. We do not ever have a specific
11 idea of the totality of this evidence, because - I'd like to
12 remind you - that we still do not have your decision on the
13 filing of 1,500 written statements, instead of oral statements.

14 [14.26.56]

15 We still do not have your answer on - regarding Judge Lemonde's
16 book. We still do not know a certain number of decisions on the
17 admissibility of documents that was requested by the parties.
18 And, suddenly, today, right now, during the fourth hearing on the
19 key documents, we are expected to accept - pretending that, in a
20 half day, we are going to have an adversarial hearing on the 847
21 documents that were presented by the parties as if this was going
22 to be a trial. I apologize; even if I - a lawyer acting beyond -
23 below what is acceptable, as you said - this is what I was told
24 yesterday. Well, I do not accept this interpretation - this
25 erroneous interpretation of this trial. Rule 87 of the Internal

1 Rules states - 87.2:

2 [14.28.06]

3 "Any decision of the Chamber shall be based only on evidence that
4 has been put before the Chamber and subjected to examination."

5 We feel that these document hearings have never been the moment
6 for an adversarial hearing, up until today, and your Chamber is
7 using these document hearings to censor the possibility of having
8 a possible authentic examination. The Prosecutor is telling me;
9 you never asked for - okay - well, okay, I'm going to skip this.
10 I already answered this. But, now, regarding the - my request for
11 extra pages and extra time for my final statements. Well, I would
12 like to be told why my request has not been clear. I don't think
13 it would be possible to say that this was not clear.

14 MR. PRESIDENT:

15 Counsel Koppe, you may now proceed.

16 MR. KOPPE:

17 Thank you, Mr. President.

18 We have been quiet, of course, so far, because basically it's a
19 discussion between my learned friend at the Khieu Samphan Defence
20 team and the Prosecution and yourself. But now, we feel it's also
21 reaching a stage that has implications on how we have been seeing
22 this key document presentation hearing.

23 [14.29.51]

24 Because now I've heard Judge Lavergne use the word "adversarial"
25 in respect of the key documents being presented and the limits of

1 our reaction. As far as we have understood the proceedings
2 yesterday and before yesterday - was that we were allowed to
3 comment on the probative value of key documents being presented.
4 Now, we interpreted yesterday in a sense that we were also
5 allowed to give context to our counter-arguments in respect of
6 those key documents. But, of course, you are fully aware that on
7 a number of occasions yesterday, we were not allowed to make
8 somewhat broader-context remarks in respect of those key
9 documents. And if you're now saying that commenting on the
10 probative value is, in fact, the same as an adversarial stance
11 toward these documents, then of course we are again - or maybe
12 I'm wrong - but - moving the goal posts, as we indicated
13 yesterday.

14 [14.31.09]

15 Because, if it is indeed adversarial, we were perfectly allowed
16 yesterday to make an argument about the speech of President
17 George Bush in respect to how he perceives enemies. We were cut
18 off. That is fine - or maybe not. But if it now - if you're now
19 saying that that hearing yesterday was meant to give you the full
20 arguments in an adversarial sense, when it comes to those
21 documents, then of course we also have a problem, because we were
22 not allowed to use that proper context. We were not allowed by
23 the Chamber to use quote from transcripts of live testimony. As a
24 matter of fact, even this morning, my Cambodian colleague was not
25 allowed to bring the broader context of Judge Marcel Lemonde's

1 book. So, I would like to be absolutely clear on this issue. Key
2 documents presentations and our comments, when it comes to
3 probative value, I understand. But if you're now saying it is
4 meant as an adversarial argument, then of course we have a
5 problem, because then we would like to have the opportunity to
6 revisit these key documents and make proper adversarial
7 arguments.

8 [14.32.30]

9 MR. VERKCEN:

10 Thank you, Mr. President. In order to move these proceedings
11 along and to answer a question put by the - your Bench - I wish
12 to make a citation from the European Court of Human Rights. And
13 just prior to - referring to this very specific passage, which
14 defines the adversarial aspect of a criminal trial:

15 "A criminal trial in an adversarial debate means for the
16 prosecution and defence to undertake all of the evidence that is
17 presented by the other party, as well as to discuss the evidence.
18 National legislation can define this in several ways. However,
19 the method must guarantee that the defence may enjoy the
20 possibility - a true and authentic possibility - to comment on
21 the charges."

22 The reference is Öcalan against Turkey, 46221/94. Judgement by
23 the Trial Chamber. 46221/99. "A true possibility to comment on
24 the charges".

25 [14.33.57]

1 Is this what we could attest to since yesterday and this morning?
2 Has this been allowed? Had the Nuon Chea been authorized to
3 comment? I do not believe so. Is this a true opportunity for us
4 to comment on the charges that were presented during the three
5 previous hearings on the presentation of key documents, when
6 there has been a prohibition to take the floor? A prohibition to
7 speak? And I can only cite this morning's example, when the -
8 when the lawyer for Nuon Chea was unable to speak, and the
9 accused was. I do not believe that this consists of a true and
10 genuine opportunity to comment. That is the first observation.
11 And the second observation, which I find very significant, is
12 this; what defines an adversarial debate on evidence? The
13 threshold of admissibility that you have determined for documents
14 relevant to this trial is an extremely low threshold. It is so
15 low that some thousands and thousands of documents have been
16 admitted, and yet you have not concluded your determination of the
17 admission of these documents. Thousands of documents have been
18 tendered into evidence, and yet we have not been able to analyse
19 them, individually, one after the other, and we have had to
20 resort to dealing with them in a wholesale, categorical manner,
21 which is entirely impossible given the time that we have been
22 allotted during the hearings, in order to deal with them in
23 isolation.
24 [14.35.53]
25 As my learned friend Son Arun wished to speak on the authenticity

1 of a particular document, the Trial Chamber told him: "well, this
2 is improper. This is not the time to do so. If you wish to speak
3 to the authenticity of a DC-Cam document, you simply have to
4 consult the original copies that are located at DC-Cam".
5 And, to conclude, I would just recall the testimony from the 1st
6 to the 6th of February of Mr. Youk Chhang, the director of
7 DC-Cam. He stated that - not only did he refuse to tell us where
8 DC-Cams documents were located - the very documents that are
9 being used in this trial, claiming that such documents were
10 spread out in secret locations across Cambodia, and that there
11 was some microfilms of the documents available at DC-Cam. You can
12 surmise that these are not original copies, but they're simply
13 microfilms, and that DC-Cam simply was refusing to reveal the
14 source of the documents - questions and challenges the
15 authenticity of the document.

16 [14.37.27]

17 MR. PRESIDENT:

18 Counsel, please stop there.

19 And, Mr. Co-Prosecutor, you may proceed.

20 MR. ABDULHAK:

21 Thank you, Mr. President. I'm going to brief, again, and do my
22 best to address arguments now that have been made by both
23 counsel.

24 It seems to me, what Your Honours are faced with is a lawyer -
25 counsel who has come to Court unprepared, and has effectively

1 been expanding the scope of excuses to encompass every
2 imaginable, conceivable breach of rights, all of which is not
3 founded in any actual fact, before Your Honours. But, getting
4 back to the specifics – and if I can start with the submission
5 made by my learned friend, Mr. Koppe – I think my friend confuses
6 the issue of an adversarial debate, and issue that has to do with
7 scope of trial and relevance of submissions, and the purposes of
8 the hearings that Your Honours have indicated.

9 [14.38.33]

10 Now, the reason Your Honours did not permit, at times, Defence to
11 make submissions – extensive submissions – on evidence is because
12 the same applied to the Prosecution. We were directed, and only
13 permitted, to read relevant portions of documents. So, to the
14 extent that Your Honours imposed certain restrictions in a way in
15 which submissions could be made, it is entirely fair – and it is
16 the very definition of an adversarial proceeding – that Your
17 Honours apply an equal standard. And that's what you have been
18 doing. So, in my respectful submission, my friend is mistaken
19 when he says that, by not being permitted to make references to
20 President Bush, he's being denied an opportunity to an
21 adversarial debate.

22 [14.39.21]

23 The matters are completely different. In any adversarial debate,
24 Your Honours will of course rule on issue such as relevance, and
25 whether or not submissions are appropriate. So, that particular

1 submission we must strongly disagree with. There has been an
2 adversarial debate in relation to these key documents. At the
3 very least, in relation to Khieu Samphan, an opportunity has been
4 provided, and an opportunity which – as we see today – they have
5 denied to take.

6 Other reasons for which Your Honours did not permit counsel to
7 stray away from dealing with key documents include things like
8 counsel testifying. Again, all of these are proper methods of
9 control of counsel discussing evidence before Your Honours.
10 Moving on to issues of fair trial rights – and certainly we do
11 not want to have this proceeding today descend into a general
12 debate, which counsel for Khieu Samphan seem to wish to engage
13 in. But fair trial rights have absolutely been respected,
14 throughout this trial. The accused have been permitted to submit
15 documentary evidence. They've called their witnesses. They were
16 given an equal opportunity, under the same condition as the
17 Prosecution, to question all witnesses. They were themselves
18 given the right to testify.

19 [14.40.40]

20 Provisions have been made to ensure that documents were
21 translated. Time has been given to them to prepare. There has
22 been every accommodation made to ensure that these accused can
23 exercise their fair trial rights. In my respectful submission, it
24 is quite improper and disrespectful for counsel to turn around,
25 at this late stage in the trial, and simply for reasons of their

1 own lack of preparation, allege that Your Honours are to blame
2 for his inability to engage in a debate about key documents. Now
3 either he can do that, or admit that he's not prepared - or he
4 does not wish to take the opportunity - but it is entirely
5 improper to make these wild allegations and broad, sweeping
6 claims that are clearly not founded. And for that reason, we
7 would invite Your Honours to either invite - well, to invite my
8 learned friend to either make responses on documents, or to
9 refrain from further submissions, the purpose of which - as far
10 as we are concerned - has become entirely confused and abused at
11 this point. Thank you.

12 (Judges deliberate)

13 [14.43.32]

14 MR. PRESIDENT:

15 The Chamber notes that it has already given time to counsels for
16 the Accused to make observations or to note on the key documents
17 presented by the Co-Prosecutor and the Lead Co-Lawyers for the
18 civil parties, and we did that properly, by informing the
19 counsels in advance. Nonetheless, counsels for Mr. Khieu Samphan
20 did not make the most of the time effectively to present such
21 documents, and counsels failed to indicate to the Chamber as to
22 how much time they would need to address these issues.

23 On the 13th of June, the Chamber also asked this question again,
24 but there was no proper response. So the Chamber notes that
25 counsel for Khieu Samphan have decided not to respond to the

1 questions - to the key documents presented by Co-Prosecutors and
2 the Lead Co-Lawyers for the civil parties.

3 [14.45.15]

4 These key documents were presented, including the joint criminal
5 enterprise policy and the roles of the accused and other relevant
6 matters. Now, the Chamber wishes to inform the parties to the
7 proceedings and the public that this session comes to a
8 conclusion, and that now we should adjourn for 15 minutes before
9 we proceed to the next hearing, when the Chamber will hear the
10 testimony of TCE-33. This witness has already been notified and
11 that he is available to be called soon. The Court is adjourned.

12 (Court recesses from 14H46 to 15H06)

13 MR. PRESIDENT:

14 Please be seated. The Court is now back in session.

15 We are now going to hear the testimony of TCE-33. Court Officer
16 is now instructed to call in this witness.

17 (Mr. Stephen Heder enters the courtroom)

18 [15.07.32]

19 QUESTIONING BY THE PRESIDENT:

20 Good afternoon, Mr. Witness.

21 Q. What's your name, please?

22 MR. HEDER:

23 A. My name is Steve Heder. It's actually Stephen Heder with a

24 P-H.

25 Q. Thank you, Mr. Steve Heder. How old are you this year?

1 A. Sixty - 60 years old this year.

2 Q. Thank you. Mr. Steve Heder, what do you do for a living?

3 A. I'm a political scientist and political historian.

4 Q. Thank you. Mr. Steve Heder, where do you live?

5 A. I have right of residence in the United States and in the
6 United Kingdom, and I live in those places and elsewhere.

7 Q. Thank you. What nationality are you?

8 [15.09.10]

9 A. I'm an American citizen - U.S. passport.

10 Q. Thank you. Mr. Steve Heder, could you please tell the Chamber
11 your parents' names?

12 A. My father's name was Robert Heder, and my mother's maiden name
13 was Patricia Maurer.

14 Q. What's your - rather, your spouse's name, and how many
15 children do you have?

16 A. My wife's name is Marianne Lilliebjerg, and I have two
17 daughters.

18 Q. Mr. Steve Heder, as the witness who will be giving testimony
19 before the Trial Chamber, the Chamber requires that you take the
20 oath based on your religious belief. Do you agree with this?

21 A. Yes.

22 [15.10.49]

23 MR. PRESIDENT:

24 Now, the International Greffier of the Trial Chamber will now
25 administer the oath-taking ceremony for Mr. Steve Heder. Can we

1 invite the Greffier to please administer this oath-taking,
2 please?

3 THE GREFFIER:

4 Mr. Heder, could you please repeat after me?

5 "I solemnly declare that I will speak the truth, the whole truth,
6 and nothing but the truth."

7 MR. HEDER:

8 I solemnly declare I will tell the truth, the whole truth and
9 nothing but the truth - speak the truth - tell the truth, and
10 nothing but the truth. Thank you.

11 BY THE PRESIDENT:

12 Thank you, Mr. Steve Heder.

13 Q. According to the report by the Greffier of the Trial Chamber
14 this morning, according to the best recollection and your
15 knowledge, you're not in a relationship with an accused or a
16 civil party in Case File 002, and that you are not related to
17 these - indeed two accused persons, Mr. Khieu Samphan and Nuon
18 Chea. Is that true?

19 MR. HEDER:

20 A. Yes, that's correct.

21 [15.12.12]

22 Q. Next, the Chamber would like to notify you of your right under
23 Rule 38 right against the self-incrimination of witnesses. Mr.
24 Steve Heder, as the witness, you may object to making any
25 statement that might tend to incriminate you. In other words, you

1 have the right not to incriminate yourself. As the witness, you
2 shall give testimony before the Chamber, and that you shall
3 respond to all questions put to you by the Judges of the Bench
4 and parties to the proceedings, unless you exercise your right
5 not to respond to the questions that are self-incriminating. And,
6 as the witness, you shall speak the truth, the whole truth,
7 nothing but that truth. And that your responses must be based on
8 the experience that you have encountered.

9 [15.13.25]

10 Mr. Steve Heder, have you ever given any interviews to any of the
11 Co-Investigators of the ECCC over the past years?

12 A. No.

13 MR. PRESIDENT:

14 Thank you, Mr. Steve Heder.

15 Now, the Chamber would like to hand over to the Co-Prosecutors to
16 begin putting questions to Mr. Stephen Heder before the other
17 parties to the proceedings. Co-Prosecutors and Lead Co-Lawyers
18 for the civil parties will have two days and a half for
19 questioning time.

20 QUESTIONING MY MR. RAYNOR:

21 Thank you, Mr. President, Your Honours. May it please you, good
22 afternoon to the Judges of this Court. Good afternoon to my
23 fellow counsel and, in particular, good afternoon to you, Dr.
24 Heder. It's good to see you here. Many people in this court have
25 been waiting for some time for you to come, and you're a witness

1 in these proceedings.

2 [15.14.57]

3 I want to give you the comfort before we start that you're not an
4 expert witness. I am not going to be asking you to express expert
5 opinions. I am going to be with, I hope, Mr. President's leave,
6 covering the books that you've authored, covering the interviews
7 you've had with many people over the years, and confining my
8 questions in that way. Now, it has to be selective because if I
9 was to undertake a detailed examination of everything you've
10 written, we'd be here for two weeks.

11 I'd like to start please by asking you some biographical
12 questions or if you can confirm parts that I'm putting to you.

13 Q. Now, is it right that you have a BA in Asian Studies and an MA
14 in Government from Cornell University?

15 MR. HEDER:

16 A. Yes, both those points are correct.

17 Q. That, certainly at some stage, you have been a lecturer in
18 political science at the University of London's School of
19 Oriental and African Studies which, for the purposes of my
20 examination, I will be shortening to the words "SOAS". Is that
21 correct?

22 [15.16.54]

23 A. Almost. Many British academic institutions don't believe that
24 there is any such thing as political science which they consider
25 a kind of American conceit. So, technically speaking, I was a

1 lecturer not in political science but politics, and in more
2 recent times I've been a research associate not a lecturer at
3 SOAS, which is what my current post at SOAS, not a lecturer but
4 research associate.

5 Q. Is it correct that in the past you have worked as a special
6 correspondent in China, Thailand, Cambodia, Laos and Taiwan for
7 Time Magazine, Newsweek and NBC News, and that you covered the
8 Cambodian conflict as a journalist between 1973 and 1975?

9 A. Yes, all of that is correct, although it should be said that
10 my sort of extensive journalistic work was only in the '73-'75
11 period.

12 [15.18.40]

13 Q. Is it also correct that at some stage - and please give me the
14 years if it helps - that you served as the Deputy Director of the
15 United Nations Transitional Authority in Cambodia, often referred
16 to as UNTAC, in the information/educational division?

17 A. Yes, that's correct, although there was some concern within
18 the UN system about the naming of me as a deputy director which
19 had a specific UN meaning. So I think for part of that time the
20 title wasn't used and I instead used the title of the Head of the
21 Analysis and the Assessment Unit of the Information, Education
22 Division.

23 Q. Thank you. Is it also correct that you have undertaken
24 research on the Thai/Cambodian border and Phnom Penh from 1979 to
25 1993 as a Fellow of the Institute of Asian Studies of

1 Chulalongkorn University?

2 A. Yes, that's - it's correct in the sense that in that period I
3 did research as a research fellow of the Asian Institute of
4 Chulalongkorn University on the Khmer Rouge while they were in
5 power, that is to say with regard to the Khmer Rouge in the
6 period that's within the temporal jurisdiction of the Court.

7 Q. And is it also correct that you've undertaken work as a Fellow
8 of the Research School of Pacific Studies of the Australian
9 National University?

10 A. Yes, that's - I was in their department of history. They
11 didn't believe in political science either, so I was - there I
12 was a kind of political historian and, again, in that academic
13 capacity my research was on the Khmer Rouge in the period that's
14 relevant to the temporal jurisdiction of the Court.

15 [15.21.32]

16 Q. Is it also correct, that at some stage - and tell me if it's
17 still current - that you've been a consultant to the War Crimes
18 Research Office at the American University?

19 [15.21.48]

20 MR. PRESIDENT:

21 Mr. Heder, could you please hold on?

22 And, Counsel Kong Sam Onn, you may now proceed.

23 MR. KONG SAM ONN:

24 Thank you, Mr. President.

25 I have heard that the Co-Prosecutor was putting some leading

1 questions regarding the witness's educational background. We
2 would like just to know the sources of the – or the basis of
3 these questions – I mean, the resources the Co-Prosecutor is now
4 relying upon because Mr. Steve Heder already made it clear that
5 he has never given any interviews to the Co-Investigating Judges,
6 and for that we would like to also have access to those pieces of
7 information otherwise we will take issue with this line of
8 questioning.

9 MR. RAYNOR:

10 I hope my learned friend knows about "Google". That's the source
11 of the biography and it seems "Google's" pretty accurate. Can I
12 proceed?

13 MR. PRESIDENT:

14 Yes, indeed, you may.

15 [15.23.27]

16 BY MR. RAYNOR:

17 Q. Mr. Heder, is it also right – and again give me the years
18 please because these might not be correct off Google – sorry. Are
19 there problems with your microphone?

20 Mr. Heder, I've got another question, but were you about to add
21 something?

22 MR. HEDER:

23 A. Yes.

24 Q. Yes.

25 A. I'm not sure I answered your question about the specific years

1 of working at UNTAC. That was '92-'93, although there was some
2 preliminary work with UNTAC's predecessor, UNAMIC, which existed
3 in '91.

4 [15.24.14]

5 Q. Thank you. And is it correct that you've also worked - and
6 please give me the years for this - as an
7 investigator/researcher/analyst, or something similar, within the
8 Office of the Co-Prosecutors for this Court for a period, and
9 then within the Office of the Co-Investigating Judges?

10 A. Yes, that may require some clarification. I was originally
11 contracted by UNAKRT to work as an
12 investigator/researcher/analyst - all one word - in the Office of
13 Co-Investigating Judges, and that was at a point in time when the
14 staffing pattern for the Office of the Co-Prosecutors included
15 no, zero, posts for investigators, researchers or analysts.
16 So although I was hired by UNAKRT to work for the Office of the
17 Co-Investigating Judges, there was an agreement between Judge
18 Lemonde and Prosecutor Petit to lend me temporarily to the Office
19 of the Co-Prosecutors. I was then taken back to the Office of the
20 Co-Investigating Judges as a result of a subsequent agreement
21 between Judge Lemonde and Robert Petit.

22 [15.26.08]

23 So, technically speaking, I was always contracted to work for the
24 Office of the Co-Investigating Judges, never contracted to work
25 for the Office of the Co-Prosecutors, but I indeed did work in

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1 the Office of the Co-Prosecutors from the - effectively the first
2 day that the Court existed through to the end - if I recall
3 correctly - of 2006.

4 [15.26.32]

5 I should maybe add here that I had previously worked for UNAKRT
6 before the existence of the Court in the first several months of
7 2006 as a consultant to UNAKRT.

8 Q. Thank you. And can I - there was an objection to my last a few
9 questions ago. Can you confirm that you've been a consultant to
10 the War Crimes Research Office at the American University?

11 A. Yes. I think that was in '98 or 1999 and I - and this may be
12 an opportunity for me to say that that was the period in which I
13 did the writing that led to the publication of "Seven Candidates
14 for Prosecution". And the funding for that research came from the
15 then Open Society Institute. So that's the relevance of that
16 particular period of consultancy or research funding, two things
17 that I've authored which, if I understand correctly, are on the
18 Case File.

19 Q. Thank you. That leads, and I hope appropriately, to the next
20 document.

21 MR. RAYNOR:

22 Mr. President, I have prepared a document here which shows all
23 the material authored by Mr. Heder which is on the Case File and
24 which is on the prosecutor's Rule 80 list.

25 [15.28.35]

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1 Can I please show a document - perhaps I would suggest to Judge
2 Cartwright because I only have an English version - and then can
3 I seek leave to distribute other copies of this document to the
4 Court unless there's another way that you feel is more
5 appropriate?

6 MR. PRESIDENT:

7 You may proceed indeed.

8 [15.29.07]

9 MR. RAYNOR:

10 I wonder if I might explain the document very briefly to Judge
11 Cartwright and then ask for the President's leave for it to be
12 distributed?

13 It shows, in short, the books written by Mr. Heder; a selection
14 of statements taken by him when he was working at SOAS; a
15 selection of statements taken by him when he was at DC-Cam, and
16 I'll ask a question about that; the interviews he had with Khieu
17 Samphan; the interviews he had with Ieng Sary; the interviews he
18 had with refugees on the Thai/Cambodian border in 1980;
19 interviews he conducted from the Office of the Co-Investigating
20 Judges; and other interviews.

21 My intention, Judge Cartwright, is this should help the Judges to
22 understand, to help Mr. Heder understand, and help all my learned
23 friends also have a reference document.

24 Can I please ask whether I can have permission to circulate now
25 copies of this document? I'm afraid it's only available in

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1 English. I haven't had it translated into Khmer or French.

2 (Judges deliberate)

3 [15.31.40]

4 MR. PRESIDENT:

5 Judge Silvia Cartwright, you may proceed please.

6 JUDGE CARTWRIGHT:

7 Yes, thank you, President. Just a supplementary question, please,

8 Mr. Prosecutor.

9 This is a list prepared by the Prosecutor's Office, of course.

10 Have you listed these documents on the daily interface? And,

11 secondly, are they available in at least two and preferably three

12 languages?

13 MR. RAYNOR:

14 The first question, yes, they have been downloaded onto the

15 interface. And the second question, there are versions in two

16 languages at least, but with some documents only partial

17 translations were done in French and Khmer. So I obviously can't

18 promise you that every page is available in French and Khmer, but

19 with most of them, it is.

20 All interviews, for instance, are in all three languages. The -

21 most of the statements are in all three languages. The one that

22 isn't available in all three languages is "Cambodian Communism",

23 which is one of the books but, generally speaking, available in

24 two or three languages.

25 (Judges deliberate)

1 [15.34.36]

2 MR. PRESIDENT:

3 Judge Cartwright, please.

4 JUDGE CARTWRIGHT:

5 Thank you, President. And one further question. Certainly from
6 our own examination of many of the documents attributed to Dr.
7 Heder, we have noted that documents have not been completely
8 translated into Khmer, but our concern is if you, Mr. Prosecutor,
9 intend to refer to parts that are not translated and, if so,
10 whether you have made a request for those to be translated at
11 least into Khmer?

12 MR. RAYNOR:

13 Judge Cartwright, can I say I haven't made the request. Can I
14 explain why? I've obviously been preparing for Dr. Heder heavily
15 over the last few days and the section on particularly "Cambodian
16 Communism" is one that was only settled yesterday or even this
17 morning.

18 [15.35.36]

19 Can I suggest this? That certainly both David Chandler and Philip
20 Short testified in circumstances where their books were not
21 available in all languages and, Judge Cartwright, as I have done
22 with, for instance, document presentations where this has arisen,
23 I've put in the requests for the translation immediately after
24 the presentation.

25 (Judges deliberate)

1 [15.36.45]

2 JUDGE CARTWRIGHT:

3 Yes, thank you, President. Well, the Chamber will allow you to
4 proceed on the basis that it may rule against you on occasion and
5 on the basis that you will seek those translations but, in the
6 meantime, just to make it very clear, I'm not the only one who
7 can read and understand English, so could you perhaps give the
8 entire Trial Chamber copies of this index? Thank you.

9 MR. RAYNOR:

10 I certainly can and providing one to you wasn't meant to be an
11 insult to everyone else, but I thought it might help with the
12 management of matters. So I've got, I think, 16 copies here. I
13 wonder if they could be distributed and also to my learned
14 friends and the Lead Co-Lawyers for the civil parties?

15 MR. PRESIDENT:

16 Court Officer is now instructed to obtain the hard copy document
17 from the prosecutor and circulate it to the parties to the
18 proceedings.

19 [15.38.06]

20 MR. RAYNOR:

21 Mr. President, can I also ask that Dr. Heder has a copy, please?

22 MR. PRESIDENT:

23 Yes, you may proceed.

24 BY MR. RAYNOR:

25 Q. Dr. Heder, I can see that you're familiarizing yourself with

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1 the document. What I'd like to do is to use this document for
2 verification purposes first of all. So if we look at the first
3 page, page 1 of the document, we see Item 1A books and reports by
4 you. It's not exhaustive as I said, but can you confirm that you
5 are the author or co-author of the books itemized at 1 to 5 on
6 that page?

7 [15.39.44]

8 MR. HEDER:

9 A. Well, for 5, 4 and 3, I know exactly what they refer to, and 1
10 as well. You haven't given a full academic citation so it's
11 sometimes a little bit hard for me to recognize these things for
12 what they probably are. And I think 1, 3, 4 and 5 are all
13 published works in the academic sense of the term. I think 2, if
14 I'm not mistaken, is unpublished in the academic sense of the
15 term and was something that was used as the basis, or as a kind
16 of draft, that led to the item number 3 which was published in an
17 academic sense. So I think that covers those five items.

18 Q. I'm just going to read them into the record. Number 1,
19 document number E3/3169 is a report by Stephen Heder entitled
20 "Pol Pot and Khieu Samphan" in its shortened form.
21 Document 3 is E3/48, that is a book by Stephen Heder and Brian
22 Tittmore entitled "Seven Candidates for
23 Prosecution-Accountability for the Crimes of the Khmer Rouge".

24 [15.41.57]

25 Document 4 has a D number of E190.1.398, and that again was a

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1 report by Stephen Heder entitled - quote: "Reassessing the Role
2 of Senior Leaders and Local Officials in Democratic Kampuchea
3 Crimes-Cambodian Accountability in Comparative Perspective" -
4 close quote.

5 And document - or book, Number 5 on the list, is E3/22, which is
6 a book by Stephen Heder entitled "Cambodian Communism and the
7 Vietnamese Model; Imitation and Independence 1930 to 1975".

8 Dr. Heder, can we move to the next category - oh, sorry, I can
9 see you want to add something.

10 A. I'm not entirely sure about Item 4 because there was a
11 conference paper and then there was a publication, and the
12 conference paper was much longer and more elaborate than the
13 publication. The publication was taken, or summarized, from the
14 conference paper. Without actually seeing the document itself, I
15 can't be absolutely sure which of the two it is. I think this is
16 the - sorry - I think this is the publication version not the
17 conference paper version, but I would have to see the document in
18 order to be absolutely sure.

19 [15.43.41]

20 MR. RAYNOR:

21 That's fair. And I'm about to show you.

22 Mr. President, can I please show Dr. Heder a copy of the document
23 that is on our Case File in order to verify, please, that this is
24 the published work?

25 MR. PRESIDENT:

1 You may proceed.

2 MR. RAYNOR:

3 Can I hand please to Dr. Heder document number on our file
4 E190.1.398?

5 MR. PRESIDENT:

6 Mr. Prosecutor, please hold on.

7 Counsel Koppe, you may now proceed.

8 [15.44.39]

9 MR. KOPPE:

10 Thank you, Mr. President. I am going to make an objection to the
11 terminology used by the prosecutor in respect of this witness.
12 Now, on its face it might seem a very childish objection that I'm
13 going to make, but I think it's a matter of importance and
14 principle behind it.

15 Mr. Stephen Heder is here as a witness. He was called upon to
16 appear as an expert. He didn't want to be an expert for whatever
17 reason - that'll be a topic of my questioning - but now he's here
18 as a witness. So I would prefer that my learned friend on the
19 other side addresses Mr. Heder as Mr. Heder, Mr. Witness, but not
20 continuously as Dr. Heder.

21 Like I said, on the face of it that might be a childish
22 objection, but it is isn't. He is here only in one capacity and
23 it is as a witness. In no court of law is a normal witness
24 addressed with his academic title. So I would invite my learned
25 friend on the other side address the witness as "Mr. Witness" or

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1 as "Mr. Heder".

2 [15.46.03]

3 MR. RAYNOR:

4 I do think it's childish, Mr. President. I once appeared in a
5 court martial when I was a captain in the British army and I was
6 never referred to by my rank, and that was described as wrong.

7 Stephen Heder is a doctor. That's his academic qualification. If
8 he were a brigadier, we'd call him brigadier. If he had another
9 title, we'd call him that. He, in my respectful submission, is
10 entirely entitled to be described as a doctor because that's what
11 it says on the tin and that's what he is.

12 (Judges deliberate)

13 [15.47.20]

14 MR. PRESIDENT:

15 It is not a big issue that's in - there was an objection. The
16 Chamber wishes to advise the prosecutor to address him as "The
17 Witness". That will have help smoothen the proceedings and the
18 process as a whole. So, Mr. Prosecutor, you may proceed.

19 BY MR. RAYNOR:

20 Q. Mr. Witness, can you have a look at this document which is -
21 I'm passing it down to ask the President - I think he's already
22 given permission - E190.1.398. Is this the published version of
23 "Reassessing the Role"?

24 MR. HEDER:

25 A. Yes, that's the published version. It's a chapter in an edited

1 volume.

2 [15.48.30]

3 Q. Can I take that back just for the moment? I just wanted you to
4 verify it.

5 Staying on the document index if we call this document "The
6 Document Index", at Item B on page 1 we have a heading of "School
7 of African and Oriental Studies" and then listed from Item 6 on
8 that list through to Item 57 inclusive, are a series of
9 statements that suggest that you conducted these statements with
10 these witnesses on the dates concerned.

11 First of all, can I ask you, were you in Cambodia with SOAS or
12 under SOAS in 2005 on these dates?

13 A. Yes.

14 Q. As far as you're able in the brief time you've had to look at
15 these, can you confirm taking these statements?

16 [15.50.06]

17 A. Well, the dates are familiar and on a first glance certainly
18 many of the names are familiar. I frankly don't recognize all of
19 the names immediately, but there's a certain rather peculiar way
20 in which the names are transliterated which suggests to me that
21 I'm the one who did the transliterating and, therefore, the
22 interviewing.

23 Q. Was there anyone else from SOAS conducting this many
24 interviews in 2005?

25 A. This may require some explanation of how it is that academic

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1 research is done and, particularly, how it's funded. This
2 research was all funded which -- with money that came from the
3 then Open Society Institute. I'll add immediately that that's not
4 to be confused with the Open Society Justice Initiative which is
5 a completely different organization.

6 [15.51.58]

7 And the way in which this normally works in academic institutions
8 is that a funding organization provides money to your academic
9 employer in order to release you from some of your other academic
10 duties, most notably teaching, and if you are released from
11 teaching then you are free to go outside of the classroom and do
12 research in the field.

13 The university normally takes a cut off the top of that funding,
14 but you remain on your university salary. The money doesn't go
15 directly into your pocket. In this instance, there was additional
16 money which was paid to the university, that is to say SOAS, and
17 which was then paid by the university to other people who worked
18 with me in the conduct of these interviews who were therefore in
19 effect paid by SOAS. That didn't make them SOAS employees, so I'm
20 not quite sure how to directly answer your question, but that's
21 the way the system worked.

22 [15.53.39]

23 Q. And so can you remember how long you were in Cambodia in 2005
24 conducting interviews on behalf of SOAS?

25 A. My recollection is that it was a longer period than is

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1 reflected here, but I think - well, maybe not - I think what
2 happened was in the earlier part of 2005 there was other research
3 done with the same funding that didn't involve interviewing but
4 involved looking at documents. So although the overall research
5 grant covered most, if not all, of the calendar year of 2005, the
6 interviewing was done in the latter half of the year whereas the
7 documentary work was done in the first half of the year. So I
8 think I was in Cambodia for almost the whole of the year, but the
9 interviewing was done in the second half.

10 Q. Now, did you lead this project or did somebody else lead it?

11 [15.55.13]

12 A. I think it would be fair to say I led it, yes.

13 Q. I'd like to turn now to page 4 of the Index and at the top of
14 page 4 we have "DC-Cam". The statements here cover quite a broad
15 range because we move from 1990 with the statement of Ouk
16 Bunchhoeun through to September 2005 with the statement of Ruoh
17 Suy.

18 Now, can you briefly explain firstly what your contact with
19 DC-Cam has been during this period?

20 A. I find this - some of this is a bit confused or confusing. The
21 arrangement that I had with DC-Cam, which I think was mostly in
22 2004, was done in a manner similar to the one I just described.
23 There was money which originated with DC-Cam and, in fact, also
24 money which originated with the British Embassy in Phnom Penh
25 which was, as in the other arrangement, aid to my university to

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1 buy-out my teaching to free me up to do other - to do research
2 work in lieu of doing teaching.

3 [15.57.11]

4 And that project consisted primarily of looking at interviews
5 that were done not by me but by DC-Cam which I then summarized in
6 English and compiled into a series of such summaries.

7 There are a couple of items on here - and some of that tidied over
8 I think into early 2005 which would explain some of the dates
9 here. And I think I may have done a few more of these summaries
10 while I was also doing the 2005 work.

11 There are some things here that don't fit with that explanation.

12 There's the - for example, there's Item 65, E3/387, alternative
13 number D210/5. That's not an interview that I did in any
14 association with DC-Cam. That's actually an interview I did when
15 I was at the Australian National University, the transcript of
16 which I provided to DC-Cam and it, therefore, seems to somehow
17 have become - gone into your system into the Case File as a
18 DC-Cam document.

19 [15.58.52]

20 I also am a bit perplexed by Item 59 dated 1999. The name doesn't
21 immediately ring a bell with me, and I wonder whether that's
22 possibly the date of DC-Cam's interview and not the date on which
23 I did it. Some of these other dates, in fact, are the dates I
24 think of the interview as done by DC-Cam not the date on which I
25 summarized it, which would explain why, for example, in the case

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1 of Item 64 the interview date is given as 2000 but I did the
2 summary in 2005. One might misunderstand from this document that
3 I did the interview or I did the summary in 2000. In fact, that's
4 not the case.

5 MR. RAYNOR:

6 Thank you.

7 When we get to a particular interview, I hope I'll be having Mr.
8 President's leave to show the interview, and I am sure we can
9 sort things out there.

10 Moving to the next item, or – Mr. President, I see the time is
11 just after 4 o'clock.

12 MR. PRESIDENT:

13 Thank you.

14 Judge Lavergne, you may now proceed.

15 [16.00.26]

16 JUDGE LAVERGNE:

17 Yes, I believe that the interpreters would like to have Mr. Heder
18 take a bit of distance from the microphone. He's maybe too close
19 to the microphone so some of what he's saying is being cut-off,
20 so it's difficult for the interpreters. So if he can step back a
21 little back from the microphone it would make the job easier for
22 the interpreters.

23 MR. PRESIDENT:

24 Thank you. And we thank you, Mr. Heder, and the Co-Prosecutor.

25 Since it is now an appropriate moment already for today's

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1 adjournment, the Chamber will adjourn. The next session will be
2 resumed by tomorrow at 9 a.m. And during tomorrow's sessions, the
3 Chamber continues to hear the testimony of Mr. Steve Heder.
4 Questions continue to be put by the Co-Prosecutors.

5 [16.01.34]

6 Mr. Heder, your testimony has not yet been complete and that the
7 Chamber will hear you tomorrow as well. So please come again to
8 give the testimony for tomorrow's session, the session that
9 commences at 9 a.m. in the morning.

10 Court Officer is now directed to assist with the WESU unit to
11 make sure that Mr. Heder is properly assisted during this
12 adjournment and have him return to the courtroom by 9 a.m.

13 Security personnel are now directed to bring Mr. Khieu Samphan
14 and Nuon Chea back to the detention facility and have them
15 returned to the courtroom by tomorrow 9 a.m.

16 Mr. Nuon Chea is directed to be brought to his holding cell only.
17 There - he can observe the proceedings from there through
18 audio-visual link.

19 The Court is adjourned.

20 (Court adjourns at 1602H)

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