

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC
Filing Party: Nuon Chea Defence Team
Filed To: Trial Chamber
Original Language: English
Date of Document: 06 January 2016



CLASSIFICATION

Classification Suggested by the Filing Party: PUBLIC
Classification of the Trial Chamber: សាធារណៈ/Public
Classification Status:
Review of Interim Classification:
Records Officer Name:
Signature:

**NUON CHEA'S RULE 87(4) REQUEST FOR ADMISSION OF
ELEVEN DIPLOMATIC CABLES**

Filed By

Nuon Chea Defence Team:
SON Arun
Victor KOPPE
LIV Sovanna
PRUM Phalla
Doreen CHEN
Xiaoyang NIE
Marina HAKKOU
Henri DECŒUR

Distribution

Co-Lawyers for Khieu Samphân:
KONG Sam Onn
Anta GUISSÉ

Co-Prosecutors:
CHEA Leang
Nicholas KOUMJIAN

Co-Lawyers for the Civil Parties:
PICH Ang
Marie GUIRAUD

I. INTRODUCTION

1. Pursuant to Rule 87(4) of the ECCC Internal Rules, the Co-Lawyers for Mr Nuon Chea ('the Defence') submit this request (the 'Request') to have admitted into evidence eleven diplomatic cables relevant to Case 002/02: two from the Australian Embassy in Hanoi, six from the United States embassy in Bangkok, two from the United States embassy in Paris, and one from the United States embassy in Phnom Penh (the 'Cables').

II. APPLICABLE LAW

2. Pursuant to Rule 87(4), at any stage during the trial a party may request the Chamber to 'admit any new evidence which it deems conducive to ascertaining the truth', subject to the general requirements of Rule 87(3) and provided 'that the requested [...] evidence was not available before the opening of the trial' or that it 'could not have been discovered earlier with the exercise of reasonable diligence'.¹ To satisfy the requirements of Rule 87(3), the proposed evidence needs only be *prima facie* relevant and reliable.²

III. ARGUMENT

3. The proposed evidence satisfies the requirements for admission under Rule 87(4). It was not available before the opening of the trial and it is relevant to issues litigated in Case 002/02.

A. Australian Diplomatic Cables

4. The first two pieces of evidence that the Defence requests the Chamber to admit are two declassified diplomatic cables, sent by the Australian embassy in Hanoi to the Australian Department of Foreign Affairs respectively on 8 May 1975 and 20 August 1975 (attached as **Public Attachments 1 and 2**).
5. On 5 October 2015, the Cambodian newspaper *The Cambodia Daily* published an article quoting extensively from Australian diplomatic cables dating from the months following the liberation of Phnom Penh in April 1975.³ According to the article, the cables were 'donated to DC-Cam by Julio Jeldres, the official biographer for the late King Norodom

¹ E313, 'Case 002/01 Judgment', 7 Aug 2014, para. 25.

² *Ibid.*, para. 26.

³ Alex Willemyns, 'Cables Detail China-VN Strains in '75 Cambodia', *Cambodian Daily*, 5 Oct 2015.

Sihanouk' in September 2015. On 19 October 2015, the Defence obtained scanned copies of the original cables from DC-Cam Deputy Director Dara P. Vanthan.

6. The first cable, dated 8 May 1975, describes 'signs of strains' in the relationship between the Democratic Republic of Vietnam and the GRUNK, mentioning the attack of a 'Khmer Rouge' supply convoy by Viet Cong forces near the Vietnamese border in February or March 1975.⁴ In addition, the cable discusses Vietnam's 'concentrated striving to consolidate Vietnamese influence in Cambodia' after the fall of Phnom Penh, noting that 'the [Democratic Republic of Vietnam] leadership appears to be keeping a careful eye on possible rivals to its influence in the region'.⁵
7. The second cable, dated 20 August 1975, describes 'border problems' between Cambodia and Vietnam, mentioning the occupation of several disputed islands by the respective armed forces of both states.⁶ Referring to 'the widely-held view that the Viet Nam Workers' Party comprehends Cambodia [...], or at least aspires to do so', the cable also describes Vietnam's 'influence on Cambodia' and highlights 'suspected Vietnamese aspirations to form an "Indochinese Federation"', concluding that 'these Vietnamese ambitions do exist'.⁷ Finally, it refers to the existence of several 'groups' and 'faction[s]' among a disputed Cambodian leadership'.⁸

(i) *The Australian Cables Were Not Available before the Opening of the Trial*

8. The Trial Chamber held that the trial in Case 002/02 commenced in June 2011.⁹ Although the Australian cables date from the May–August 1975 period, the Defence could not reasonably be expected to have been able to identify this evidence before the opening of the trial.
9. The Defence learnt of the existence of the Australian cables through a press article published by *The Cambodia Daily* on 5 October 2015.¹⁰ According to the article, the

⁴ Australian diplomatic cable, Embassy Hanoi, 8 May 1975, para. 6.

⁵ *Ibid.*, paras 5 and 9.

⁶ Australian diplomatic cable, Embassy Hanoi, 20 Aug 1975, paras 5 and 6.

⁷ *Ibid.*, paras 11, 12, and 14.

⁸ *Ibid.*, para. 7.

⁹ E307/1, 'Decision on Parties' Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists of Evidence (E305/3)', 11 Jun 2014, para. 2; E307/1/2, 'Decision on Joint Request for *de novo* Ruling on the Application of Internal Rule 87(4)', 21 Oct 2014, para. 6.

¹⁰ Alex Willems, 'Cables Detail China-VN Strains in '75 Cambodia', *The Cambodia Daily*, 5 Oct 2015.

cables were ‘declassified in 2011’ and ‘donated to DC-Cam by Julio Jeldres, the official biographer for the late King Norodom Sihanouk’ in September 2015. Immediately following the publication of the article, the Defence requested DC-Cam to obtain scanned copies of the original cables, which were given to it by DC-Cam Deputy Director Dara P. Vanthan on 19 October 2015.

10. Until the publication of this article, the Defence had no way of knowing that the government of Australia possessed information relevant to the issues litigated in Case 002/02. Considering the paucity of resources at its disposal, the Defence cannot realistically be expected to contact the diplomatic services of all 193 UN member states in the hope that they would agree to provide whatever potentially relevant material they might have, with the caveat that such material might remain classified under the domestic laws of the state concerned.
11. The Trial Chamber has ruled that diplomatic cables authored and declassified before the opening of the trial and subsequently made publicly available through WikiLeaks ‘could not have been previously discovered with the exercise of due diligence’, and that it was satisfied that the party requesting their admission had exercised due diligence in discovering them and filing a request to that end in a timely fashion.¹¹ There is no reason to depart from this principle in the present case.
12. The Defence could not have discovered the Australian cables with the exercise of reasonable diligence before being put on notice of their existence on 5 October 2015, following which the Defence took action to obtain them within the shortest possible delay. These cables must therefore be considered to have been unavailable before the opening of the trial, despite the exercise of reasonable diligence. They are eligible for admission pursuant to Rule 87(4).

(ii) *The Australian Cables Are Relevant to Case 002/02*

13. The Australian cables recount several incidents involving FUNK armed forces and forces linked to the Democratic Republic of Vietnam, and refer to Vietnam’s ambitions and

¹¹ **E282/2**, ‘Decision on Co-Prosecutors’ and KHIEU Samphan’s Internal Rule 87(4) Requests Concerning US Diplomatic Cables (E282 and E282/1; E290 and E290/1)’, 13 June 2013, para. 5. *See, also, Prosecutor v. Taylor*, Case no. SCSL-03-01, ‘Decision on the Urgent and Public with Annexes A-C Defence Motion to Re-Open Its Case in Order to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor’, 27 Jan 2011, p. 5, 10th recital.

influence in Cambodian territory. This information relates to portions of the Closing Order concerning the existence and nature of the armed conflict.¹² It also bears on the issue of internal purges,¹³ to the extent that many individuals subsequently arrested and transferred to S-21 were suspected of participating in the armed conflict in the interests of Vietnam. This information is relevant to Case 002/02 and specifically its fourth segment ('security centres and internal purges')¹⁴ and sixth segment ('nature of the armed conflict').¹⁵

14. Furthermore, in the second cable the reference to the existence of several 'groups' and 'faction[s] among a disputed Cambodian leadership'¹⁶ is relevant to administrative and military structures.¹⁷ This information is also relevant to the composition of the alleged joint criminal enterprise ('JCE'),¹⁸ as well as to Nuon Chea's alleged authority and control over other CPK cadres,¹⁹ and therefore to his alleged responsibility for ordering,²⁰ instigating,²¹ and as a superior.²² This information is relevant to Case 002/02 in its entirety and its last segment ('role of the Accused').²³

(iii) *The Australian Cables Are Reliable*

15. The authenticity of the Australian cables is beyond question. The documents attached to the present Request were scanned from the original cables, showing the typewritten text, the coat of arms of the Australian government, official stamps of the Australian Department of Foreign Affairs indicating filing date and classification level, the handwritten signature of the author, and various handwritten notes.

¹² **D427**, 'Closing Order', 15 Sep 2010, paras 150–155.

¹³ *Ibid.*, paras 192–203, and 415–474.

¹⁴ See **E315**, 'Decision on Sequencing of Trial Proceedings in Case 002/02', 12 Sep 2014 ('Decision on Sequencing'), para. 14(D)(c).

¹⁵ *Ibid.*, para. 14(F).

¹⁶ See para. 7 above.

¹⁷ **D427**, Closing Order, paras 33–63 and 113–149 respectively.

¹⁸ *Ibid.*, paras 159 and 1529.

¹⁹ *Ibid.*, paras 870, 876, 880, 881, 882, 884, 891, 913, 960, 1532, and *passim*.

²⁰ *Ibid.*, paras 1553–1554.

²¹ *Ibid.*, paras 1547–1548.

²² *Ibid.*, paras 1558–1560.

²³ See **E315**, Decision on Sequencing, para. 14(G).

B. United States Diplomatic Cables

16. The third through eleventh pieces of evidence that the Defence requests the Trial Chamber to admit are nine United States diplomatic cables. The first eight cables are contemporaneous to the Democratic Kampuchea ('DK') period; they were sent by the United States embassies in Bangkok and Paris to the US Secretary of State between 1976 and 1978. These cables are part of a large volume of documents declassified by the US Department of State on the occasion of its systematic review of classified documents, and released by the United States National Archives and Records Administration.²⁴ The date of declassification is indicated on the header and footer printed on each page of the cables. Three US cables were declassified and released on 4 May 2006, one on 22 May 2009, and four on 20 March 2014. These cables were subsequently published by international non-profit organisation WikiLeaks. WikiLeaks has published several collections of US diplomatic cables. The first relevant batch – the 'Kissinger Cables' – dates from 1973 to 1976 and was published on 7 April 2013.²⁵ The second batch – the 'Carter Cables' – dates from 1977 and was published on 24 April 2014.²⁶ The third batch – the 'Carter Cables II' – dates from 1978 and was published on 27 May 2015.²⁷ The ninth and last cable dates from 2002 and was published by WikiLeaks as part of the 'Cablegate' release of 1 September 2011.
17. The first US cable, dated 18 August 1978 and entitled 'Vulnerability of the Phnom Penh Regime', was sent by the American embassy in Bangkok to the US Secretary of State ('US Cable 1', attached as **Public Attachment 3**).²⁸ US Cable 1 was declassified on 20 March 2014, and published by WikiLeaks on 27 May 2015. It describes 'signs of strains' within DK, discussing the conflict between Cambodia and Vietnam, and mounting internal tensions between the CPK authorities in Phnom Penh and regional commanders. US Cable 1 recounts 'intense fighting' and 'high casualties' in the 'border war with Vietnam', noting 'a determined Vietnamese effort to overthrow [the DK

²⁴ The online database of the National Archives is accessible at: <https://aad.archives.gov/aad/>.

²⁵ WikiLeaks, 'WikiLeaks Special Project K: The Kissinger Cables', 7 Apr 2013, available online at: <https://wikileaks.org/>.

²⁶ WikiLeaks, 'WikiLeaks Releases the Carter Cables', 24 Apr 2014, available online at: <https://wikileaks.org/WikiLeaks-releases-the-Carter.html>.

²⁷ WikiLeaks, 'WikiLeaks Releases more than Half a Million US Diplomatic Cables from 1978', 27 May 2015, available online at: <https://wikileaks.org/plusd/pressrelease/>.

²⁸ US diplomatic cable, Embassy Bangkok, 'Vulnerability of the Phnom Penh Regime', 18 Aug 1978, BANGKO 23954.

government] by a combination of major force or subversion'.²⁹ It also notes the existence of 'pockets of resistance possibly led by Khmers trained in Vietnam',³⁰ and discusses the role of East Zone Secretary Sao Phim in 'leading the fight in Eastern Kampuchea against Pol Pot'.³¹ It anticipates 'mounting success from a Hanoi-backed resistance in Eastern Kampuchea', discussing the possibility of a rebellion of regional military commanders, notably in the East Zone under Sao Phim's leadership, and mentioning past 'instability [...] leading to purges' in the western regions of the country.³²

18. The second US cable, dated 16 February 1978 and entitled 'More Khmer Border Raids on Thailand', was sent by the American embassy in Bangkok to the US Secretary of State ('US Cable 2', attached as **Public Attachment 4**).³³ US Cable 2 was declassified on 20 March 2014, and published by WikiLeaks on 27 May 2015. It reports border clashes involving 'Khmer Rouge and Thai communist insurgents' and having caused 'heavy casualties',³⁴ questioning Phnom Penh's 'ability to control its border forces' and suspecting 'antagonism between Khmer Rouge and Khmer resistance forces'.³⁵
19. The third US cable, dated 15 February 1978 and entitled 'Cambodian and Lao Resistance: Recruitment [*sic*] Campaigns in Thailand', was sent by the American embassy in Bangkok to the US Secretary of State ('US Cable 3', attached as **Public Attachment 5**).³⁶ US Cable 3 was declassified on 20 March 2014, and published by WikiLeaks on 27 May 2015. It notes an increase in the recruitment of resistance forces from refugee camps in Thailand,³⁷ and relays reports of armed raids into Cambodian territory carried out, notably, by the 'Khmer Serai' movement.³⁸
20. The fourth US cable, dated 9 February 1978 and entitled 'Thai-Cambodian Relations: Fonman Uppadit Visit to Phnom Penh', was sent by the American embassy in Bangkok

²⁹ *Ibid.*, para. 1.

³⁰ *Ibid.*, para. 4.

³¹ *Ibid.*, para. 7.

³² *Ibid.*, para. 8. *See also* Summary.

³³ US diplomatic cable, Embassy Bangkok, 'More Khmer Border Raids on Thailand', 16 Feb 1978, BANGKO 04791.

³⁴ *Ibid.*, para. 1.

³⁵ *Ibid.*, para. 3.

³⁶ US diplomatic cable, Embassy Bangkok, 'Cambodian and Lao Resistance: Recruitment [*sic*] Campaigns in Thailand', 15 Feb 1978, BANGKO 04575.

³⁷ *Ibid.*, para. 1.

³⁸ *Ibid.*, paras 1, 3, and 5.

to the US Secretary of State ('US Cable 4', attached as **Public Attachment 6**).³⁹ US Cable 4 was declassified on 20 March 2014, and published by WikiLeaks on 27 May 2015. It relates a series of high-level Thai-Cambodian diplomatic meetings in Phnom Penh, which addressed notably the issue of the recurring border clashes between the two countries. According to US Cable 4, the Cambodian delegation, led by Pol Pot and Ieng Sary, stated that Cambodia 'had been under attack from the Vietnamese from the start in 1975', and implied that Vietnam had been supporting a Thai communist organisation active in Cambodian territory.⁴⁰ The author of the cable expressed interest for this information and stressed its 'extreme sensitivity'.⁴¹ Cable 4 also mentions activities of the 'Khmer Serai' resistance movement operating along the Thai-Cambodian border.⁴²

21. The fifth US cable, dated 29 September 1977 and entitled 'Cambodia – Conversations with the Resistance', was sent by the American embassy in Bangkok to the US Secretary of State ('US Cable 5', attached as **Public Attachment 7**).⁴³ US Cable 5 was declassified on 22 May 2009, and published by WikiLeaks on 24 April 2014. It relates a discussion between US diplomatic personnel and Cambodian resistance leaders based in Thailand. US Cable 5 reports the activities of several armed groups operating in Cambodian territory, such as occasional attacks on 'Khmer Rouge' convoys by a group of 400 troops in Kampong Speu province,⁴⁴ and the destruction of a bridge by resistance forces comprising 'Khmer Rouge' defectors in the region of Koh Kong and Pursat.⁴⁵ US Cable 5 also describes 'the structural linkage between the resistance and the Thai army', mentioning notably the 'financing of the Cambodian resistance' by a former Thai deputy prime minister.⁴⁶ Finally, the cable discusses 'recent leadership struggle' within the CPK: it relates a 'coup plot' involving 'central figures in Phnom Penh and their military allies' and the ensuing 'purges', concluding that 'Khmer Rouge leadership may not be stable'.⁴⁷

³⁹ US diplomatic cable, Embassy Bangkok, 'Thai-Cambodian Relations: Fonman Uppadit Visit to Phnom Penh', 9 Feb 1978, BANGKO 03886.

⁴⁰ *Ibid.*, paras 1–2, and 9.

⁴¹ *Ibid.*, paras 2 and 15.

⁴² *Ibid.*, para. 3.

⁴³ US diplomatic cable, Embassy Bangkok, 'Cambodia – Conversations with the Resistance', 29 Sep 1977, BANGKO 21997.

⁴⁴ *Ibid.*, para. 3.

⁴⁵ *Ibid.*, para. 2A.

⁴⁶ *Ibid.*, paras 4 and 17.

⁴⁷ *Ibid.*, Summary, and paras 7 and 16.

22. The sixth US cable, dated 8 March 1976 and entitled ‘Foreign Diplomat’s Observations of Alleged U.S. Bombing of Siem Reap’, was sent by the American embassy in Paris to the US Secretary of State (‘US Cable 6’, attached as **Public Attachment 8**).⁴⁸ US Cable 6 was declassified on 4 May 2006, and published by WikiLeaks on 7 April 2013. It discusses the possible causes of an explosion that occurred in Siem Reap on 25 February 1976, namely ‘bombing from Thailand by Cambodian dissidents, explosion of an ammunition dump either by insurgent attacks or accident or communist internal conflict, or bombing by South Vietnam or Lao-based Vietnamese aircraft’.⁴⁹
23. The seventh US cable, dated 16 March 1976 and entitled ‘Incident at Siem Reap: Soviet Line’, was sent by the American embassy in Bangkok to the US Secretary of State (‘US Cable 7’, attached as **Public Attachment 9**).⁵⁰ US Cable 7 was declassified on 4 May 2006, and published by WikiLeaks on 7 April 2013. It relays the analysis of a member of the Soviet embassy staff concerning the 25 February 1976 explosion in Siem Reap, which concludes that a MiG 23 based in China or Vietnam could not have been responsible for the bombing.⁵¹ The author of the cable, however, raised the possibility that a MiG aircraft based in Southern Laos might have carried out the bombing run.⁵²
24. The eighth US cable, dated 16 March 1976 and entitled ‘Swedish Report Concerning Cambodia and Vietnam’, was sent by the American embassy in Paris to the US Secretary of State (‘US Cable 8’, attached as **Public Attachment 10**).⁵³ US Cable 8 was declassified on 4 May 2006, and published by WikiLeaks on 7 April 2013. It relays the analysis of a Swedish diplomat concerning the 25 February 1976 explosion in Siem Reap, which concludes that the explosion ‘was not recent and probably caused by internal conflict’.⁵⁴
25. The ninth and last US cable, dated 6 June 2002 and entitled ‘Additional Biographic Information for Hor Namhong, Cambodian Minister of Foreign Affairs and International Cooperation’, was sent by the American Embassy in Phnom Penh to the US Secretary of

⁴⁸ US diplomatic cable, Embassy Paris, ‘Foreign Diplomat’s Observations of Alleged U.S. Bombing of Siem Reap’, 8 Mar 1976, PARIS 06963.

⁴⁹ *Ibid.*, para. 2.

⁵⁰ US diplomatic cable, Embassy Bangkok, ‘Incident at Siem Reap: Soviet Line’, 16 Mar 1976, BANGKO 05980.

⁵¹ *Ibid.*, para. 2.

⁵² *Ibid.*, para. 3.

⁵³ US diplomatic cable, Embassy Paris, ‘Swedish Report Concerning Cambodia and Vietnam’, 16 Mar 1976, PARIS 07801.

⁵⁴ *Ibid.*, para. 2.

State ('US Cable 9', attached as **Public Attachment 11**).⁵⁵ Incumbent Cambodian Minister for Foreign Affairs Hor Namhong is described 'as an opportunist who lacked his own power bases, but gained positions by seeking alliances and doing favors for powerful [...] leaders'.⁵⁶ The cable relays a report indicating that Hor Namhong 'became head of the Beng Trabek camp and [...] collaborated in the killing of many prisoners'.⁵⁷

(i) The US Cables Were Not Available before the Opening of the Trial

26. The Trial Chamber held that the trial in Case 002/02 commenced in June 2011.⁵⁸ Although the US cables were originally sent before that date, the Defence cannot reasonably be expected to have been able to identify this evidence before the opening of the trial.
27. US Cables 1 through 4 remained classified and inaccessible until the US National Archives made them available to the public in March 2014. US Cable 9 was classified and could not be accessed until its release by WikiLeaks on 1 September 2011. These cables were thus not available before the opening of the trial and are eligible for admission under Rule 87(4).
28. US Cables 5 and 6 through 8 were made available by the US National Archives in 2009 and 2006 respectively. Nevertheless, absent any indication that information relevant to Case 002/02 had been made available by the US National Archives, the Defence could not reasonably be expected to have been able to identify this evidence on time before the opening of the trial. The database of the US National Archives contains approximately 10 billion pages of textual records⁵⁹ and over two million US diplomatic cables from the relevant time period. Considering the paucity of resources at its disposal, the Defence did not have – and could not reasonably be expected to have had – the capacity and time to search for potentially relevant information among such a large volume of documentary material. The Defence became aware of the existence of these cables only after their publication by WikiLeaks on 24 April 2014 and 7 April 2013 respectively. The Defence

⁵⁵ US diplomatic cable, Embassy Phnom Penh, 'Bio: Additional Biographic Information for Hor Namhong, Cambodian Minister of Foreign Affairs and International Cooperation', 6 Jun 2002, 02PHNOMPENH1361_a.

⁵⁶ *Ibid.*, para. 1.

⁵⁷ *Ibid.*, para. 2.

⁵⁸ E307/1, 'Decision on Parties' Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists of Evidence (E305/3)', 11 Jun 2014, para. 2; E307/1/2, 'Decision on Joint Request for *de novo* Ruling on the Application of Internal Rule 87(4)', 21 Oct 2014, para. 6.

⁵⁹ See <http://www.archives.gov/publications/general-info-leaflets/1-about-archives.html>.

then invested significant time and resources to search through the documents and identify the present cables.

29. The Trial Chamber has ruled that diplomatic cables authored and declassified before the opening of the trial and subsequently made publicly available through WikiLeaks ‘could not have been previously discovered with the exercise of due diligence’.⁶⁰ There is no reason to depart from this principle in the present case. US Cables 5 through 8 must therefore be considered not to have been available before the opening of the trial, despite the exercise of reasonable diligence on the part of the Defence. They are eligible for admission under Rule 87(4).

(ii) The US Cables Are Relevant to Case 002/02

30. The US cables contain information relevant to the existence and nature of the armed conflict, to internal purges and S-21, to administrative and military structures, and to Nuon Chea’s criminal responsibility under several modes of liability.

Existence and Nature of the Armed Conflict

31. US Cables 1 through 8 contain information relevant to various aspects of the armed conflicts that occurred in Cambodia during the DK period. The following information relates to portions of the Closing Order concerning the existence and nature of the armed conflict.⁶¹ It is relevant to Case 002/02 and specifically its sixth segment (‘nature of the armed conflict’).⁶²
32. First, the US cables provide evidence of direct confrontation between DK armed forces and the Vietnamese armed forces, as well as evidence of military intervention of foreign forces into Cambodian territory. US Cable 1 describes the ‘border war with Vietnam’, relating ‘intense fighting’ between Cambodian and Vietnamese troops.⁶³ US Cable 5 mentions an attack carried out by DK armed forces in Vietnamese territory, adding that Chinese military advisers were involved in the planning of this operation.⁶⁴ US Cables 6

⁶⁰ See para. 11 above.

⁶¹ **D427**, Closing Order, paras 150–155.

⁶² See **E315**, Decision on Sequencing, para. 14(F).

⁶³ See para. 17 above.

⁶⁴ See para. 21 above.

and 7 further suggest that a Vietnamese aircraft based in Vietnam or Laos may have been responsible for the February 1976 bombing in Siem Reap.⁶⁵

33. Secondly, the US cables provide evidence of an internal armed conflict involving, on the one hand, the DK armed forces, and on the other, various ‘resistance movements’ and ‘dissidents’. US Cable 1 mentions the existence of ‘resistance forces’ lead by East Zone military commanders.⁶⁶ US Cables 2, 3, and 4 discuss several incidents involving incursions into Cambodian territory of Khmer armed groups based in Thailand.⁶⁷ US Cable 5 further describes the various armed groups active in Cambodian territory and involved in regular clashes with the DK armed forces.⁶⁸ In addition, US Cables 6 and 8 suggest that the February 1976 Siem Reap explosion may have been caused by an internal conflict.⁶⁹
34. Thirdly, the US cables provide evidence of the involvement of neighbouring states in different branches of the internal conflict. US Cable 1 reports that East Zone ‘resistance forces’ were trained and supported by Vietnam.⁷⁰ US Cable 4 suggests that Vietnam supported a Thai communist armed group in Cambodia.⁷¹ US Cable 5 indicates that Khmer ‘resistance groups’ were supported by the Thai army and financed by a senior Thai public official.⁷²

Internal Purges and S-21

35. The above information relating to the armed conflict also bears on the topic of internal purges,⁷³ as individuals suspected of being linked to enemy factions were arrested and transferred to S-21. The connection between the conflict and internal purges is made in US Cable 1, which links ‘purges’ to the ‘instability’ caused by the rebellion of regional military commanders, notably the ‘Hanoi-backed resistance’.⁷⁴ Likewise, US Cable 5

⁶⁵ See paras 22–23 above.

⁶⁶ See para. 17 above.

⁶⁷ See paras 18–20 above.

⁶⁸ See para. 21 above.

⁶⁹ See para. 22 and 24 above.

⁷⁰ See para. 17 above.

⁷¹ See para. 20 above.

⁷² See para. 21 above.

⁷³ See **D427**, Closing Order, paras 192–203, and 415–474.

⁷⁴ See para. 17 above.

mentions ‘purges’ carried out further to a military coup attempt.⁷⁵ This information is relevant to the fourth segment of Case 002/02 (‘internal purges and security centres’).⁷⁶

Administrative and Military Structures

36. Furthermore, in US Cables 1 through 6 and US Cable 8 numerous references are made to ‘internal conflict’, ‘defection’, ‘instability’, ‘leadership struggle’, and ‘rebellion’ within the CPK.⁷⁷ US Cable 9 further identifies Hor Namhong as the former head of Boeng Trabek security centre,⁷⁸ which is mentioned repeatedly in the Closing Order.⁷⁹ This information is relevant to administrative and military structures,⁸⁰ and therefore to Case 002/02 in its entirety.

Modes of responsibility

37. Finally, in US Cables 1 through 6 and US Cable 8 the references to ‘internal conflict’, ‘defection’, ‘instability’, ‘ability to control’, ‘leadership struggle’, and ‘rebellion’ within the CPK⁸¹ are relevant to the composition of the alleged JCE,⁸² as well as to Nuon Chea’s alleged authority and control over other CPK cadres,⁸³ and therefore to his alleged responsibility for ordering,⁸⁴ instigating,⁸⁵ and as a superior.⁸⁶ This information is relevant to Case 002/02 in its entirety and in particular its last segment (‘role of the Accused’).⁸⁷

(iii) The US Cables Are Reliable

38. US Cables 1 through 8 were downloaded from the official website of the United States National Archives and Records Administration and their authenticity is beyond question.

39. US Cable 9 is no less reliable. The information it contains is corroborated by other evidence on the case file. The Closing Order relies on Hor Namhong’s own written

⁷⁵ See para. 21 above.

⁷⁶ See **E315**, Decision on Sequencing, para. 14(D)(c).

⁷⁷ See paras 17–22 and 24 above.

⁷⁸ See para. 25 above.

⁷⁹ **D427**, Closing Order, paras 427, 1096, 1101–1104, and *passim*.

⁸⁰ *Ibid.*, paras 33–63 and 113–149 respectively.

⁸¹ See paras 17–22 and 24 above.

⁸² **D427**, Closing Order, paras 159 and 1529.

⁸³ *Ibid.*, paras 870, 876, 880, 881, 882, 884, 891, 913, 960, 1532, and *passim*.

⁸⁴ *Ibid.*, paras 1553–1554.

⁸⁵ *Ibid.*, paras 1547–1548.

⁸⁶ *Ibid.*, paras 1558–1560.

⁸⁷ See **E315**, Decision on Sequencing, para. 14(G).

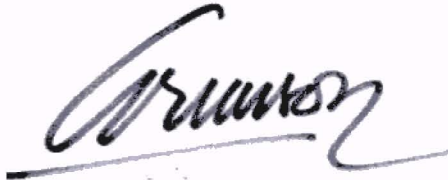
statement confirming that he was present at Beng Trabek.⁸⁸ Hor Namhong's biography from the official records of the State Security Service of the former German Democratic Republic also identifies him as 'leader' of the Beng Trabek camp ('*Leiter des Lagers*') and as 'Ieng Sary's accessory' ('*Helfershelfer Ieng Sarys*')

Transfer to Beng Trabek to the south of Phnom Penh [...]. H. N. Hong is the leader of the camp as well as a prisoner like the others. But things are easier for him, and on the occasion of the inspections carried out by Ieng Sary he can describe to him the situation in the camp. [Redacted] blames Hong for being an accessory of Ieng Sary.⁸⁹

IV. RELIEF

40. For the reasons stated above, the Defence requests the Trial Chamber to admit the Cables into evidence in Case 002/02.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

⁸⁸ D427, Closing Order, paras 1087, and 1099.

⁸⁹ E307/5.2.8, 'Compilation of 20 short biographies from the Stasi archives – Biography of Hor Nam Hong', ERN 01002022, internal translation of the Defence (the original German reads as follows: '*Verlegung nach Beng Trabek im Süden von Phnom Penh [...]. H. N. Hong ist als Leiter des Lagers genauso Häftling wie die anderen. Er hat es aber leichter und kann bei von Ieng Sary durchgeführten Kontrollbesuchen die Situation im Lager darlegen. [Redacted] beschuldigte Hong, ein Helfershelfer Ieng Sarys zu sein*').