



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

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

ឯកសារដើម
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ថ្ងៃ ខែ ឆ្នាំ (Date): 09-May-2018, 09:44
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7 November 2016
Trial Day 477

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

The Accused: NUON Chea
KHIEU Samphan

Trial Chamber Greffiers/Legal Officers:
CHEA Sivhoang
EM Hoy
Maddalena GHEZZI

Lawyers for the Accused:
Victor KOPPE
LIV Sovanna
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For Court Management Section:
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I N D E X

2-TCW-1065

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
2-TCW-1065	Khmer
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. KONG Sam Onn	Khmer
Mr. KOPPE	English
Mr. KOUMJIAN	English
Mr. LIV Sovanna	Khmer
Mr. LYSAK	English
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer
Mr. SMITH	English

1

1 PROCEEDINGS

2 (Court opens at 0912H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to hear the responses or

6 observations to the key document presentations made by the

7 Co-Prosecutor and the defence team in relation to the armed

8 conflict. And after that, we'll begin to hear the remaining

9 testimony of witness 2-TCW-1065.

10 Ms. Chea Sivhoang, please report the attendance of the parties

11 and other individuals to today's proceedings.

12 THE GREFFIER:

13 Mr. President, for today's proceedings, all parties to this case

14 are present.

15 Mr. Nuon Chea is present in the holding cell downstairs. He has

16 waived his right to be present in the courtroom. The waiver has

17 been delivered to the greffier.

18 The witness who is to continue his testimony after the conclusion

19 of the key document presentation, that is, 2-TCW-1065, is ready

20 to be called by the Chamber. Thank you.

21 [09.14.23]

22 MR. PRESIDENT:

23 Thank you, Ms. Chea Sivhoang. The Chamber now decides on the

24 request by Nuon Chea.

25 The Chamber has received a waiver from Nuon Chea, dated 7th

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1 November 2016, which notes that due to his health; that is,
2 headache, back pain, he cannot sit or concentrate for long. And
3 in order to effectively participate in future hearings, he
4 requests to waive his right to be present at the 7 November 2016
5 hearing.

6 Having seen the medical report of Nuon Chea by the duty doctor
7 for the accused at the ECCC, dated 7 November 2016, which notes
8 that today Nuon Chea has a lower back pain when he sits for long
9 and recommends that the Chamber shall grant him his request so
10 that he can follow the proceedings remotely from the holding cell
11 downstairs. Based on the above information and pursuant to Rule
12 81.5 of the ECCC Internal Rules, the Chamber grants Nuon Chea his
13 request to follow today's proceedings remotely from the holding
14 cell downstairs via an audio-visual means.

15 The Chamber instructs the AV Unit personnel to link the
16 proceedings to the room downstairs so that Nuon Chea can follow.
17 That applies for the whole day.

18 And before I hand the floor to the parties to respond to the key
19 document presentations made on last Thursday, the Chamber would
20 like to inform the parties due to a shortage of interpreters as a
21 result of traffic congestion, a relay system will be used, so
22 please speak slowly so that the interpreters could do their job
23 properly. And this is in particular for the Khmer and French
24 booth.

25 I'd like now to hand the floor to the Lead Co-Lawyers for civil

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1 parties to respond to the key documents presented by other
2 parties if you wish to do so.

3 Please hold on. And Counsel Anta Guisse, you have the floor.

4 [09.17.18]

5 MS. GUISSÉ:

6 Thank you, Mr. President. Good morning. I'm sorry to interrupt my
7 colleague from the civil parties. I simply want to remind the
8 Chamber that I sent this weekend an email requesting to make an
9 oral submission before the Chamber following the disclosures we
10 received from the Prosecution of certain documents relative to
11 witness TCW-953, who will testify after 2-TCW-1065. And given the
12 fact that we are asking that his testimony be postponed <due to
13 the disclosure>, I'd like to know if we could deal with this
14 issue right now or this morning so that we <can figure out how
15 to> organize ourselves.

16 So I wanted to draw the Chamber's attention on this point and, of
17 course, I am open to your propositions.

18 [09.18.30]

19 MR. PRESIDENT:

20 Deputy Co-Prosecutor, you have the floor.

21 MR. SMITH:

22 Good morning, Mr. President.

23 The Prosecution will be able to briefly respond to that request
24 if required.

25 MR. PRESIDENT:

4

1 Yes, you can right away proceed with that.

2 And first, in order to clarify the matter, I'd like to give the
3 floor to the counsel for Khieu Samphan to provide a detailed
4 summary of your request so that the parties and the public
5 understand the nature of your request. You have the floor.

6 [09.19.17]

7 MS. GUISSÉ:

8 Thank you, Mr. President.

9 Very briefly speaking, Friday at 12 noon, we received a new
10 statement from 2-TCW-953, which was taken by the Co-Investigating
11 Judges in another case. And a little bit before 4 o'clock, we
12 received an audio recording of this statement on a DVD. And the
13 duration was seven hours and 50 minutes. So we received these
14 elements on Friday afternoon.

15 And as far as I remember, the Chamber provided the list of the
16 witnesses it intends to call to testify regarding the role of the
17 accused, and that list was provided on 14 September 2016, if I'm
18 not mistaken. And witness 2-TCW-953 was on the list of the
19 Co-Prosecutors since 2014, I believe, but I'm speaking from
20 memory here.

21 [09.20.29]

22 Today, in the Khieu Samphan defence team, we are facing the
23 situation where Friday afternoon we received new elements on a
24 crucial segment, which is the role of the accused. And the
25 Co-Prosecutor, of course, will provide explanations regarding why

5

1 this disclosure was so tardy, whereas the testimony of this
2 witness is scheduled for Tuesday. In any case, we in the <Khieu
3 Samphan> Defence, we're telling you right away we are not going
4 to be able to examine this witness on Tuesday given the elements
5 that were provided to us on Friday afternoon.

6 It's important that I say things the way they are. And of course,
7 I should slow down because I understand that there's a problem
8 with <the> interpretation <this morning>.

9 But it's important for me to remind you that in the Khieu Samphan
10 defence team, we're trying to do our best in order not to delay
11 things. But at one point, impossible to proceed, so we cannot be
12 sloppy about <defending> our client.

13 [09.21.41]

14 So the <new> testimony of 2-TCW-953 is 23 pages long in English,
15 and we were only able to give this document this morning to Khieu
16 Samphan. <That means that > for a witness who, a priori, is going
17 to come to testify on the role of Khieu Samphan, we were not able
18 to analyze properly this new <statement nor> listen to the audio
19 recording which, for us, is very, very important because it
20 allows us to <potentially> see things more in detail and to
21 cross-examine the witness better.

22 So what we're asking the Chamber is that, given these tardy
23 disclosures, is to make sure that the testimony of this witness,
24 2-TCW-953, be postponed to after the Water Festival <break> so
25 that we can work in proper conditions.

6

1 [09.22.37]

2 I do not know what the Co-Prosecutor is going to say regarding
3 this issue, but I anticipate -- and of course, this is always the
4 same old complaint on the part of the Defence, and maybe you are
5 tired of hearing it, but I have to remind you once again, that
6 the work that we're doing here in the courtroom is only the tip
7 of the iceberg and we are doing everything at the same time. That
8 is to say, that when we have an expert, when there are document
9 hearings to prepare, it's always us, it's always us. When we have
10 to prepare replies, it's always us. When there are witnesses we
11 have to prepare, it's always us again.

12 So, at one point in the context of this preparation, and in the
13 context of sharing work within our team, there are things that
14 are difficult to manage within a limited timeframe and here,
15 concretely, we are facing this kind of wall where it will be
16 absolutely impossible for us to prepare ourselves unless we do
17 things in a sloppy way which will be detrimental to our client,
18 so this is our request.

19 This witness, therefore, who was scheduled for Tuesday, we would
20 like him to be postponed to after the Water Festival break given
21 the elements that we have recently received <in the Khieu Samphan
22 Defence team>.

23 On any case, to all parties, but for us in particular, as I told
24 you, these specific concrete problems we are facing here, so
25 really, I am telling you maybe in a forceful way because recently

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1 <we have been juggling nonstop, we have been stretched very
2 thin,> we are trying to adapt ourselves, but at one point it's no
3 longer possible. So this is our request, and we hope that, on the
4 other side, we will at least be supported in this request.

5 Thank you very much, Mr. President, for having allowed me to make
6 this oral submission.

7 [09.24.30]

8 MR. PRESIDENT:

9 I'd like now to hand the floor to the Co-Prosecutor to respond or
10 to make observation to this request.

11 MR. SMITH:

12 Thank you, Mr. President.

13 The Prosecution's well aware of Khieu Samphan's position and the
14 Defence position, and it applies to the Prosecution. It's a very
15 busy trial. There's lots of documentation, and that we all have
16 to deal with and master.

17 Perhaps if I can make some observations and leave the decision in
18 your hands as to whether or not the witness should be postponed.

19 But firstly, I should give an explanation why the statement was
20 disclosed only on Friday as opposed to some months earlier.

21 The Defence are correct. When the witness list was put forward by
22 the Prosecution, the witnesses they wanted, this statement was
23 not on that list. There were DC-Cam statements on the list. And
24 the reason being is that this statement didn't come into an
25 existent -- wasn't taken until February this year by the OCIJ.

8

1 And then when the witness list came out from the Trial Chamber on
2 the 14th -- 14th of September, of course, the Prosecution did all
3 the searches required to make sure that any new material that
4 arose in the investigation since the documents were put forward
5 back in 2014 was made available.

6 The problem we had was an electronic search issue. This witness,
7 when you look at the statements from DC-Cam, the two statements,
8 and summary of the statement, this witness has four different
9 names, or four different permutations of the name. And then when
10 we looked at the statement -- and this is why the Prosecution
11 didn't discover it. When we looked at the statement that was
12 taken by OCIJ earlier this year, it was listed under a different
13 name. There was a slight similarity, but not similar enough that
14 when the Prosecution conducted the searches for the four
15 different names that appeared on the DC-Cam statements, it did
16 not bring up this new statement.

17 [09.27.10]

18 So the Prosecution made all due efforts to make sure the
19 statements are with the Defence, but the electronic system didn't
20 pick up the different names.

21 None of the names on the DC-Cam statement were contained in the
22 OCIJ statement in February this year.

23 So, the Prosecution had done its searches, but because of the
24 difference in names, it was discovered -- and how was it
25 discovered? It was because searches were being done on certain

1 locations relating to this witness, and when a search was done on
2 a location relating to this witness, this statement from OCIJ
3 came up through that search term. And that led us to discover,
4 and that was late on Friday morning, this new statement. The
5 Prosecution wasn't aware this statement was a statement in
6 relation to this witness that was coming on Tuesday.

7 [09.28.09]

8 So in that respect, that's the reason why it was discovered so
9 late.

10 In terms of whether the witness should be postponed, Your
11 Honours, we would like to observe that it is a 23-page statement.
12 It's a statement that's in the question and answer format. It's
13 not in the usual paraphrasing format that sometimes the OCIJ
14 statements are. The audiotape was provided at 4 o'clock on Friday
15 evening, so more than likely the audiotape and the statement
16 would be very similar, unlike maybe some of the other OCIJ
17 statements where it is a paraphrasing and the questions and
18 answers may be more interesting.

19 We would assume that the audiotape and the statement would be the
20 same.

21 We note that the Defence has been given extra resources for
22 disclosure issues. We would ask that whatever decision, Your
23 Honour, makes that it applies to both. If the witness is put off
24 after the Water Festival, that the examination and
25 cross-examination be put off at the same time so we question

10

1 under the same conditions.

2 [09.29.30]

3 In terms of whether it should go ahead on Tuesday, the
4 Prosecution always determine that this trial was fair, fair to
5 the Prosecution and the Defence, and so we're in Your Honour's
6 hands, but we do note that it is a question and answer statement
7 rather than a paraphrased one, so the tape and the statement
8 would be very similar.

9 In terms of the issue of disclosure, there's a new system, as,
10 Your Honour's, are aware, or new guidelines put forward by the
11 Investigative Judges, and that's contained in decisions D193/102
12 and D193/103, and that decision from the OCIJ -- I apologize.
13 Those decisions from the OCIJ which were made available last week
14 has now allowed for the Prosecution to provide material, whether
15 it be exculpatory or in that exceptional circumstances, 87.4, to
16 the parties straight away rather than waiting for the
17 authorization of the OCIJ and then once, Your Honours, decide
18 that it's appropriate that that statement be disclosed and used
19 in the trial, then the OCIJ will take their decision.
20 So that's the Prosecution's position. Thank you.

21 [09.31.07]

22 JUDGE FENZ:

23 Can I just ask one question? Did I understand it correctly, the
24 tape is more than seven hours and that translates into 23 pages
25 only, or did I misunderstand any of the numbers?

11

1 MS. GUISSÉ:

2 Seven hours, 50 minutes of recording, <Your Honor>.

3 Mr. President, I would simply like to make several response
4 observations.

5 First, I must say that I'm a bit disappointed. I would have
6 really appreciated that the Prosecution at least recognize that,
7 regardless of the technical reasons that we're running into <that
8 led to this tardy disclosure,> they could recognize that it's
9 true -->

10 [09.32.17]

11 MR. PRESIDENT:

12 Please hold on.

13 And Lead Co-Lawyers for civil parties, do you have any
14 observation?

15 MS. GUIRAUD:

16 Thank you, Mr. President. Good morning, everyone.

17 The request of the Khieu Samphan team seems reasonable to us
18 given the time lines. This is a witness who is meant to appear
19 tomorrow, so we have no objection to the request of the Khieu
20 Samphan team.

21 [09.32.55]

22 MR. PRESIDENT:

23 And the defence team for Mr. Nuon Chea?

24 MR. KOPPE:

25 Yes. Thank you, Mr. President. Good morning.

12

1 We believe that the request is reasonable as well and, in
2 addition to this, there is no necessity to start the last segment
3 with this particular witness. We could easily move this witness
4 after the other witnesses that are still to come and which are
5 scheduled, so I don't think there's any reason to -- for concerns
6 of delay, so I think the request is reasonable and it can be
7 executed fairly easily.

8 MS. GUISSÉ:

9 Thank you, Mr. President.

10 I was a bit impatient to take the floor again saying that yes,
11 indeed, I was a bit disappointed by the manner in which the
12 Prosecution responded. Because there's always a sort of prejudice
13 against the way that we organize our work in the context of our
14 Defence work, and I would have appreciated if he could have been
15 as elegant as the Civil Party Lead Co-Lawyers this morning.

16 [09.34.14]

17 So yes, we do have seven hours, 50 minutes of recordings. I am
18 willing to take into account what the Prosecution said <at face
19 value>, but there's no way <for the Khieu Samphan Defence> to save
20 time in listening to the full recording and, as the Co-Prosecutor
21 did in preparing for this witness, also research any related
22 materials that might be necessary <in light of the new statement.
23 So I maintain the request put forth by the Khieu Samphan Defence
24 team, while underscoring that we are obviously doing this
25 reluctantly, but I want it to be clear that the tardy disclosure

13

1 creates exceptional circumstances, and our request is a
2 consequence of that.>

3 MR. PRESIDENT:

4 Thank you.

5 However, I would like to ask all parties whether or not you are
6 ready to hear the testimony of an upcoming witness from <the> 10
7 <th>.

8 And Mr. Co-Prosecutor, are you ready for the upcoming witness on
9 <the> 10<th, are you ready if the witness is called to testify on
10 Tuesday>?

11 [09.35.43]

12 MR. LYSAK:

13 Thank you, Mr. President.

14 I think that this is a civil party, so we would be asking
15 questions second, but we'll obviously -- unless I'm mistaken, on
16 my schedule the person who would follow is a civil party,
17 scheduled for two days.

18 If I'm correct about that, we'll do our best, as always, without
19 any complaints to deal with the situation if we have to move that
20 civil party forward.

21 MR. PRESIDENT:

22 And Lead Co-Lawyers for civil parties, 2-TCCP-237, this civil
23 party is scheduled to testify on 10 and 11 and then, if we move
24 this civil party to come and testify tomorrow, is that okay for
25 you?

14

1 MS. GUIRAUD:

2 Thank you, Mr. President. I don't know if the civil party is
3 already in Phnom Penh. Yes, she has arrived. My colleague
4 confirms that.

5 After having discussed with my co-counsel, I believe we could be
6 ready for tomorrow so this civil party could be heard tomorrow
7 instead of the day after tomorrow as was initially scheduled.

8 [09.37.37]

9 MR. PRESIDENT:

10 And the defence team for Mr. Nuon Chea, do you have any problem
11 with that?

12 MR. KOPPE:

13 No, none whatsoever.

14 MR. PRESIDENT:

15 And Khieu Samphan defence team.

16 MS. GUISSSE:

17 Clearly there's no problem for us, Mr. President, since it's to
18 accommodate our request.

19 [09.38.08]

20 MR. PRESIDENT:

21 Thank you, everyone. The Chamber will take into consideration the
22 request and submissions from all parties and will issue a
23 decision very soon today.

24 And the Chamber now gives the floor to the Co-Lead Lawyers for
25 civil parties to register the response to the submissions by

15

1 <Co-Prosecutors and> the defence team for Mr. Nuon Chea<, in
2 relation to the facts of armed conflicts, which was filed last
3 Thursday>.

4 MR. PICH ANG:

5 Thank you, Mr. President, for allowing us to respond to the
6 submission of the defence team for Nuon Chea and Khieu Samphan.
7 We do not have any responses.

8 MR. PRESIDENT:

9 Next, the floor is given to the Co-Prosecutors to make
10 observations on the documents, key documents presented by the
11 defence team for Mr. Khieu Samphan.

12 You may now proceed.

13 [09.39.31]

14 MR. LYSAK:

15 Thank you, Mr. President.

16 I'm going to start in our response with the Philip Short book, as
17 it was cited rather extensively by the Khieu Samphan Defence.

18 That book, of course, is "Pol Pot: History of a Nightmare",
19 document E3/9. Let me start with a few general comments.

20 First, unlike Nayan Chanda and Stephen Morris, who wrote entire
21 books devoted to the -- this issue, I think it's fair to say
22 Philip Short is not an expert per se on relations between
23 Democratic Kampuchea and Vietnam.

24 A second general observation in looking at some of the quotes on
25 this issue, unlike Ben Kiernan, there are a number of parts,

1 particularly on this issue, where there are no sources referenced
2 for the information that he writes.

3 [09.40.51]

4 And let me give you an example that comes from the very first
5 excerpt that was used by the Khieu Samphan Defence about -- in
6 relation to Phu Quoc island, she read an excerpt that suggested
7 that Cambodian and Vietnamese naval units were firing on each
8 other near Phu Quoc island.

9 If you look in the book, you'll see this is unsourced. It's also
10 inconsistent with the research that was conducted by Chanda,
11 Stephen Morris and Ben Kiernan, all of whom found and wrote that
12 these attacks were initiated by the Khmer Rouge to try to capture
13 Phu Quoc island and also another island, Tho Chu.

14 Another comment, observation, related to some of the quotes,
15 there were a few instances where we did not receive here verbatim
16 quotes, and more summaries. Because of that, I think there were a
17 few important points that Philip Short was making in relation to
18 the excerpts presented by the Defence that were missed.

19 And for example, in the same section related to this 1975
20 conflict over the islands, and specifically relating to meetings
21 that Pol Pot had with the Vietnamese leaders at that time which
22 the Defence quoted as being a grand gesture of friendship, Philip
23 Short expressly noted that Pol Pot's efforts with the Vietnamese
24 were a calculated ruse, if you will. It was designed to buy him
25 time to build up his military strength, not genuine friendship.

1 [09.42.57]

2 And this is the quotes here. The Khieu Samphan team was reading
3 from French ERN 00639837 through 39. The English of that is
4 00396504 through 506. And this is not a -- I believe a section
5 for which we have Khmer translations. But this is what Short
6 wrote about these meetings, quote:

7 "The calculation was simple. If, as Pol believed, Vietnam was the
8 main potential long-term enemy, prudence required the maintenance
9 of good relations, at least until Cambodia was strong enough to
10 meet an eventual Vietnamese challenge."

11 And continuing two pages later at the end of the ERN range I've
12 just provided describing the meetings that took place between the
13 two countries, Short writes, quote:

14 [09.44.19]

15 "As the year ended, the Vietnamese Politburo concluded that
16 relations were slowly improving and that, despite strains, the
17 alliance was intact. This was a fatal error. As the Vietnamese
18 Foreign Minister, Nguyen Co Thach, subsequently acknowledged,"
19 and he quotes from him, "'In 1975, Vietnam evaluated the
20 situation in Cambodia incorrectly'." End of quote.

21 And then Short writes: "Khieu Samphan said later that Pol was
22 simply playing for time." End of quote.

23 And Short does provide a source for this last reference, and that
24 is, of course, the interviews he conducted himself of Khieu
25 Samphan.

18

1 We see the same stratagem, if you will, in the 11 March 1976
2 Standing Committee minutes. I'll just identify those, E3/217, the
3 strategy of buying time to build up forces.

4 Another observation relating to Philip Short, when you look --
5 while there are some differences, on the whole, when you read the
6 various excerpts in his book on what took place with the armed
7 conflict, it is essentially the same facts as what Nayan Chanda,
8 what Stephen Morris and what Ben Kiernan have all written.

9 [09.46.11]

10 There is not much disagreement between any of these authors on
11 what took place between these two countries, though they -- of
12 course, they have some different opinions or characterizations of
13 the events. But the essential facts are, for the most part, the
14 same.

15 And as an example, I read to you an excerpt from Ben Kiernan last
16 week about how it was Cambodia that -- Democratic Kampuchea in
17 December 1976, that began to prepare for an attack.

18 Philip Short also describes this, how, at a December 1976 Central
19 Committee meeting -- and as you'll remember, this was a time at
20 which there had been relative peace on the border for a few
21 months, Pol Pot instructed the cadres to prepare for a guerrilla
22 and conventional war.

23 And you'll find that reference in Philip Short's book at French,
24 00639931; English, 00396571.

25 [09.47.32]

1 And further evidencing what I'm saying, which is that Philip
2 Short largely has a version of events that is consistent with the
3 others, Philip Short writes in his book of the DK incursions into
4 Vietnam on the 30th of April 1977 and the 24th of September 1977,
5 in which Vietnamese civilians were massacred in the most barbaric
6 manner possible.

7 Short also notes that the Khmer Rouge committed similar
8 atrocities that same year in Thailand.

9 Short quotes Douglas Pike, another source that was used by the
10 Khieu Samphan Defence in their presentation. They quote Douglas
11 Pike -- or Short quotes Douglas Pike as describing Cambodia's,
12 and I quote here, "hostile, if not aggressive, behaviour towards
13 Vietnam and Thailand" as a -- what he calls a "bristly dog
14 gambit", a "bristly dog gambit".

15 That might not translate very well. What he's referring to here
16 is how a smaller dog will be very aggressive to try to scare off
17 a bigger dog, essentially.

18 [09.49.03]

19 Short also cites a resolution from the East Zone Committee in
20 mid-1977, which directed as follows, quote:

21 "Preparations should be made to send troops deep into Vietnamese
22 territory to annihilate them on their own ground."

23 These various references, you'll find them in Short's book at
24 French, 00639942 through 46; English, 00396580 through 83. And
25 again, as indicated in Khieu Samphan's presentation last week,

1 these -- this part of Short's book is not translated in Khmer at
2 this time.

3 Short also writes, I will note, that the Khmer Rouge aggressive
4 strategy of attacking first continued until October 1978. And

5 I'll give you a quote here from French, 00639964; English,
6 00396597. Short writes, quote:

7 [09.50.31]

8 "Since January 1978, Khmer Rouge frontier units had been under
9 orders to adopt an aggressive forward posture. 'We must attack
10 first because, otherwise, they will attack us', Pol said. After
11 his return from Beijing in October 1978, the front line
12 commanders were told to switch to a defensive strategy, to use
13 mines against Vietnamese armour and infantry formations and to
14 avoid decisive confrontations which carried a risk of heavy
15 losses." End of quote.

16 And let me just finish with my observations on Short. The only
17 part of Short's book where I found any notably different account
18 of the conflicts was in his description of the first invasion by
19 Vietnamese forces in December 1977.

20 This reference you'll find at French, 00639949; English,
21 00396585. This is what Short wrote so you understand what I'm
22 about to say:

23 "In mid-December, 50,000 Vietnamese troops, backed by armour and
24 artillery, poured across the border along a front stretch -- a
25 front stretching more than 100 miles, from the Parrot's Beak in

1 Svay Rieng to Snuol in the north. In the first week, they met
2 little resistance and penetrated about 12 miles into Cambodian
3 territory."

4 [09.52.35]

5 Let me stop. So far, this is consistent with the others. Here's
6 where there is a little difference. Short continues:

7 "Khmer Rouge soldiers who fell into their hands were
8 systematically killed. Reinforcements were then sent in from the
9 southwest and, in some areas, the Vietnamese forces were forced
10 onto the defensive." End of quote.

11 This account of both systematic killings but also of southwest
12 reinforcements arriving in time in December 1977 or in early
13 January '78, to drive back the Vietnamese, again, is not
14 supported by any cited source by Short here. It differs from the
15 findings of the others, Chanda, Morris and Kiernan, and it's
16 inconsistent with both the December '77 reports, the
17 contemporaneous records that exist, and, of course, what you
18 heard from some of the Southwest Zone military commanders about
19 when it was that they were able to arrive in that region.

20 [09.53.52]

21 So in summary on Philip Short, we believe that with a few
22 differences which are not sourced, Philip Short essentially comes
23 to the same conclusions as the others, as Nayan Chanda, as
24 Stephen Morris, as Ben Kiernan.

25 The Khieu Samphan Defence also presented last Thursday some

1 documents on the border issues, the border lines. They presented
2 a March 1976 study conducted by the U.S. State Department on the
3 Cambodia-Vietnam border issues. That was E3/2373, which refers to
4 some of the decrees from the French colonial period. And then
5 counsel quoted an excerpt from some CPK Standing Committee
6 minutes, E3/217, in which she noted that Vietnam had told Nuon
7 Chea the borders were made by the imperialists, quote unquote.
8 I'm not sure what point the Defence was trying to make here,
9 whether they're arguing that Cambodia and Vietnam were bound to
10 accept all decrees or edicts of the former colonial period, that
11 it was wrong for either side in negotiations to question or raise
12 issues about some of the border lines. I find that to be a little
13 bit strange argument coming from the leaders of the Communist
14 revolutionary movement.

15 [09.55.53]

16 But to the extent their point -- their bigger point is just that
17 there were disagreements about the border line and that that was
18 one of the principal reasons that led to the conflict, that was
19 part of our document presentation and it's something we obviously
20 agree with.

21 Next, the Defence presented a number of meeting minutes and
22 telegrams reporting on incidents in which Vietnamese people or
23 soldiers intruded onto land that Democratic Kampuchea claimed was
24 its territory. The Defence described these as incursions that
25 were -- suggesting they were equivalent to the Democratic

1 Kampuchea incursion into Vietnam that took place in -- beginning
2 in March or April 1977. So there are a few observations I would
3 like to make about these telegrams and meeting minutes.

4 [09.57.01]

5 First, I would observe that when you are looking at any of these
6 documents on these incidents on the border, it's important to
7 ascertain as best you can whether these reports involve land that
8 was part -- the subject of the border disputes. That obviously
9 makes a significant difference in understanding what was going on
10 because there were areas that both countries believed belonged to
11 them. And that is exactly what was going on with one of the first
12 documents presented by Khieu Samphan team.

13 This is the 2 November 1975 Standing Committee minutes, document
14 E3/227. There were a number of documents relating to an area in
15 Ratanakiri called Au Ta Bauk. And these Standing Committee
16 minutes indicate that 130 people from Vietnam had entered this
17 area, people who were described as ethnic Rade and apparently
18 soldiers.

19 But the minutes make very clear that this was an area that the
20 Vietnamese people believed was part of their territory. Let me
21 just read to you from the Standing Committee minutes that were
22 cited by the Defence, E3/227; Khmer, 00019133; French, 00290867
23 through 68; English, 00183413. This is what the Standing
24 Committee wrote -- minutes reflect, quote:

25 [09.59.11]

1 "The situation at Au Ta Bauk is confused, but, in fact, there are
2 Vietnamese there. According to what has been grasped, after
3 withdrawing from Stung Treng in late July, 30 Vietnamese
4 returned. When we told them to withdraw, they responded that it
5 was their land and, later, they reinforced. But the majority of
6 them were ethnic Rade. Subsequently, they sent 100 people. When
7 we objected officially, the south did not respond. The north
8 responded, explaining that they welcomed the matter we told them
9 about. They added that if examination showed it was truly our
10 land, they would order these troops to withdraw." End of quote.

11 [10.00.09]

12 The Defence quoted these minutes, a portion that -- to suggest
13 that the CPK leaders had wanted to have a model of friendship.
14 There's a portion of these notes that says:

15 "We will tell them to withdraw. We wish to have no clashes. If
16 there are excesses, we will solve them. We will be the model of
17 friendship."

18 That was the quote used by the Khieu Samphan Defence.

19 And I just want to observe and draw, Your Honour's, attention to
20 what exactly the leaders in the Standing Committee considered a
21 model of friendship to be. Nine days after the Standing Committee
22 meeting -- the Standing Committee meeting was on the 2nd of
23 November 1975. Nine days later, on the 11th of November, the
24 Centre sent instructions to Northeast Zone secretary Ya directing
25 that forces be organized to attack the Vietnamese, who had

25

1 returned to Au Ta Bauk. And this is document E3/1150, E3/1150. I
2 believe we read some of the excerpts from this last week, so I
3 won't repeat them.

4 [10.01.42]

5 They provide specific instructions to use grenades, mines, B40,
6 B60 rocket launchers specifically identifying the Au Ta Bauk area
7 as one of the places. They say the assault shall continue for
8 three to four months.

9 Now, at the end of this telegram from the Centre, they do also
10 suggest that Northeast Zone secretary Ya, and I will quote here:

11 "Consider contacting their leaders to determine how to make a
12 complaint against them through a political venue."

13 And fortunately, in this case, that seems to have happened. Ya --
14 as I think you're aware from some of the documents, Ya engaged in
15 negotiations, real negotiations, with Vietnam and he reported on
16 those at a Standing Committee meeting held on the 26th of March
17 1976. This is another document that was presented, E3/218,
18 E3/218. And in Section 1.2(b) of those Standing Committee
19 minutes, it is reported regarding the situation in Ratanakiri
20 that the Vietnamese had withdrawn from this area.

21 [10.03.11]

22 So this is an example of where negotiations were genuinely
23 pursued. These two countries were able to resolve an area. And I
24 must note here that Northeast Zone secretary Ya, having engaged
25 in some relatively successful negotiations with Vietnam, seems to

1 have been rewarded a few months later by being branded a traitor
2 and sent to S-21 in August 1976, reference OCP S-21 list, number
3 10192.

4 This is an observation I will make with a number of the
5 contemporaneous records that the Defence has cited. These
6 individuals who were reporting on the border situation with
7 Vietnam, most of them ended up in S-21.

8 Another telegram that was included by the Khieu Samphan defence
9 in their document list, E3/903, this is an 8th February 1976
10 telegram from Division 920 secretary Chhin, reporting on a
11 situation -- some land in Mondolkiri on which the Vietnamese were
12 located.

13 [10.04.52]

14 Paragraph 1 of that telegram reports, and let me read this to
15 you:

16 "I'd like to report to Brother about the border problem that the
17 Vietnamese set up their bases in our territory. Our soldiers met
18 with Teu Dik, Teu Dik, who is in charge of the planting section.
19 They camped along the Hich stream in Pou Trak village.

20 According to the information given by the region's soldiers, they
21 had moved one kilometre into our territory. We went to inspect
22 all together. The Vietnamese did not recognize this borderline.
23 They said our map is not correct. Our soldiers ordered them to
24 withdraw completely from that place, but they have not done yet."

25 End of quote.

1 I bring up -- because in 1976, we had these border incidents in
2 both Ratanakiri and Mondolkiri, and the subsequent telegrams from
3 Division 920 secretary Chhin show that the response -- ultimate
4 response of Division 920 was to attack and throw grenades at
5 these Vietnamese. People who weren't there engaged in violence.
6 They believed the land was theirs.

7 [10.06.39]

8 It seems from a 19 February 1976 telegram they were trying to
9 farm the land. That is document E3/8377, E3/8377. And pursuant to
10 the documents I described and presented last week, which I won't
11 repeat, the response of Division 920 was to begin attacking and
12 throwing grenades at these Vietnamese even while negotiations
13 were going on to solve the border.

14 We also -- the Defence also presented a number of telegrams from
15 1977, three telegrams, I believe, some of which show fighting
16 back and forth at the border areas, but in some cases, again,
17 showing Democratic Kampuchea soldiers opening fire merely because
18 they believed the Vietnamese had intruded onto their territory.
19 You'll see this. Let me give you one example. Document E3/852,
20 which was presented by the Defence, E3/852, which is an April
21 1977 report to Office 870 regarding the situation along the
22 border in the Eastern Zone.

23 [10.08.15]

24 And paragraph 4 reports the following in regards to Pursat
25 district, quote:

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

1 "On 30 April 1977, at 5.00 p.m., identifying a target area in
2 Chrak Matey sub-district, there were six Vietnamese who had
3 pulled off some of our stakes. After realizing that, our
4 colleagues started firing at them, leaving one dead." End of
5 quote.

6 Now, it's important to also always -- in considering the
7 telegrams and reports, you have to consider the time period and
8 understand that. And it's important to note that the three 1977
9 telegrams that were cited by the Defence, that do include some
10 incidents of Vietnamese firing at Cambodian troops -- let there
11 be no mistake about that. Their -- neither of these sides were
12 angels. There was -- there was fighting being initiated by both
13 sides as of 1977, and certainly 1978.

14 [10.09.34]

15 But that's the important point. These telegrams are from April
16 and June 1977, which is after the time of the first incursions by
17 Democratic Kampuchea forces into Vietnam, which Kiernan dates at
18 March 1977. He cites some incidents on 15th to 18th of March and
19 the 25th to 28th of March 1977.

20 And just for the record, that's in Kiernan's book, E3/1593,
21 Khmer, 00637902 through 903; French, 00639136 through 37.

22 Let me repeat. Khmer, 00637902 through 903; English, 01150185
23 through 86; and French, 00639136 through 37.

24 Another point on these telegrams is, and I started with this
25 observation, the Khieu Samphan team were trying to make an

1 equivalency between the Vietnamese incursions into Democratic
2 Kampuchea that are described in these documents and the
3 incursions by Democratic Kampuchea forces that took place
4 beginning in March 1977.

5 And I would observe that that is another false equivalency, to
6 try to equate what is reflected in these documents as to what
7 Vietnam was doing and what the evidence shows took place with the
8 Democratic Kampuchea incursions.

9 Certainly the Vietnamese -- though in some instances these were
10 areas they contended were theirs, they were trespassing at worst,
11 taking rice and food that probably -- that did not belong to
12 them.

13 [10.12.10]

14 What did Democratic Kampuchea's forces do in their incursions in
15 1977 and '78?

16 It's important to understand this in order to understand why this
17 armed conflict escalated in 1977.

18 This is what Nayan Chanda was told by a witness who visited the
19 site of the September '77 massacres a few days after it took
20 place:

21 "In house after house, bloated, rotting bodies of men, women and
22 children lay strewn about. Some were beheaded, some had their
23 bellies ripped open, some were missing limbs. Recalling the scene
24 even a year later, Nham was overcome by nausea."

25 And Chanda himself personally went to the scene of another

1 massacre near Ha Tien in March 1978, and this is what he
2 described what he saw:
3 [10.13.24]
4 "In a clearing, a dozen sweating, silent men were digging graves.
5 Next to a completely gutted house lay 15 bodies, men, women and
6 children. Some of the staves with which they had been beaten to
7 death still lay around. One stave was stuck between the legs of a
8 spread-eagled, naked woman. Her two children had been cut to
9 pieces. A few bodies were headless, some were disembowelled and
10 covered with blue flies.
11 I felt nauseated and had to rest briefly under a tree. House
12 after house presented the same gory sight."
13 You'll find these two accounts, Your Honours, in Nayan Chanda's
14 book, "Brother Enemy", E3/2376; Khmer, ERNs 00191526 and 560;
15 English, 00192379 and 192408 through 09; French, 00237062 and
16 237086 through 87.
17 And the reasons that we have brought up this evidence, it has
18 been a matter that we've had argument about. You cannot
19 understand the armed conflict that took place without
20 understanding these -- what took place in these incursions of DK
21 forces in Vietnam. These were -- these attacks were triggering
22 event that dramatically escalated the conflict, and it changed
23 the course of the relations that played out between these two
24 countries in the 1977 to '78 period. And so it's important in
25 looking at the documents presented by the Khieu Samphan team to

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1 understand this difference. It is an important different.

2 [10.16.08]

3 Intruding into someone's land, taking their property is wrong.

4 Make no mistake about that. But you don't pull out your gun and

5 start shooting your neighbour when he comes over into your yard

6 and takes some of your mangoes. You try to resolve the situation

7 and, if necessary, you go to Court.

8 That's what Cambodia did before when they had a dispute on Preah

9 Vihear. Cambodia knew how to go to the International Court of

10 Justice to solve border disputes. The situation that Vietnam

11 faced with these incursions was obviously different.

12 [10.16.48]

13 One last telegram just to make an observation on. The Defence

14 presented document E3/913, E3/913. And this is a 15 January 1978

15 telegram, that was sent by the -- by Phoung, who was the East

16 Zone rubber plantation chairman, to Office 870.

17 It describes the damage that had been inflicted by the Vietnamese

18 upon the Memot rubber plantation during the retaliatory invasion

19 that had begun in December 1977, and had ended after the first

20 week of January 1978. And my observation on this is that there

21 was obviously major damage that had been inflicted upon this

22 rubber plantation as part of this retaliatory attack.

23 But in contrast to what Democratic Kampuchea forces did to

24 Vietnamese civilians, there's no indication in this report that

25 the Vietnamese killed any of the rubber plantation workers.

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1 And instead, if you look at this, what is reported is, and I
2 quote:

3 "Two families followed the enemy. One was a worker at Sla, and
4 another a former nurse for the guerrillas."

5 So some of the people -- the Cambodians actually used this
6 opportunity to get out of the country and followed the Vietnamese
7 forces when they retreated.

8 [10.18.38]

9 Let me just remark on a few more documents before I end.

10 There was a number of--

11 MR. PRESIDENT:

12 It is now appropriate for a short break. The Chamber will take a
13 break now and resume at 25 to 11.00, to continue our proceedings.

14 The Court is now in recess.

15 (Court recesses from 1019H to 1048H)

16 MR. PRESIDENT:

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

18 The Chamber wishes to inform the parties that the request by
19 Khieu Samphan defence team is granted, and the schedule to hear

20 2-TCW-953 -- is there any issue with the interpretation system?

21 Court officers, please work with the technical staff to deal with
22 the issue.

23 (Short pause)

24 [10.49.50]

25 MR. PRESIDENT:

1 The Court is now back in session.

2 The Chamber wishes to inform concerned parties that the request
3 of the defence team for Mr. Khieu Samphan is granted. The request
4 concerned the change of the schedule to hear 2-TCW-953 until
5 after the Water Festival.

6 And this decision of the schedule change will be informed via
7 email of the senior legal officer.

8 Although there is change in the schedule, we will then start to
9 hear <the testimony of> the civil party, and all parties will
10 receive an email from the senior legal officer for further
11 information.

12 Now it is the floor for the responses in relation to submission
13 made by Khieu Samphan.

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

15 [10.51.13]

16 MR. LYSAK:

17 Thank you, Mr. President.

18 Another group of documents that were presented by the Khieu
19 Samphan Defence were some diplomatic cables, documents that
20 originated from diplomats or foreign analysts from other
21 countries.

22 One of them is document E3/9723, E3/9723. This was a memorandum
23 written by an official from the Australian Embassy in August
24 1975. And my general observation on these is that one needs to be
25 careful what one is reading here.

1 In other instances in these diplomatic documents, documents from
2 other countries, sometimes there are factual reports of
3 conversations that took place or letters that were received, but
4 in other cases, and here is an example, we're really often
5 reading rather speculative analysis from people who aren't too
6 close to the factual situation that was not very well understood.

7 [10.52.41]

8 And that's clear in E3/9723 on its face. If you look at the first
9 page, paragraph 7, they're reporting on some comments received
10 from various embassies. And paragraph 7, let me just read, starts
11 by saying:

12 "The Romanian chargé has an alternative purely conjectural theory
13 to explain the islands incident."

14 This -- end of quote.

15 This is a document discussing the conflict in the islands.

16 So this is an observation that one has to look and be careful
17 where we're using documents that really are rather speculative,
18 sometimes uniformed, pieces of work.

19 Slightly different document, but with -- that does have some of
20 the same problem, E3/882, E3/882 that was presented by the Khieu
21 Samphan Defence.

22 [10.53.49]

23 This is actually a telegram that comes from Democratic
24 Kampuchea's Ambassador to Vietnam, so he's obviously a person
25 that does have firsthand information on the relations and

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1 communications between the two countries, but this document was
2 presented by the Defence to support the notion that the foreign
3 community viewed the Vietnamese as deceptive.

4 And when you look at this part of the telegram, you're either (a)
5 getting the opinion of this Ambassador who's writing to his
6 superiors back in Phnom Penh or if he's passing on -- in some
7 cases, if you look towards the end, he calls it - he actually
8 titles it "Foreign opinions in Hanoi".

9 And this reads more like gossip amongst the diplomatic circuit in
10 Hanoi from people who were not privy to the actual facts of what
11 was going on between these two countries.

12 [10.55.02]

13 So, it is a word of caution about the probative value of some of
14 the statements in these diplomatic documents. And I would also
15 note, as was the case with Ya, Khieu Samphan's counsel described
16 this as a rather brilliant analysis by the DK Ambassador to
17 Vietnam. The CPK leaders at home did not seem to share or
18 appreciate Chhean's work and analysis as much as Khieu Samphan's
19 counsel because, once again, when diplomat -- diplomatic
20 relations ended and Chhean was recalled to Cambodia, within a few
21 months he was sent to S-21.

22 This is OCIJ number 12927, OCIJ S-21 list number 12927. You'll
23 find Sok Kheang, alias Chhean, the DK Ambassador to Hanoi. He was
24 kept alive until the very end and was still being interrogated by
25 Tuy, who was the interrogator used for the harshest interrogation

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1 as of December, nine months after his arrival.

2 You'll find that in E3/1651. So that is the fate of the author of
3 this document.

4 Last two documents I want to comment on, Your Honours, are a
5 couple of documents, meeting minutes that the Khieu Samphan team
6 presented to suggest there was a benign or peaceful intent of
7 Democratic Kampuchea towards Vietnam. They cited a -- the minutes
8 of the Minister of Councils' meeting, the second meeting of the
9 Minister of Councils of Democratic Kampuchea on the 31st of May
10 1976, document E3/794, E3/794, as evidencing a peaceful intent
11 towards Vietnam.

12 [10.57.34]

13 And I simply would draw your attention to the paragraph that
14 follows. The first section of these minutes are about national
15 defence matters, and immediately -- on the second page,
16 immediately following a discussion of the eastern border, there's
17 a paragraph in which Vietnam is not referred to by its name, but
18 no less than 11 times in this one paragraph, every time Vietnam
19 is mentioned, they are described as "the contemptible".

20 As, Yours Honours, well know, you understand the meaning of this
21 word. This is not a word you want to hear before your name, and
22 it certainly does not suggest a peaceful view towards the
23 Vietnamese.

24 And the same is also true with the September 1976 minutes of the
25 meeting between Son Sen and the division secretaries or -- let me

1 correct that. This was a meeting between Son Sen and the Division
2 920 leaders, document E3/799, E3/799.

3 [10.59.00]

4 And again, it was presented to show that Democratic Kampuchea had
5 a peaceful view and wanted -- it did not want to engage in
6 conflict. And I simply want to draw your attention to the fact
7 that it's rather remarkable this was put forward for this reason
8 because, as I mentioned in my presentation, this document
9 contains a statement by Son Sen made to his division commanders
10 at 920 about the Vietnamese. There's no way to sugar coat this.
11 This is a racist statement.

12 And I'm referring here to the statement. It immediately precedes
13 what the Defence described as peaceful instructions to Vietnam,
14 to -- peaceful instructions to Division 920. And Son Sen says:
15 "The Vietnamese people have no work. Prostitutes abound. They
16 have no money. They go around begging for money. They fight
17 amongst themselves." End of quote.

18 [11.00.21]

19 I'm not -- don't need to use many analogies, but you can think of
20 your home countries. If you said something about -- like this
21 about an entire group of people, you would rightfully be labelled
22 the bigot. So it's rather remarkable that this is put forward as
23 a good document helpful to the Defence when Son Sen is putting --
24 is on record here as showing what cannot be described in any
25 other terms other than a racist view towards the Vietnamese

1 people.

2 I will end my responses here. Thank you for the time, Mr.

3 President.

4 MR. PRESIDENT:

5 Thank you.

6 And the Chamber now hands the floor to the defence team for Khieu

7 Samphan to make your observation to respond to the key document

8 presentation made by the Co-Prosecutor as well as the

9 Co-Prosecutor's response.

10 [11.01.37]

11 MS. GUISSÉ:

12 Thank you, Mr. President.

13 The gist of my observations today will be revisiting certain

14 documents that were used by the Prosecution in its presentation

15 of the key documents with, of course, still, as it's often the

16 case in this kind of hearing, quotes from segments that seem

17 relevant to me in these documents and that I should bring to your

18 attention.

19 And this will allow me to react to the last remarks of the

20 Prosecutor on the issue of using documents from the period,

21 whether they be diplomatic documents or when we use excerpts of

22 works from authors who spoke to the different <stakeholders> or

23 the different diplomats at that period. It is therefore, indeed,

24 very important to be very careful and to know what the source of

25 the information is, and on what we base ourselves, on or on what

1 the speakers base themselves, or what their reasons are for
2 conveying that information.

3 So when we use documents regarding what is said in diplomatic
4 circles, and I I believe I said this when I brought up my
5 documents last Thursday. The issue is not only what's happening
6 on the field, but what is said about what's happening on the
7 field. And we learn a lot <from> what is being said and what
8 language <of communication stakeholders> use to describe that
9 <topic>.

10 [11.03.16]

11 And it's important to <put this in perspective.>

12 And this is my first observation in relation to the documents
13 that were presented by the Prosecution, in particular the works
14 of Nayan Chanda, of Stephen Morris, of Ben Kiernan. As we saw in
15 the testimony of <expert witness> Stephen Morris, most of these
16 sources are diplomatic sources from the Soviet archives <or> the
17 information that is provided is information that is provided by
18 Vietnam. So it might be a bit naive to not really understand what
19 <realpolitik> is about, and to imagine that diplomats do not
20 provide information that serves their interests<, whatever they
21 may be>.

22 [11.04.05]

23 So in order to be clear, and I think this was also said last
24 Thursday when we <spoke> about each side's position, it's
25 important to confront these positions but, of course, the truth

1 is somewhere in the middle.

2 Nayan Chanda used, therefore, book E3/2376, and I'm not going to
3 get back on the totality of the passages that were presented by
4 the Prosecution, but here, once again, most of the archives from
5 Vietnam, and this is the case with Stephen Morris as well, and
6 the case with Ben Kiernan as well, as well as they use as few
7 archives of DK, but what's interesting is that there are not many
8 books about the armed conflict <with significant> use of
9 documents <from the DK era>.

10 <We stress that when> these books were written at a time when
11 these archives were not available, but <also> -- and this is
12 maybe one of the issues <before this Chamber --> we <also> do not
13 have an unlimited number of archives other than the diplomatic
14 sources from Vietnam, or then the official statements. But
15 anything that's, say, dealing with telegrams or the orders that
16 were given at the military level, we don't have much of <that
17 from Vietnam>.

18 [11.05.37]

19 And this is a real issue if we want to have a clear vision of
20 what the conflict was and of the orders that <may have been>
21 issued.

22 And another general comment as you understood regarding the
23 <latest> objections we made recently, of course, we would like to
24 remind you that everything that happened in Vietnam during the
25 armed conflict is not <the facts> -- I'm speaking here about the

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1 specific <facts, for example when someone says: "At>
2 such-and-such a village, this happened, and this happened".
3 <These> events are not part of the Closing Order, and the accused
4 are not being charged for events that happened there. And the way
5 that the Prosecution is basing itself heavily on quotations from
6 many books such as Nayan Chanda and Ben Kiernan, <etcetera,>
7 well, the <majority of their> sources<, even on these events -
8 which again, I underscore,> do not fall within the scope of this
9 trial. And in any case, we have one single source here, which is
10 Vietnam. So when the Co-Prosecutor says that it's a diplomatic
11 source that is telling us that Vietnam was sometimes a bit
12 devious <or shifty> in the information it provided and in its
13 communication to the outside, <that is> not <the only source we
14 had on this. We> also obtained <this confirmation> from <expert
15 witness> Stephen Morris when he testified.

16 [11.07.10]

17 So generally speaking, when we are dealing with the international
18 relations, and in particular in the case of armed conflict,
19 realpolitik explains that people do, indeed, communicate to serve
20 their interests.

21 So this reminds me of a proverb that I like very much, which
22 states that as long as the lions would not have historians, the
23 history of hunting will always glorify the hunters.

24 So, in the case of the armed conflict and of the elements that we
25 have available to us, aside from certain telegrams and from DK,

1 which I'll get back to, but it's true here that, essentially, we
2 only have the version of the <events as they was distilled by the
3 Vietnamese>. Whether it be the version that was given to the
4 authors or whether it be the <documents> that the Vietnamese
5 <wanted to share. And there isn't much.>

6 [11.08.09]

7 And another point, and this is a document <on> which the
8 Prosecution <dwelled on at> length in presenting <these
9 documents>, the excerpts of the book by Mr. Khieu Samphan, E3/18,
10 "The History of Cambodia" -- "The Recent History of Cambodia".
11 Here, once again, I'd like to refer you to the numerous
12 observations that I already made on the issue, that is to say,
13 that it's <always> very complex to come explain that this is the
14 position of Khieu Samphan, whereas references are only being
15 quoted in other authors' books and not necessarily with a
16 critical point of view. But it's interesting to note that when we
17 spoke about -- when this book <mentions> what happened<, and
18 includes irrefutable evidence of what happened in Vietnam,> the
19 source is Nayan Chanda, <who> we also find as a source with many
20 <other> authors.

21 So this is, indeed, the snake biting its tail. If <there is
22 evidence, it is because we are citing a document which itself
23 cites Vietnamese sources,> it's always a round-about situation
24 and it's always difficult to <think> that we have an objective
25 vision of the events.

1 [11.09.36]

2 But since we quoted an excerpt from Mr. Khieu Samphan's book, I'd
3 like to return to what follows the excerpt that was used by the
4 Prosecution, document E3/18. And apparently the proverb that I
5 mentioned was not translated into Khmer, so I will repeat this
6 proverb. As long as the lions <do> not have historians, stories
7 of hunting will always glorify the hunters. So, popular wisdom is
8 always interesting to look at, isn't it?

9 So the document -- the excerpt that I'd like to quote following
10 the part that was quoted by the Prosecution in document E3/18, is
11 at ERN French, 00595447; English, 00103760; and Khmer, ERN
12 00103849 on to the following page.

13 So the last paragraph quoted by the Prosecution was an interview
14 with Khieu Samphan in the 1990s: "Contrary to my previous
15 perception, is it, rather, the Khmer Rouge who, without assessing
16 their own abilities, launched a policy of military attacks
17 against Vietnam<, which> was much more powerful?

18 [11.11.23]

19 And he continues:

20 "Of course, <back then> I <could only follow the developments of
21 military conflicts through reports from leading cadres in the
22 army and major border zones, at major meetings of the CPK
23 Standing Committee, and through> my conversations with them. But
24 I was convinced back then that the incursions that were <taking
25 place> were a response to the Vietnamese incursions. As far as I

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1 know, <though> the leaders of the CPK were determined to assert
2 their sovereign right over our entire national territory, they
3 were too aware of their material weaknesses to engage themselves
4 in a hostile policy towards Vietnam, which was much more
5 powerful." End of quote.

6 [11.12.26]

7 So the question is not if we're dealing here with <an angelic> DK
8 or <an angelic> Vietnam. The question is, do the acts <at any
9 point> correspond to <a geopolitical situation, a domestic
10 political situation, and> a power <relationship> that <makes>
11 people make <this or that> decision.

12 <And once again, no one is an angel here.> <Realpolitik is that,>
13 and -- <I think that> if we study all of conflicts in human
14 history <worldwide>, we can find similar instances of <this;> why
15 do we make agreements <at certain points in time, why do we break
16 agreements at other times?> Everything is <also> based on
17 national interests.

18 Now I would like to move on to a certain number of telegrams that
19 were quoted by the Prosecution and to return to points that were
20 not mentioned, apparently. And I am thinking in particular about
21 a first telegram, E3/1150, dated 11 November 1975.

22 So it's a telegram that was addressed to Ya, and the parts that
23 were mentioned by the Prosecution do not include paragraphs 5 and
24 6 of this document, French, ERN 00532738; Khmer, 00021445;
25 English, 00539054.

45

1 [11.14.07]

2 And it's important to see what's said here at the political
3 level, <so> point 5:

4 "At the political level, we are asking you where are their
5 leaders?"

6 And here, in parentheses, they're speaking about the armed forces
7 with which there were problems, Vietnamese, essentially. So,

8 "Where are their leaders and how could we meet them?"

9 Previously, was there any way for us to come into contact with
10 them? If it <is> possible to contact them quickly, please contact
11 them, Comrade Ya. And based on our assessment, they must be far
12 away, maybe <even> at the seaside."

13 And they spoke about this just to <buy> time and to draw up a
14 report.

15 [11.15.07]

16 Paragraph 6:

17 "As a summary, our visions are:

18 (a) prepare the military forces by taking the most important
19 military forces that are located in the bases, that is, the
20 zone<, sector,> and district forces. Regarding the upstream
21 forces, we will need more time;

22 (b) have in hand more specifically the situation of the enemies;

23 (c) examine the possibility of contacting the leaders of the
24 enemies in view of political negotiations."

25 So another document. It's a telegram, E3/893, French, ERN

1 00386272; Khmer, 00000708; English, 00182620. And the Prosecution
2 mentioned point 3 of this telegram, and I would like to get back
3 to paragraph 2.2, which describes the fact that there was a
4 meeting with the Vietnamese of 24/1 (sic). This was mentioned in
5 paragraph 1.

6 Paragraph 2, it's interesting to note in this paragraph that
7 they're speaking about what was said by the DK side, and the
8 following is said:

9 "During the meeting, they proposed to us to speak first, and I
10 expressed myself according to <Angkar's policy> by insisting on
11 the situation at 010b. After my presentation, they accused us
12 violently of having violated their territory integrity at 10a,
13 10b and 10c."

14 [11.17.04]

15 Then we see extra explanations, and the segment that I'm
16 particularly interested in -- so he's speaking here about the
17 accusations of territory violation on the part of DK. "And their
18 soldiers could not stand this any longer, so we raised the issue
19 by basing ourselves on the map. And he said that:

20 This map was drawn up by imperialists that had drawn this map to
21 generate conflicts between us, and they asked us to leave 010b
22 quickly. After long discussions, he accepted to look at the map,
23 and then we indicated the limits of our territory of and of
24 theirs, at 010b. When he saw that, he calmed down.

25 There were certainly errors in the determination of the

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1 boundaries. He proposed that we examine the boundaries again, and
2 the margin of error is tiny because their artillery is very, very
3 precise. And we answered that we <had> not <made> a mistake and
4 because our base <had> always <been> located <here> since the
5 <beginning> of our political resistance," and then <there was a>
6 discussion on the organization of a meeting.

7 [11.18.26]

8 So another point that's interesting here which we find again in
9 document E3/893 points number 5 and 6 where the discussions
10 continue on the maps and on the boundaries that existed back
11 then.

12 Point 5:

13 "He refused to examine the border markers, and we agreed to
14 create a no man's land along the border that could not be
15 violated. At the same time, they decided to determine the border
16 lines in a temporary way according to the border watch towers.
17 And we waited for a decision from the Central Committee in order
18 to avoid conflict."

19 Point 6:

20 "<During the> discussion he was aggressive, but we remained calm
21 and we replied and took the upper hand thanks to the evidence
22 provided in the map. And we managed to keep the spirit of
23 solidarity, and we believed that we won the first battle in an
24 honourable way."

25 [11.19.35]

1 And this is a telegram signed by <But.>

2 So it's interesting to note that they was tension on both sides
3 but that, in any case, at that date it is clear that it is
4 negotiation on the basis of existing maps was really the central
5 point.

6 Another document that was used is document E3/218, which is the
7 minutes of the Standing Committee of 26 March 1976. And a certain
8 number of segments were used and mentioned by the Prosecution,
9 but they omitted -- because it's -- these are minutes that
10 describe the result of negotiations. And in the presentation of
11 the Prosecution, they essentially focused on what the position
12 was of the Vietnamese as related by the person drawing up these
13 minutes, Ya.

14 However, what's interesting is that in this very same document,
15 we also see elements and complaints from DK which follow or even
16 sometimes precede the complaints coming from Vietnam.

17 And I'd like to refer you specifically to document E3/218 at
18 French, ERN 00334969; English, 00182653; Khmer, 00000753 on to
19 the following page as well.

20 [11.21.26]

21 And this is what Ya says to the Vietnamese based on these
22 minutes, describing the problems on the DK side:

23 "Super Comrade Ya raised the events since liberation, in
24 particular, the concrete invasion instances in both places with
25 dates <and> evidence. Super Comrade Ya then specified that the

1 Vietnamese super comrades keep on speaking about solidarity, but
2 <you> keep on threatening Cambodia<, specifically> by ordering
3 planes to shoot at us along the border in Mondolkiri at Au Dak
4 Dang and Dak Hup, and order the artillery to constantly shell us,
5 so what does solidarity mean in this case?"

6 [11.22.21]

7 And as an answer on the Vietnamese side, Tu Cam criticized his
8 colleagues <for having acted so foolishly>. Lieu Giang said that
9 the planes belong to the regional forces<, and are intended to
10 use in operations against FULRO." End of the first quote.>

11 So what's interesting is that we understand that in the critiques
12 that were made in March 1976 here, <there is aircraft shelling>
13 along the Mondolkiri border and artillery shelling coming from
14 Vietnam, and that, apparently on the Vietnamese side, they
15 acknowledged that mistakes were made.

16 Now, on the same page at sub-paragraph (c), the resulting
17 sub-proposals from this discussion during that meeting, "We
18 proposed to them" -- the French translation is <very bad>, but:
19 "We proposed <withdrawing> from Muy village and from Au Vay
20 <(phonetic)> and from Trongaol mountain. We specified that this
21 is our main wish and we very much desired solidarity, but in
22 order to have solidarity, it's necessary for the Vietnamese super
23 comrades to respect Cambodia's national sovereignty. Up until
24 here, we made many, many concessions. If the super comrades keep
25 on violating Cambodian territory, solidarity cannot work."

1 [11.23.55]

2 Another segment that's interesting to look at in relation to the
3 Vietnamese activities back then, that is to say, March 1976,
4 French, ERN 00334971; English, 00182657; Khmer, 00000757. And the
5 Prosecution quoted in part sub-paragraph 3 on this page, that is
6 to say, the Vietnamese activities in other places, but this is
7 what appears before the Party recommends the usage of mines.

8 This is what is said before the page that was quoted by the
9 Prosecution, and I quote:

10 "When we were negotiating in the northeast, in other places, the
11 Vietnamese carried out operations without stop as follows. In the
12 east, at around Chbot <(phonetic)> in Snuol district, they build
13 roads over our territory through Barang Chas road and they
14 entered five kilometres inside our territory."

15 Then we see the segment that was quoted by the Prosecution, "The
16 Party recommended using mines", etc., etc. And another segment
17 that was not quoted in another place:

18 "<In another place on> the Svay Rieng border, they came to plant
19 more than 200 <bamboo> spikes more than one kilometre inside of
20 our territory."

21 [11.25.42]

22 So here again, it is interesting to see that when we speak about
23 one incident, they are, of course, the premises to this incident.
24 Another telegram that I would like to use and that was quoted by
25 the Prosecution, E3/1020, French, ERN 00711511; Khmer, 00021462;

1 English, 00305246.

2 So in this telegram, the Prosecution mentioned point 3 of the
3 telegram that relates to requests for ammunition, but the
4 Prosecution did not quote the first paragraph, which I'm going to
5 read out to you now. So it's a telegram that was sent to Brother
6 89 by Chhin.

7 [11.26.46]

8 "And I would like to explain the situation as follows: On 16
9 February 1976, at 10.30 in the morning, Group 7 set up about 55
10 soldiers that were <armed to the teeth, like us, with equipment
11 such as> mats <and pillows> in O Dam Bay (phonetic), <and in
12 another illegible place, and in the part going from Daem Thnal
13 (phonetic) to Pou Eou (phonetic).> They were led by six
14 commanders, that is to say, A Hoeung, A Thoeung and others <whom>
15 we do not know.

16 From 15 to 21 February, we vainly <and incessantly> tried to wage
17 a political struggle and now we have organized a plan to attack
18 them directly." End of quote.

19 So here, it's interesting to see that before noting that
20 resorting to force, there had been a "political struggle"<, as
21 they described the negotiations, that took place> between 15 and
22 21 February.

23 Another document, a telegram of 29 February 1976, E3/8373, and
24 this is point 1 in all languages. The first part was quoted by
25 the Prosecution, and here, again, what is described is the arming

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1 of other side, and the fact that the enemies were smashed thanks
2 to <hand> grenades, but then this is what's said afterwards:
3 "Up until now, we waged a political struggle, but they did not
4 accept to retreat. On 25 February, we organized our forces and
5 attacked them during one day and one night. Despite everything,
6 they still did not withdraw."

7 [11.28.47]

8 Paragraph 2:

9 "On 20 February 1976, we operated along our border north of <Au>
10 (phonetic) from <Kon> Rok (<phonetic>). <In Pou Trak (phonetic)>
11 Team 7 surrounded us, but we managed to escape. And at 11.30, we
12 opened fire. Team 7 returned to its territory." End of quote.

13 So here again, we're dealing with elements that demonstrate that
14 there were skirmishes and fights following the entry of the
15 Vietnamese into Cambodian territory and despite attempts at
16 negotiation.

17 Mr. President, I see that it's 11.30, so if you want us to take
18 the break now for lunch, I can stop now.

19 MR. PRESIDENT:

20 How much time do you need?

21 [11.29.47]

22 MS. GUISSSE:

23 I thought I could go faster, but since I only started at 11.00, I
24 think I will need the full session that as scheduled at the
25 start, so I will need another 30 minutes, I believe. Yes.

53

1 I believe that we were given a session, yes.

2 MR. PRESIDENT:

3 Thank you.

4 It is now convenient time for our lunch break. We'll take a break
5 now and resume at 1.30 this afternoon to continue our
6 proceedings.

7 Security personnel, you are instructed to take Khieu Samphan to
8 the waiting room downstairs and have him returned to attend the
9 proceedings this afternoon before 1.30.

10 The Court stands in recess.

11 (Court recesses from 1130H to 1331H)

12 MR. PRESIDENT:

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

14 And the Chamber gives the floor to the defence team for Mr. Khieu
15 Samphan to resume the response.

16 MS. GUISSÉ:

17 Thank you, Mr. President.

18 Another telegram I wanted to mention which was partially referred
19 to by the Prosecution, E3/923; ERN in French, 00623151; in Khmer,
20 00052345; and in English, 00185238. The Prosecution had quoted
21 paragraph 1 of this telegram and I would like to move to
22 paragraph 2.

23 "Later on the 29th of February" -- I'm sorry; let me clarify that
24 this was a telegram of Chhin, on the 3rd of March 1976.

25 [13.32.48]

1 "Later on the 29th of February, the enemies, once again,
2 positioned <themselves> on our territory at the point that was
3 mentioned above. There were about 200 of them. They deployed in
4 combat lines in order to encircle on O Ang Kril Mountain
5 (phonetic). They had arms such as <AK-47s>, B41s, DK75s,
6 Koronobs, and they were using loudspeakers just across from us,
7 <calling> things to us such as that Vietnam and Cambodia were in
8 solidarity. Sometimes, they spoke in Vietnamese, sometimes in
9 Cambodian, and now they were saying <that Cambodia previously did
10 not invade other countries, but now Cambodia has invaded Hanoi,
11 which> will disrupt our solidarity." <End of quote.>

12 So it's of interest to note that everything is focused on the
13 territory there, from one place to another.

14 And we also see that the issue of Vietnamese propaganda is not
15 only taking place in diplomatic circles, but also in the field;
16 this issue of addressing the population either in pamphlets, as
17 we saw in other documents, or <via> loudspeakers.

18 The document E3/805, which was also cited by the Prosecution in
19 <point> 4, also talks about boundary markers and the fact that
20 Vietnamese troops were moving the border markers within the
21 territory.

22 [13.34.46]

23 Another document, which was an article from the "Bangkok Post,"
24 E3/143, and I would like to quote from -- we only have this
25 English ERN which is 00168726. And it talks about what we were

1 able to also see in a document that was referred to previously,
2 where Ya had reproaches against the Vietnamese. This was 2
3 September 1977, when this "Bangkok Post" came out, making
4 references to over flights and strikes by the Vietnamese and I
5 will quote in English.

6 "In the following months, the Vietnamese increased their
7 reconnaissance intrusions into Cambodia. These were supplemented
8 by occasional air strikes, helicopter gunships, U17s, and
9 sometimes, jets. There has been no attempt at interception by the
10 Cambodian air force. A modest assortment of ancient
11 American-built T28s, and T14 and U24 spotter planes based mainly
12 in Phnom Penh and Battambang." End of quote.

13 [13.36.40]

14 This is yet another point regarding the disparity in aerial
15 forces and the fact that the Cambodian air forces were a bit
16 outdated and could, therefore, not <compare to> the Vietnamese
17 forces.

18 Another document, this one from the 15th of June 1977, E3/878;
19 this is a telegram from Chhean, sent on the 15th of June 1977.
20 The last paragraphs of this telegram are of interest because
21 we're still talking about the issues of airplanes and the
22 reproaches against Vietnam made by Democratic Kampuchea. So <in
23 this document Chhean presents> a bit of a summary of the
24 discussions they had with <a> Vietnamese delegation. So once
25 again, we have a citation of what the Vietnamese delegation said

1 and I -- because that's what the Prosecution's noted and I will
2 here read out Chhean's response and this is what he says -- the
3 ERN in French is 00611723; in English, 00182770; in Khmer, the
4 ERN is 00001265. So responding to this complaint by Vietnam, this
5 is what he said.

6 "We never had the idea or the wish to invade any country, when
7 we're talking about invasions. <But> all of the others <were
8 determined to defend their own independence, their sovereignty,
9 and territorial integrity, at any cost. As far as the bombings
10 that your army, Comrade, launched in order to murder our
11 population in Kampuchea, which was launching a rice growing
12 offensive, I do not think that this is something easy to forget.>
13 This is the only example I would like to give you, Comrade. Each
14 time I <talked> about the planes in question, he turned the
15 conversation away towards another topic." End quote.

16 [13.39.20]

17 So here, it's a great interest and it <reflects> the article that
18 I just referred to where they said there were airstrikes, so
19 Chhean is reproaching the airstrikes <on the people who were
20 working the fields>.

21 Document E3/981; this is another telegram, and the reason this
22 one is of interest is that it talks about the discussions with
23 the deputy director of the Asia II department and the questions
24 that came up in the context of the conflict with Vietnam.

25 And what's also of interest is that in paragraph 2 at ERN in

1 French, 00623824; in English, the ERN is 00314586, I believe; and
2 in Khmer the ERN is, 00002824 continuing on to the next page.

3 [13.40.50]

4 So we're talking about discussions here and what's of interest is
5 that the treaty between Vietnam and Germany from <December 4>
6 1977 says that, "There are nine new articles and we've tried to
7 summarize <the five> that are most relevant in this treaty." End
8 quote.

9 I'm quoting this passage because it's quite interesting to
10 <compare it to> the <analyses by> East German diplomats that I
11 had mentioned in the presentation of our key documents because it
12 explains the diplomatic positions that <were> later taken
13 regarding the refusal to receive messages from DK.

14 Something else I would like to mention for E3/8369, which was a
15 telegram of October 26, 1977; I don't know what the problem at
16 the root of this challenge was, but the Prosecution quoted
17 paragraphs from this telegram, so in English, at ERN 00182815
18 continuing on to the next page. <However, in> the Khmer version
19 that we have, this portion that was quoted in English does not
20 appear and it does not appear in the French translation either.

21 So in Khmer, 00003182; and in French, 00343397; and what that
22 means is the entire English paragraph <starts with> "At the
23 <first> and <second points>", and then it continues to the end
24 with the mention of an attack at Troeung (phonetic). That section
25 does not appear in the original Khmer that we have in the file,

1 so that is something to be looked at.

2 [13.43.24]

3 And then in the same document in French, 00343397; and the Khmer,
4 which I have already said; and the English is also the same;

5 there's also a reference that is of interest. The third <sector>

6 -- we're talking about the Prosecution having cited what happened

7 in <Sector> 1 in the key documents and in the third <sector>,

8 it's mentioned here, "We attacked villages in Trapeang Ampil and

9 Prek Pork (phonetic). We pushed them back to the border. We <set

10 ourselves up on the> former lines of combat at Prek Pork

11 (phonetic) and we also <totally> liberated the <Prek Pork

12 (phonetic)."

 End quote.

13 That's also interesting because here, once again, we see that the

14 attacks were meant to push back the troops that were in DK

15 territory.

16 Another interesting passage, E3/8372; these were telegrams sent

17 by Chhon, alias So Phim, E3/8372; in French, 00291043; in

18 English, 00183632; and in Khmer, 00020917. The Prosecution

19 partially cited the first lines of this telegram, then moving to

20 the second paragraph.

21 [13.45.10]

22 I would like to quote everything that follows in paragraph 1

23 where Chhon -- So Phim explains, and I quote:

24 "In the Da (phonetic) village, the enemies attacked us with much

25 force cutting off our combat lines. Then the enemies shot into

1 <the crowd near the houses,> killing <several residents and
2 several oxen> and water buffalo. Now, <the enemies are in the
3 village of Da (phonetic),> in Phlak Samrong (phonetic)<, in the
4 village of Rong Ko (phonetic) on <National> Route <7>."

5 That's a telegram of 22 December 1977.

6 Another situation to be raised that's of interest is E3/243; <ERN
7 in French> 00548911; in English, 00532795; and in Khmer, 00020938
8 continuing on to the next page.

9 [13.46.26]

10 The Prosecution had noted what was happening in Sector 24. It
11 would be interesting to see what was happening on Route 22 in
12 <section> two and <on> Route 23 in <section> three.

13 The situation on Route 22 in 1978: "On the 19th of January, in
14 the morning, we fully liberated the village of Khuoch and half of
15 the Prey Sala village. We recuperated a certain number of
16 weapons."

17 And the situation in Zone 23, so <part> 2 of this paragraph 3,
18 they talk about "shelling into our territory".

19 So here, again, when they talk about the various zones, we do see
20 that <yes,> in January 1978; the Vietnamese troops were coming
21 into the DK territory regularly.

22 Another document of 1978; now, this one a telegram from the 8th
23 of April 1978, E3/1076. The Prosecution quoted the second part of
24 the first paragraph of this telegram, but the first part allows
25 us to put things in context. In fact, in the second part, which

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1 was quoted by the Prosecution, we're talking about attacks on
2 Dong Thap by Cambodian troops, but the beginning of this
3 paragraph says the following.

4 [13.48.14]

5 "We succeeded in completely pushing back the enemies who had
6 entered by force into Trapeang Sach (phonetic) in Baray in Sector
7 24. Their five tanks were affected. They were hit and then they
8 were set on fire by our shots." And then it continues with what
9 the Prosecution cited.

10 So it's important to see the chronology of events.

11 Another excerpt or another mention -- and this is an example of
12 the propaganda that we see in the press that I've mentioned
13 before, the Prosecution quoted an excerpt from E3/1269, in which
14 we note words which are attributed to five Khmer Rouge soldiers,
15 in ERN S00009871 in English and in French, 00305273. There is no
16 Khmer ERN.

17 And we realize that these are elements that have been provided by
18 VNA, which is a Vietnamese agency. So once again, that's of great
19 importance in this period<, of what I refer to as a> media war
20 being waged by the Democratic Kampuchea side as well as the
21 Vietnamese side<, and the war was also being waged by intruding
22 media, and they said that they wanted the people to hear them.>

23 [13.50.08]

24 Another document, E3/791, which was quoted by the Prosecution,
25 and the interest of this document, which was, again, partially

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1 quoted by the Prosecution and I would like to note that it is
2 called "The Point of View of the Current Situation of the
3 Kampuchea Revolution". The Prosecution quoted several parts of
4 this document speaking of the various attacks, carried out by
5 Democratic Kampuchea.

6 Another interesting passage needs to be quoted; in French,
7 00747882; in Khmer, 00079295; and in English, 00721426 continuing
8 on to the next page. Of interest here is the fact that <they cite
9 a sort of - it is a short history of the fighting between - from
10 November to December 1977 - it is at B-1:> "<From the end of 1977
11 to now, the situation has been the following:> From November to
12 December 1977, enemies have attacked us forcefully <with support
13 from their elements belonging to> Division 14 <(sic)>, even <if a
14 Vietnamese battalion only has> little more than 200 soldiers."

15 [13.51.52]

16 <But the elements from the 14 divisions represent a figure - that
17 was significant. In their army,> 4 battalions form a regiment<,
18 infantry, artillery,> and 12 battalions form a brigade, and <36
19 to 40> <battalions form a division. So 14 divisions is a huge
20 number. The enemies attacked us all over the country, from the
21 border area.> They formed a dragon's tail formation from
22 Ratanakiri until Ha Tien. They <mostly> attacked <the plains in
23 the east and> southwest and the mountainous areas attacked were
24 secondary and they, therefore, undertook strong offensives
25 against us."

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

1 Another point brought up at 00747883 in French; in Khmer,
2 00079296; and in English, 00721427, "On the East Zone front,
3 their troops from one division were positioned at Memot and we
4 are currently fighting back fiercely."

5 This excerpt is found between two excerpts that are quoted by the
6 Prosecution and, once again, to talk about an attack by
7 Democratic Kampuchea without talking about the general situation
8 doesn't give us a full picture and doesn't allow us to understand
9 why the attacks took place.

10 And next, there were several telegrams quoted and including by Ke
11 Pauk. I will be talking about all of them, but I'll take two as
12 example.

13 [13.53.56]

14 There were about a dozen documents quoted by the Prosecution, but
15 which were not on their list that they sent; not when they first
16 sent it, nor on their revised list. E3/890 is among these
17 documents. In French, the ERN is <00386264>; in English, 00386264
18 (sic); and in Khmer, 00020874. One example -- and I quote and
19 this is the 28th of October, '77 or '78, I'll find it :

20 "At 4 o'clock in the morning on the <25th> of October -- in the
21 morning of the 26th of October, the Vietnamese attacked three
22 <areas>; the Old Market of <Me Sathngak (phonetic),> the village
23 <of Tadev (phonetic),> Koh Kaban (phonetic), and Chek (phonetic)
24 village. These enemies attacked up to the Old Market of Me
25 <Sathngak> (phonetic). We have organized forces and immediately

1 responded in a forceful way until <11:00 on> 26th of October. We
2 successfully smashed the enemies. The enemies were killed and
3 wounded, in <numbers greater than> one section. Those that
4 survived took the dead and wounded and <they all> returned to
5 their territory." End quote.

6 [13.55.45]

7 So there was -- again, it's of interest to note that the fighting
8 took place on DK territory and it was in order to eject them from
9 this territory that that fight took place. Document E3/853a, in
10 all languages, they talk about rockets being launched <in> DK
11 territory; that's of interest.

12 The Prosecution also noted E3/928<, paragraph one in all
13 languages,> and the Prosecution talked about the number of
14 Vietnamese who were supposedly arrested, but he didn't read the
15 <second> part of <the first> paragraph. The ERN in French is
16 00611668, in Khmer 00017026, and in English 00183357.

17 And after having mentioned the arrests, there's also a mention of
18 five boats from 10 to <37> horsepower, as well as other <weapons,
19 including a M-79, and other material that> was confiscated and
20 each time they were talking about <warfare> equipment.

21 [13.57.28]

22 Another document that was a priori not on the list at the
23 beginning, but was mentioned, E3/932, and this is of interest
24 because in this document; there is a mention that enemies planted
25 mines. Generally speaking, what's of interest here is that among

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1 the documents, and specifically those which came from Ke Pauk;
2 there are many documents that mention combats that took place in
3 the East Zone <in> DK territory explaining each time that the
4 Vietnamese had invaded the territory.

5 Finally, to conclude, I would like to say that the majority of
6 documents that were referred to by the Prosecution can be read in
7 another light. <We're talking about an armed conflict, neither
8 side <behaved like saints,> but simply to present things <as if
9 the aggressors came from just one side - Democratic Kampuchea -
10 is not a reflection of reality.

11 [13.58.52]

12 <And I have to underscore once again that many of the documents
13 that the Prosecution began and finished its intervention with are
14 essentially - or> were essentially written on the basis of
15 Vietnamese sources and not necessarily period documents from
16 Vietnam, which<, unfortunately,> are not always available, <as I
17 stated earlier,> but which also correspond to a story that
18 Vietnam wanted to put out, about what was happening during the
19 armed conflict.

20 So we need to pay attention to the sources that were used and to
21 make sure that we're not only looking at one version.

22 So I'll finish my responses here, Mr. President.

23 MR. PRESIDENT:

24 Thank you. And the hearing on the key document presentations in
25 relations to the nature of armed conflict is now concluded. The

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1 Chamber now proceeds to hear the testimony of witness 2-TCW-1065.
2 Court officer, please usher witness 2-TCW-1065 as well as his
3 duty counsel into the courtroom.

4 [14.00.22]

5 (The witness enters the courtroom)

6 [14.02.09]

7 MR. PRESIDENT:

8 I'd like now to hand the floor to the defence team for Nuon Chea
9 to continue putting further questions to this witness.

10 QUESTIONING BY MR. KOPPE RESUMES:

11 Thank you, Mr. President. Good afternoon, Mr. Witness.

12 Q. Last week, I was asking you questions -- my final questions
13 about a Vietnamese cadre named Hay So -- incorrectly, in the
14 transcript, referred to as Hay Sok. It is H-A-Y S-O -- and your
15 response was that you didn't know this person.

16 [14.02.55]

17 Let me start from there and this time not pronouncing -- trying
18 to pronounce the Vietnamese names, I would like to give you a
19 document with a few -- with a few Vietnamese names on it. I have
20 highlighted them for you and I would like to ask you whether you
21 know these Vietnamese high-ranking cadres.

22 Mr. President, I'll be referring to document E3/1262; English,
23 ERN 00079723; Khmer, 00224494; and French, 00076147; and this is
24 the -- the document that I would like to show to the witness with
25 your leave.

1 MR. PRESIDENT:

2 Yes, you may proceed.

3 (Short pause)

4 [14.04.34]

5 BY MR. KOPPE:

6 Q. Mr. Witness, as the first name on that page, you'll find Hay

7 So, H-A-Y S-O. The second name, please look at his pseudonym, Ba

8 Hai; is that a Vietnamese name that somehow rings a bell, B-A and

9 then H-A-I?

10 2-TCW-1065:

11 A. Regarding the first and second named, both of them do not

12 sound familiar to me.

13 [14.05.34]

14 Q. The third name; again only the alias, Tu Cam, T-U and then

15 C-A-M, does that -- does that name sound familiar?

16 A. As for the third name, I am also not familiar with it.

17 Q. The fourth and the fifth name; Ba Ha and Bai Mab, are these

18 Vietnamese names or are these names of Vietnamese high-ranking

19 cadres familiar to you or not at all?

20 A. For me, the fourth and the fifth names also do not sound

21 familiar.

22 [14.06.42]

23 Q. No problem, Mr Witness. My next question is following up

24 something you said on the 2nd of November last week. At around

25 15.36 in the afternoon, you talked about someone whose name is

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1 correctly spelled in the Khmer transcript, but incorrectly in the
2 English transcript.

3 In the English transcript, at the bottom of that page, you refer
4 to the deputy chief of district Ponhea Kraek as, in English, Tak
5 Ming So (phonetic), but in fact, you said Ta Tmenh Sar; Ta White
6 Teeth in English, in other words.

7 However Ta Tmenh Sar, in the English translation; it says that he
8 was known as Chea Sim, but I believe in the -- in the Khmer
9 translation, there's something -- it's something else that you
10 said. Can you explain, again, who Ta Tmenh Sar, T-M-E-N-H Sar,
11 S-A-R who that was?

12 A. Ta Tmenh Sar, white-teeth man, was not Chea Sim. He was the
13 chief of Ponhea Kraek <district>. As for Chea Sim; his <previous>
14 name was Chea Salath (phonetic), and Ta Tmenh Sar was the chief
15 while Chea Sim was the deputy.

16 Q. Thank you for clarifying that again. Following up, Mr.
17 Witness, have you ever seen Chea Sim or Ta Tmenh Sar talk to
18 Vietnamese military or Vietnamese cadres in 1977 or 1978?

19 A. I did not see Ta Tmenh Sar or Ta Chea Sim meet with any
20 Vietnamese because they were on the administrative side, while I
21 was on the military side.

22 [14.09.39]

23 Q. Let me ask the question then to final -- to finalize it in a
24 very -- in very -- very general terms; did you ever see, either
25 civilian or military cadres from the CPK or from the East Zone

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1 army talk to Vietnamese communists in 1977 or 1978?

2 A. Personally, I did not. I did not see any of them talking to
3 <the> Vietnamese.

4 Q. Very well. Another follow-up question in regards So Phim, Mr.
5 Witness; last week, you said that I was wrong when I said that So
6 Phim is the same person as the Chhon from the telegrams that were
7 shown to you. Do you know whether So Phim was also known by
8 number? For instance, Son Sen, Brother Khieu was known as Brother
9 89; do you know whether So Phim, himself, also had a number?

10 [14.11.24]

11 A. So Phim was at the zone level, while I was a military person
12 with the division and I did not know whether he had a code name
13 or not. I can only say to what I know.

14 Q. Have you ever heard -- just to double -- to be sure -- to
15 double check -- whether So Phim was also sometimes referred to as
16 Brother 18, 1-8?

17 A. No, I did not hear that.

18 Q. Some more questions about So Phim, Mr. Witness. An English
19 journalist, who was called here in this courtroom to testify as
20 an expert, talked to -- at length about So Phim. In his book,
21 E3/9, he says, on English, page ERN 00396378; French, 00639686;
22 no Khmer; the following about So Phim. It's a difficult word, so
23 I'll -- I'll use it slowly, he says, "So Phim was a
24 quintessential warlord." In other words, he was a -- truly a
25 warlord in the sense that he was truly a very hardcore, military

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1 commander. I'm not sure if -- if that's an appropriate
2 translation of the word "quintessential," but Mr. Witness, is --
3 you -- you knew So Phim well; would you agree with Short --
4 Philip Short that So Phim was a quintessential warlord?

5 A. For a foreign journalist who had that view, that is his
6 business. Personally, <I only know that> he was the chief of the
7 <East> Zone and I could not say whether he was a warlord or not.

8 [14.14.40]

9 Q. Well, I understand, but on the other hand; you were a military
10 person within the East Zone; you were family of So Phim; you
11 spoke to him often; is there anything that you can say about his
12 military capacities?

13 A. I do not know about his capacity. As I said, we <> were at a
14 military site and I did not know about his business at the zone
15 level. I only knew about what happened within the military
16 division since his work at the zone was separate from us.

17 [14.15.39]

18 Q. Very well, let me follow up on this. Last week, at around
19 15.33 in the afternoon, I asked you whether you knew someone
20 named Hem Samin, H-E-M S-A-M-I-N. The draft transcript in Khmer
21 is correct, but in English; it's incorrect. Hem Samin, if I
22 understood your answer correctly, is someone that you didn't know
23 at the time. Hem Samin was also interviewed by Ben Kiernan and
24 Hem Samin is being quoted about So Phim and I would like to read
25 that quote to you and ask your reaction.

1 E3/1593, Mr. President. English, ERN 01150139; Khmer, 00637771;
2 and French, 00639034.

3 Hem Samin talks about the crushing of the Cham rebellion in 1975
4 in the East Zone and this is what Kiernan writes, "Hem Samin, a
5 Hanoi-trained communist, then a political prisoner in the zone
6 blames the zone CPK secretary, So Phim, for the first repression
7 of local Chams. 'It was he who signed the orders for Phuong to
8 kill the Chams in Trea in 1974. He was nasty.'" End of quote.

9 Was So Phim involved, if you know, Mr. Witness, in the crushing
10 of the '74 Cham rebellion?

11 A. No, I don't. As I said, I was with Division 4 and we had
12 nothing to do with the Cham people.

13 Q. Then -- then who was it that crushed the rebellion in '74 and
14 '75; do you know that?

15 A. I also do not know anything about that event in 1975 and I did
16 not know who killed the Cham people. If I know, I would have told
17 you so.

18 [14.19.05]

19 Q. And -- and finally, So Phim being "nasty", is that something
20 that you can react to?

21 A. I do now know how everyone said he was nasty. I met him and
22 during our occasional conversation, he was an ordinary person;
23 however, our conversation did not delve into our work. We spoke
24 as relatives and I did not know whether he was nasty to anyone,
25 although I do not deny this.

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1 Q. Let me ask you about a meeting that So Phim chaired. I'm going
2 to be referring you to a -- a village in, I think, Ponhea Kraek
3 district. I will ask my national colleague to pronounce the name
4 of the village.

5 Mr. President, I'll be referring to E3/1593; that is Kiernan's
6 book; 01150203, English ERN; Khmer, ERN 00637947; and French,
7 00639172.

8 [14.20.52]

9 MR. LIV SOVANNA:

10 Mr. President, allow me to read it; the village name is Pha-Au.

11 BY MR. KOPPE:

12 Q. Do you know that village, Mr. Witness?

13 2-TCW-1065:

14 A. No, I do not know in which commune Pha-Au village is located
15 in probably it was to -- somewhere to the South.

16 Q. Have you ever heard of a secret meeting that So Phim called
17 for in March 1978, two months before -- or three months before he
18 died?

19 A. As I have indicated, regarding the zone's affairs; I did not
20 know much, since I was at the front battlefield and in my
21 capacity, I would not be called to attend such a meeting; only
22 the people at the divisional level would be called to attend
23 those meetings.

24 [14.22.25]

25 Q. Well, apparently there was an eye witness to this meeting; a

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1 woman who was interviewed by Ben Kiernan and this is what Ben
2 Kiernan wrote in his book, "A woman from the Ponhea Kraek
3 district office says that Phim called a secret meeting in Pha-Au
4 village in March 1978. 'I was serving the food for the leading
5 cadres there, but I went in close and heard what was being said.
6 Phim told him -- Phim told them that the situation had now
7 changed considerably and that the comrades should all take an
8 interest. He reminded the regional and district cadres of this
9 standpoint because, at that time, regional, district, and
10 military cadres were being taken away one after another.'" And a
11 bit further, he says, "Everyone should be careful."

12 March '78, two months before you defected, or so you say, Mr.
13 Witness; is that -- is that anything that sounds familiar, a
14 secret meeting in which So Phim tells all kinds of cadres to be
15 careful and that things had changed considerably?

16 [14.24.13]

17 A. No, I did not know anything about that. As I indicated, I only
18 involved myself at the battlefield. So for any meeting that took
19 place at the rear, that's beyond my knowledge.

20 Q. That's fine. I'll move on to another subject and that is in
21 response to what you said about the very important day of the
22 25th of May 1978. You said it was Pol Pot who had staged a coup
23 d'état and there was discussion whether it may -- may have been
24 Son Sen, rather, who staged -- who staged that coup d'état.

25 First of all, isn't it a bit awkward to say that it either was

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1 Pol Pot or Son Sen who staged a coup d'état; wasn't it the case
2 that they were the ones who were in power and if yes, how, in
3 your view, could they have initiated a coup d'état?

4 A. Allow me to describe the matter. I was at the preparatory line
5 at the battlefield. There were foreigners to the front of our
6 battlefield and there were no foreigners at our rear or at our
7 back. We were protecting our border, but the gunfight happened at
8 the rear and that happened at various departments and ministries
9 and that made me reach a conclusion that somebody staged a coup
10 d'état and to me, that was no one besides Pol Pot, while others
11 said it was Son Sen, who was in charge of the military, who
12 staged the coup d'état. But for me, it's not difficult to make my
13 conclusion because they took actions to kill us who defends the
14 border and, for that reason, we had to resist.

15 [14.27.06]

16 Q. Well, the question is, is if it's really your conclusion or
17 whether you are repeating what other people have said. Let me
18 read to you from the interview that Heng Samrin gave to Ben
19 Kiernan, E3/1568--

20 JUDGE FENZ:

21 Shouldn't he first answer your question if this -- if it's his
22 own conclusion or if this is something other people have told
23 him?

24 [14.27.40]

25 BY MR. KOPPE:

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1 That's fair enough. I was -- I was going too fast.

2 Q. Mr. Witness, what you're saying about his coup d'état, is that
3 your own conclusion or is it, rather, something that you heard
4 from others?

5 2-TCW-1065:

6 A. I made my personal conclusion.

7 Q. Do you know whether this was also the conclusion of So Phim
8 and Heng Samrin?

9 A. I cannot make that conclusion regarding the conclusion made by
10 Heng Samrin or So Phim; I only make my personal conclusions that
11 we attacked each other, so it means that somebody from inside
12 <had betrayed us. If they were attacking the enemies, I would not
13 say that they were traitors, but they killed our fella soldiers.
14 How could they call themselves patriots?>

15 Q. Let -- let me move away from the fact that your conclusion is
16 the same as -- or was the same as Heng Samrin and So Phim. Let me
17 move away from this, but ask things differently and let me
18 confront you with the following: Mr. -- Mr. Witness, in your WRI,
19 you spoke to investigators; E3/10668. In question and answer 18,
20 you were asked about Division 4 commander Heng Samrin and you
21 said his first deputy was Kim and his second deputy was Kri and
22 you are corroborated in this by another witness who says the same
23 thing; that is E3/157. So Heng Samrin and then his two deputy
24 secretaries, Kim and Kri.

25 [14.29.58]

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1 Now, let me read to you an excerpt from a dissertation of someone
2 who testified a few weeks ago in this courtroom, Stephen Morris;
3 E3/10699. It's -- there's only English ERN, Mr. President; it's
4 01335197; and this is what he writes and I quote:
5 "According to a major from the national army of Democratic
6 Kampuchea, who had defected to Thailand in September, Heng Samrin
7 had attempted a coup against the government in Phnom Penh the
8 previous April -- April '78; however, the second in command of
9 Heng Samrin's 4th Division, based at Kampong Cham, warned the
10 government and the plot was crushed. Heng Samrin, who was said to
11 have been part of a larger pro-Vietnamese group, within the CPK,
12 fled to Vietnam with some of his troops and weapons." End of
13 quote.

14 [14.31.22]

15 Now, it seems here from this excerpt -- from this piece of
16 evidence -- and there are many more, I can tell you -- that it
17 was, in fact, Heng Samrin and So Phim and others who staged a
18 coup d'état, rather than Pol Pol or Son Sen; can you react to
19 that, please?

20 A. The fact is different from what you said. Heng Samrin, when he
21 was reassigned from the military to the staff office in Prey
22 Veng<. Otherwise>, he would have been dead. If he was to attend
23 the meetings at the division, he would be killed. He was lucky
24 that he was reassigned.

25 I was at the battlefield at National Road Number 7 and if you

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1 said that Heng Samrin took some soldiers to meet with Vietnamese,
2 that is not true; he only tried to flee with a few soldiers <for
3 their own survival. That> was <only> me <who commanded> troop< to
4 mount the> attacks <against> the Khmer Rouge forces. <It was not>
5 Heng Samrin <who> took any forces <> to engage in the
6 negotiation<. In this regards, I deny this statement.> I, myself,
7 was at the battlefield and I knew about it.

8 Q. If Morris is correct or his source is correct, then it was the
9 second in command of Heng Samrin's 4th Division who had warned
10 Pol Pot and others. Have you ever heard whether either Kim or Kri
11 have informed the Centre about any coup d'état plans?

12 [14.33.33]

13 A. Concerning positions and rights, the deputy commanders of a
14 division were not entitled to report to the Centre, but to the
15 zone and the zone was entitled to make the report to the Centre.
16 <This was their confidentiality. In fact,> Kim and Kri<,
17 including people in the companies,> were decided by the Central
18 Zone and then they were killed, so who were the traitors if these
19 people were killed? If these people were killed, I conclude that
20 <the killers were traitors>.

21 Q. Well maybe Heng Samrin knows. Let me -- let me stay with him
22 for a while, Mr. Witness; after all, he was the 4th Division
23 commander and you were a part of Division 4.
24 This is what he said in -- in the interview with Ben Kiernan,
25 again, E3/1568; English, ERN 00651889; Khmer, 00713962; French,

1 00743361.

2 [14.35.12]

3 So he talks, not about 1978, but about 1976 and 1977. He says:

4 "We had a struggle, but a secret one. But at that time, it was

5 tight and cramped. There was no opportunity to rise up and

6 struggle. Even Ta Phim had to struggle. He used to say, 'We will

7 have further bloodshed,' but there was no opportunity. The

8 opportunity for us to struggle came when they saw us change to

9 some extent, so they made a coup first in order to (unclear) us.

10 When they did that, we seized the opportunity to rise up and

11 struggle."

12 Is that something that you heard of or you knew at the time, '76

13 - '77, a secret struggle against the Centre that the East Zone

14 was part of?

15 A. I, myself, did not hear of it. I never witnessed it as well.

16 If I had known, I would have told you.

17 Q. Which brings me to a -- a last, maybe, question before the

18 break, a general question. Is it fair to say, Mr. Witness, that

19 you really didn't know anything about any plans or anything that

20 happened before the 25th of May '78; would that be fair to say?

21 [14.37.29]

22 A. I would like to inform you, Mr. Lawyer, frankly. People were

23 killed. I mean chiefs in the division were killed and I conclude

24 that those who killed these people were traitors<, no one else>.

25 We defended the border. Why we were killed? <>

1 MR. PRESIDENT:

2 Mr. Witness, you have already answered such a question. Please
3 listen carefully to the question and answer fully to the
4 questions and if you do not really understand the question,
5 please ask the questioner to repeat it. Do not repeat your
6 answers. Do not give your answer beyond the limit of the
7 question.

8 Koppe, please repeat your question.

9 [14.38.36]

10 BY MR. KOPPE:

11 I'll -- I'll withdraw the question, Mr --. Mr. Witness. Let --
12 Mr. President, excuse me. Let me just ask some very concrete
13 questions to see what knowledge the witness really has.

14 Q. Mr --. Mr. Witness, again, Heng Samrin -- on English, ERN
15 00651900; Khmer, 00713981; French, 00743376; Heng Samrin talks
16 about the plan to take Ta Phim to the east in order to get him
17 out to Vietnam. Is that something that you were aware of, a week
18 -- the week or 10 days before his death that there was a plan to
19 take So Phim out of Kampuchea to Vietnam?

20 2-TCW-1065:

21 A. I was not aware of it.

22 Q. Were -- were you aware of a meeting on the 27th of May, where
23 many people, apparently, attended, where all kinds of strategic
24 and technical decisions were made; Chea Sim was present; Hem Bou
25 (phonetic) was present; Heng Samkai was not present, the brother

1 of Heng Samrin. A meeting on the 27th of May '78; were you
2 present?

3 A. I was not aware of it and I did not attend that meeting.
4 [14.40.31]

5 Q. And maybe my -- my last question before the break on that same
6 page that I just referred to; Heng Samrin speaks about the --
7 about the amount of troops they had to fight the Centre. He says
8 around 2,000 troops.

9 He says, and I quote:

10 "Over the next months, we fought Pol Pot many times. We fought
11 and smashed them and seized their ammunition by the truckload on
12 many occasions. We destroyed three or four trucks and seized and
13 drove one into the forest until we had no gas. We attacked hard
14 north of Highway 7. That was done by the 4th Division and various
15 mixed units like Pol Saroeun's artillery support forces. We had
16 many forces."

17 Is that something that you can testify to or can confirm; were
18 you involved in these fights?

19 [14.41.43]

20 A. Let me ask for clarification; which year are you referring to?

21 Q. Nineteen seventy-eight, after May -- after 25 May 1978.

22 A. The issue happened like this. The situation, at the time, was
23 confusing. <> I was the one who attacked and seized the vehicle<.
24 I was sitting about 5> metres <off the road, and 100 metres>
25 ahead <was the Khmer Rouge's> defence line <against the

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1 Vietnamese>. I was there to <> fight in order to capture
2 <ammunition loaded on that> vehicle and I could capture a vehicle
3 at that time.

4 MR. PRESIDENT:

5 It is now time for break. The Chamber will take break from now
6 until 3 p.m.

7 Court officer, please assist the witness in the waiting room
8 during the break time and please invite him back together with
9 the duty counsel at 3 p.m.

10 The Court is now in recess.

11 (Court recesses from 1443H to 1501H)

12 MR. PRESIDENT:

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

14 And again, I hand the floor to Nuon Chea's Defence to put further
15 questions to the witness.

16 BY MR. KOPPE:

17 Thank you, Mr. President.

18 Q. Mr. Witness, we were speaking about heavy military clashes
19 between former East Zone forces and Centre forces after May '78.
20 You said that you were to a certain extent part of this. Let me
21 ask you one or two follow-up questions and then I'll move to
22 another subject.

23 Heng Samrin in is interview with Kiernan, E3/1568; English,
24 00651902; Khmer, 00713985; and French, 00743379; speaks about
25 many civilians in the forest with his troops south of the

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1 highway, tens of thousands evacuees in the south and north. Is
2 that something that you recall, that -- in the proximity of Heng
3 Samrin's troops or your troops, there were many civilians?

4 [15.03.13]

5 2-TCW-1065:

6 A. As for the statement of Heng Samrin's that there were many
7 civilians <in the south>, I only heard about it but I did not see
8 it. I was assigned to be stationed to the north part of National
9 Road Number 7, and <even there,> there were also many civilians
10 who fled to the jungle. However, I do not know if there many
11 civilians to the south side of the road.

12 Q. So you also don't know whether Heng Samrin's troops or other
13 troops from the former East Zone were mingling with civilians or
14 were hiding within large amounts of civilians, these are things
15 that you don't know; is that correct?

16 A. As I said, I did not know about the number of civilians to the
17 south part of the road. However, to the north part there were
18 <mostly> civilians mingled with the soldiers, and those civilians
19 fled from the massacre.

20 Q. But do you know whether Heng Samrin's troops were deliberately
21 mingling with the civilians, or is that something that you don't
22 know?

23 [15.04.59]

24 A. As for soldiers in Division 4, after the commanders were
25 removed, there were some soldiers at the defence line to counter

1 the Vietnamese troops. Later on, the east zone assigned new
2 commanders to those defence lines. <It was then becoming> chaotic
3 <> since the <previous> commanders had been removed and new
4 commanders were replaced them.

5 Q. One last question in respect of Heng Samrin's interview. In
6 that same page that I just referred to, he says -- and let me
7 quote him:

8 "We attacked the Pol Pot forces many times --" -- it's a bit
9 further in time -- " -- but only in 'small guerrilla attacks'."

10 Is that something that you remember as well, guerrilla attacks by
11 the forces of Heng Samrin?

12 [15.06.21]

13 MR. KOUMJIAN:

14 My understanding is the witness has consistently said he wasn't
15 with Heng Samrin, so I'm confused about the basis of the
16 question.

17 MR. KOPPE:

18 I'm quoting from Heng Samrin's testimony, but I'm happy to
19 reformulate in a more general question.

20 Q. Mr. Witness, were you or your forces involved in guerrilla
21 attacks after 25 May '78, guerilla attacks on the Centre forces?

22 2-TCW-1065:

23 A. As for our forces, we always deployed the guerrilla forces,
24 that is, just a small force to attack the big force.

25 Q. Finally, Mr. Witness, would you agree with me that, at least

1 since 25th of May '78 all the way up until 7 January '79, there
2 was a civil war going on in Kampuchea?

3 A. Yes, I agree with you. It was internal conflict.

4 Q. And to be complete, I put it to you that before the 25th of
5 May '78, there was a secret civil war going on. Is that something
6 that you could agree to?

7 A. I just responded to your question.

8 [15.08.28]

9 Q. That's fine, thank you, Mr. Witness.

10 One last point before I move to some other subjects. Last week I
11 asked you about several names. We talked about Yos Por, Y-O-S
12 P-O-R, we talked about Heng Samrin's brother Heng Samkai, Keo
13 Chanda; Bou Thang all those names we discussed. Do you know, Mr.
14 Witness, whether these people were involved in setting up a
15 resistance force in early 1978, so a few months before 25 May
16 '78?

17 A. As I have testified, I did not know about that. Regarding the
18 combat forces, I created them and I did not know about the other
19 group.

20 [15.10.00]

21 Q. So would it be fair to say that you have no knowledge
22 whatsoever as to what happened -- not in Kampuchea but on
23 Vietnamese territory -- before May '78 in respect of the setting
24 up of a Cambodian resistance organization; correct?

25 A. Yes. And allow me repeat my <answer> that I do not know about

1 that.

2 Q. Fine. Two specifics points then and I will finish with this.

3 Do you know about a "string of secret camps that had sprung up in
4 South Vietnam"? So secret camps in South Vietnam.

5 I'm referring, Mr. President, to E3/2376, Chanda's book. English,
6 ERN 00192403; French, 00237082; and Khmer, 00191553.

7 So I'm not talking about plans, but I'm talking about
8 implementation of plans, a string of secret camps had sprung up
9 in South Vietnam to recruit and train a guerilla army. Is that
10 something that you knew?

11 A. No, I did not know about that.

12 [15.11.58]

13 Q. And then the very final question and I will stop, Mr. Witness.

14 On the next page Chanda speaks about 22 April 1978, so that's
15 about a month before you joined the rebellion. He says that: "On
16 22 April '78, the first brigade of the Khmer dissident army was
17 commissioned in a secret ceremony."

18 By the end of '78 he says: "Several such brigades were ready to
19 join the Vietnamese army in its push against Cambodia."

20 Have you ever heard of the first brigade of the Khmer dissident
21 army, founded on April 22nd of 1978?

22 A. No, I was not aware of that.

23 [15.13.07]

24 Q. You were present at that big meeting on the 2nd of December

25 '78, in Snuol where the Front was established. You said you were

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1 present in Ho Chi Minh a month early or -- not a month but
2 sometime before. Do you have an explanation as to why you have no
3 knowledge of the setting up of a resistance army in the first
4 months of '78 or were you too low level for instance or was there
5 another reason?

6 A. No, I was never at the Ho Chi Minh Trail. If that statement
7 was made like that, I deny it.

8 Q. Something went wrong I think in the translation. You said that
9 you had been at a meeting in Ho Shi Minh city, not the trail, Ho
10 Chi Minh city. You were also present at the big 2 December '78
11 meeting in Snuol. While you were at those meetings, did you have
12 no idea of the existence of a big Cambodian resistance army?

13 A. I, myself, never attended any meeting in Hanoi. I attended
14 meetings in Prey Nokor or Ho Chi Minh, what is now known as Ho
15 Chi Minh, but not in Hanoi. And I, myself, never been to Ho Chi
16 Minh Trail.

17 MR. PRESIDENT:

18 Yes, his response so far is correct. He never said that he
19 attended in a meeting in <Ho Chi Minh> or that he's been on the
20 Ho Chi Minh Trail.

21 [15.15.16]

22 MR. KOPPE:

23 I think something went completely wrong in the translation. I
24 spoke about Ho Chi Minh city, the former Saigon. He said that he
25 had been in meetings -- in a meeting in Ho Chi Minh city, Saigon

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1 in late '78. I didn't say Hanoi. So I think something went
2 completely wrong in the translation.

3 But it's fine, Mr. Witness, it's -- I'll move on to another
4 subject.

5 Q. And that is following up some answers in relation to Smach
6 Market and Barracks 27. Were you ever informed of the existence
7 of a tunnel located at the border on the Vietnamese territory, a
8 tunnel going into Kampuchean territory coming from Smach?

9 [15.16.34]

10 2-TCW-1065:

11 A. <Through my observation, no one> could dig a <tunnel into
12 Cambodian territory and into> Smach Market <>. Coming from Smach
13 Market, there would be Barrack 27 and then there would be the
14 "spean deik" or the iron bridge. But I did not see any
15 tunnel<-digging>.

16 Q. And you also never heard of tunnels going from Vietnamese
17 territory into DK territory in order to enable Vietnamese troops
18 entering secretly into DK territory?

19 A. I was at the battlefield, but I did not see any tunnel.

20 Q. Thank you, Mr. Witness. Another follow-up question.

21 You said last week, 1 November hearing 1424H, that Vietnamese
22 troops attacked -- "attacked us from behind." And then you say,
23 "At the time I was wondering how come there were -- we were
24 shelled by tanks from behind."

25 Were you -- were you or your forces surprised by attacks from

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1 Vietnamese troops from behind? And if yes, why were you
2 surprised?

3 [15.18.26]

4 A. I already responded to this question. I already spoke in
5 detail as to which line that was broken and that's why we were
6 attacked from behind. Anyway, allow me to clarify it a bit. Unit
7 155 <was penetrated but my Unit was 156. The line was broken at
8 the east, at Ampok (phonetic), Bos Ta Kok (phonetic).> Then the
9 Vietnamese troops came from behind, that is from Road Number 7.
10 <I already stated this before>.

11 MR. PRESIDENT:

12 There are two separate events regarding the attack from behind by
13 the Vietnamese troops, that happened in 1977. However, the event
14 regarding the attack by Ke Pauk, that is, the Centre army, that
15 happened <after the death of So Phim> on the 25th of May '78.
16 So Counsel, please try to distinguish these two events. Although
17 the events were similar, but the nature of the forces was
18 different.

19 [15.19.47]

20 MR. KOPPE:

21 Well, I wasn't sure exactly to what he was referring. Let me read
22 the full quote to you, so that you know the context:

23 "They -- we could not penetrate them and they could not penetrate
24 us. However, they could penetrate the area where Unit 155 was in
25 charge. Then they manoeuvred through National Road Number 7 and

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1 attacked us from behind. And at that time I was wondering how
2 come they were - how we were shelled by tanks from behind. In
3 fact, there was a penetration at the area where Unit 155 was in
4 charge. And subsequently we had to retreat ourselves to the back
5 in order to contain them."

6 Q. So this is the full quote. And my question is: why was it that
7 you were wondering that they were shelling by tanks with tanks
8 from behind? Why was it a surprise?

9 [15.21.03]

10 2-TCW-1065:

11 A. I support the clarification made by the President. There are
12 two separate events, one happened in '77 while the other happened
13 in '78. I already spoke about the event that happened in '77,
14 Division 4 stationed along the border ranging from 154, 155 to
15 156. And we, 156, <was> to attack Barrack 27,< that was from
16 Kraek to the south.> While 155 was stationed at <Bos> Ta Kok
17 (phonetic). During the attack, Vietnamese troops used large force
18 to <penetrate Unit> 155 spearhead and broke through, and then
19 they moved through <National> Road 7 from Kraek and attacked us
20 from behind.

21 So since we had to fight the two fronts, that is one at the front
22 and one at the rear, we had to retreat to counter the attacks
23 from behind, and that's how it happened. And that happened in
24 1977.

25 [15.22.16]

1 Q. Thank you very much for that clarification.

2 And my question is: why were you and your troops surprised? Let
3 me help you a bit. Was there a suspicion that information,
4 intelligence, was given to Vietnamese troops in order to enable
5 them to attack you from behind?

6 A. For me, I did not have that suspicion at the time. For the
7 army, if they had more forces so they were more superior and they
8 could break through our forces. And that happened to either us or
9 to Vietnamese troops and that's the art of war. And that's their
10 tactics <>. And since our forces were smaller, then we were
11 defeated.

12 Q. Let me ask it in general terms. Were there suspicions in your
13 unit or Division 4 or anywhere that information, secret
14 information, was given to the Vietnamese about your military
15 positions?

16 A. For my unit, I did not have that suspicion because we were at
17 the defence front against the Vietnamese troops.

18 MR. KOPPE:

19 Very well. Mr. President, with your leave, I would like to show
20 two minutes of footage to the witness. We've sent an email
21 announcing the E3 and the two minutes. AV Unit is aware of it.
22 It's footage from E3/3015R and it's the first two minutes 19. I
23 would like to show that footage to the witness and ask him
24 subsequently some questions.

25 JUDGE FENZ:

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1 Can you just identify for the record what it is?

2 [15.24.50]

3 MR. KOPPE:

4 It is -- let me be neutral. It is a meeting in early '78, and
5 people that I spoke of just now attended that meeting. And I --
6 the question -- the reason that I'm a bit vague is that I would
7 like to ask him whether he recognizes anyone, otherwise it
8 doesn't make sense.

9 MR. PRESIDENT:

10 Yes, you can proceed.

11 And AV Unit personnel, please play the video clip as requested by
12 the Defence Counsel, Victor Koppe.

13 [15.25.35]

14 (Audio-visual presentation)

15 [15.28.01]

16 BY MR. KOPPE:

17 Q. Mr. Witness, were you able to see the footage properly?

18 2-TCW-1065:

19 A. This is the first time that I see it, but if you want me to
20 recognize those people on the video, it is difficult for me to do
21 so because this is the first time that I see the film.

22 Q. Would you like me to play it one more time for you to be able
23 to have another look?

24 A. It's all right, sir, just to see it for the first time,
25 because these people are civilians and I am on the military side.

1 And if you ask me to recognize them, <I cannot answer that
2 because this is the civil affair>. <If> you ask me about <my
3 unit>, yes, I can answer that question.

4 Q. Mr. Witness, did you recognize Pol Pot?

5 A. No, I do not know Pol Pot, I only heard of his name. <I never
6 saw him.>

7 [15.29.24]

8 Q. Did you recognize So Phim?

9 A. I know So Phim, if I see him then I recognize him. Besides So
10 Phim, I do not recognize anyone, including Pol Pot.

11 Q. Maybe I misunderstood, but you do recognize So Phim; correct?

12 A. Yes, I know So Phim. And besides So Phim, I do not know anyone
13 else.

14 MR. PRESIDENT:

15 The question is this, Defence Counsel wants to ask you about the
16 video clip that you just watched, whether you know anyone in the
17 video clip is So Phim. And of course, besides the film context
18 you know So Phim. But from the video clip that you watched, do
19 you recognize So Phim, that is in the video clip that you just
20 watched?

21 [15.30.44]

22 2-TCW-1065:

23 From the video clip that I saw, it is not clear. And for that
24 reason, it is difficult for me.

25 MR. KOPPE:

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1 Mr. President, I think it's wise to play it again, maybe it went
2 too fast. I've seen it so many times already, so -- but--

3 JUDGE FENZ:

4 And he should -- if we do it, he should say "stop" when it comes
5 to the place where he thinks he recognizes somebody, because
6 otherwise we do the same thing 10 times.

7 MR. KOPPE:

8 Correct. Let me then ask two questions before.

9 Mr. Witness, if you see anyone on that video that is So Phim or
10 Heng Samrin, please say "stop".

11 MR. PRESIDENT:

12 AV Unit personnel, please show the video clip once again.

13 [15.32.00]

14 (Audio-visual presentation)

15 [15.35.14]

16 BY MR. KOPPE:

17 Q. Mr. Witness, I didn't hear you say "stop", your duty counsel
18 also didn't do anything.

19 Is it -- you didn't recognize anyone; is that the case?

20 2-TCW-1065:

21 A. It is not clear, I mean the video. I suspect that So Phim was
22 a quite short <and big build> man with a cap on his head, but it
23 is not clear to me. The video is not so clear to me.

24 Q. There was a man, he was -- you could see him extensively
25 always walking behind another leader, always clapping like this,

1 is that -- round face, you could see him for maybe 40 seconds. Is
2 that not someone that you recognize as So Phim?

3 [15.36.33]

4 JUDGE FENZ:

5 I think the easiest thing is to refer to the minutes, otherwise
6 -- equally with what he said, he said there was a small man with
7 a cap, so if we can identify a still.

8 MR. KOPPE:

9 Well we stopped on that face about four or five times, but
10 nothing came. It's fine. It's also interesting.

11 Mr. Witness, let me move away from this. One other question, just
12 to complete.

13 Q. Is it correct that you didn't recognize anyone on this video
14 who was Heng Samrin?

15 2-TCW-1065:

16 A. As I told you, the video is not in good quality, it is
17 blurred. I cannot give you my clear answer, because I cannot
18 assume who they were since the video is not really in good
19 quality and it's blurred.

20 [15.37.52]

21 Q. Thank you, Mr. Witness. One last subject.

22 Before I come to it, one follow-up question in respect of my
23 earlier questions about Vietnamese attacking from behind, and
24 whether you ever had suspicions that intelligence was given to
25 Vietnamese troops. My question related to events before 25 May

1 '78, after you had defected. And when you came in contact with
2 Vietnamese troops, did you yourself ever give intelligence to
3 Vietnamese troops?

4 MR. PRESIDENT:

5 Perhaps you quote the wrong statement of the witness. He did not
6 say that his troops or soldiers gave any intelligence to the
7 enemy<. All his troops were at the battlefield.> The Khmer is
8 clear. The witness did not make mention about the intelligence
9 given by the witness. So the quote may be not correct.

10 [15.39.10]

11 MR. KOPPE:

12 Maybe something wasn't translated correctly. My question was
13 whether after he had defected, his unit or his troops --

14 MR. PRESIDENT:

15 <It is not so, you> quoted the testimony of the witness about the
16 Vietnamese broke through or attacked from behind. And you stated
17 that the witness <suspected that there was someone giving> the
18 intelligence to <the> Vietnamese. <The witness stated that he did
19 not have any suspicions.> I think it is a wrong quote from what
20 the witness said.

21 MR. KOPPE:

22 I didn't say that that was his testimony. I quoted my own
23 question. So I'm not saying that he gave that testimony, I was
24 just repeating my own question.

25 So we are in agreement that he didn't say any--

1 MR. PRESIDENT:

2 You can put the question, but <what you just quoted was
3 incorrect>. <I believe you quoted a wrong statement because> I
4 heard you quoting some of the sentences, and then you put your
5 question. <>

6 [15.40.21]

7 BY MR. KOPPE:

8 No problem. Thank you, Mr. President.

9 Q. Mr. Witness, did you or your unit ever give intelligence
10 information to Vietnamese troops after you had defected?

11 2-TCW-1065:

12 A. My troop and I, before the 25th event, how could I give
13 intelligence to <the> Vietnamese, because we at the time were in
14 the fighting <against each other>. It was until October and
15 November 1978, I met those people in the jungle and we had the
16 discussion about different topics.

17 [15.41.17]

18 Q. It's fine, I'll move on to my very last subject. And that is
19 following up questions from one of the International Judges to
20 you, Mr. Witness, questions about the period after 7 January '79.
21 You spoke about your arrest and your detention, your arrest by
22 Vietnamese troops under the suspicion that you wanted to escape.
23 You were also asked questions about meetings that you chaired.
24 Can you tell us a bit how you experienced in those first one or
25 two years your role in the administration?

1 Let me be very specific and come to the point straight away. An
2 expert who testified here a few weeks ago, Stephen Morris in his
3 book, E3/7338; the English ERN only, 01001897; he said that
4 Vietnam had installed a "colonial regime" in Cambodia. And he
5 said: "There was a colonial relationship between Vietnam and
6 Kampuchea."

7 Was that your experience as well, that Vietnam was a colonizer of
8 Cambodia in '79 - '80 when you were still having a high function?

9 A. This is a different matter the national affairs, a different
10 matter. I was working in the police affairs. I was not involved
11 in the administrative affairs. I was in the <Vietnamese> Zone
12 Number 7, working and responsible for public order and I am not
13 aware of that.

14 [15.43.58]

15 Q. Well let me be a bit more concrete since you worked in the
16 administration. He says:

17 "There were two dimensions of the colonial relationship. First,
18 there was the direct political control of the Phnom Penh
19 administration by the Vietnamese. According to the accounts of
20 numerous defectors from the regime, the PRK, the People's
21 Republic of Kampuchea, operated under the tutelage of Vietnamese
22 advisors at all levels. As an example he says, "officials of the
23 PRK were compelled to study the Vietnamese language."

24 And then he says:

25 "The second dimension of the colonial relationship was the

1 arrival from 1979 onwards of 'hundreds of thousands of Vietnamese
2 civilians'. The Vietnamese government has claimed that these
3 Vietnamese settlers are people who lived in Cambodia before '75,
4 and either fled during the Lon Nol pogroms of 1970, or were
5 expelled by the Khmers Rouge after '75." End of quote.

6 [15.45.21]

7 Is that something that you experienced, colonial relationship,
8 full control of the Vietnamese and the settlement of hundreds of
9 thousands of Vietnamese civilians right after '79?

10 A. I told you earlier that it is civil affairs<, I was not aware
11 of that>. I was working in the police affairs responsible for
12 five provinces <in Zone Number 7>. So I am not fully informed of
13 affairs across the country, particularly about the entry or the
14 settlement of a certain number of Vietnamese population. Please
15 refer that question to anyone who is aware of the national
16 affairs of this country. But if you ask me about the police
17 affairs in the zone that I was responsible for at the time, I
18 have the answers for you. <That time, each section was separated
19 from one another.>

20 Q. I understand it's a difficult question or maybe something that
21 you don't want to speak about.

22 One last question in this respect, have you ever heard of a
23 forced labour program called K-5?

24 MR. KOUMJIAN:

25 Objection to the relevance.

1 MR. KOPPE:

2 The relevance is that K-5 was a forced labour program, which
3 apparently cost around 30,000 lives, which is relevant for the
4 demographics issue. And this witness being part of the
5 administration, at least in the beginning, hopefully he could say
6 something about K-5 and whether there was a forced labour program
7 causing the deaths of many people after '79.

8 [15.47.39]

9 MR. PRESIDENT:

10 The question is irrelevant. Mr. Witness, you are instructed not
11 to give your answer.

12 And perhaps you have run out of questions. And Koppe, please also
13 think of the time allocated for counsel for Mr. Khieu Samphan as
14 well. <Your time almost runs out.>

15 MR. KOPPE:

16 Of course I knew that this was going to be objected to and
17 sustained, so I'm done.

18 Thank you, Mr. President.

19 [15.48.12]

20 MR. PRESIDENT:

21 The floor is given to the defence team for Mr. Khieu Samphan to
22 put questions to the witness.

23 You may now proceed.

24 QUESTIONING BY MR. KONG SAM ONN:

25 Thank you, Mr. President. Good afternoon to the Chamber and

1 parties, as well as Mr. Witness.

2 I would like to put short questions to you Mr. Witness.

3 Q. You have already indicated about a conflict between Vietnam
4 and Cambodia in the period between 1975 and 1978. You made
5 mention about the conflict as a result of interest and border
6 issue. <Now in relations to the border issue,> as you were a
7 medic <> and you were also a commander at the battlefields, could
8 you inform the Chamber about <the specific> locations? I mean
9 which villages and communes were under the attacks of Vietnamese
10 troops between 1975 and 1978? I understand that there was a tug
11 of war, fighting back and forth at the time between 1975 and 1978
12 <from the beginning to the end>?

13 [15.49.44]

14 2-TCW-1065:

15 A. I have already answered the question and I would like now to
16 repeat my answer <to end your suspicion>.

17 Regarding the fighting between Vietnamese and Kampuchean forces,
18 <Division 4 had> three important bases. One was at Memot
19 <district>, another one was at Ponhea Kraek <district -->

20 Q. Could you inform the Chamber about <names of> villages that
21 you were there and countered the attack by the Vietnamese troops?
22 <Please answer that point first.>

23 A. As for my spearhead, I was stationed at National Road Number
24 <22 (sic)>, from Trapeang Tlong to Ponhea Kraek.

25 Q. National Road 22 (sic), was that a location under constant

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1 attack by the Vietnamese or were <DK> troops successful in
2 recapturing that location afterwards?

3 [15.51.07]

4 A. I would like to make a distinction of the issue into two
5 parts. Number 1, concerning 1977 -- late 1977, there was a
6 conflict between the East Zone and the Vietnamese troops, <I am
7 not talking about '78>. In <> 1977, there <was a prolonged war
8 at the border, there were> fighting back and forth. <It became a
9 standoff at my position.> My troop attacked the Vietnamese troops
10 and pushed them into their territory and they counterattacked. <I
11 refer to only the situation in my position which happened in
12 December '77, but what happened in> 1978, that was a different
13 issue.

14 Q. Thank you. In document E3/10668, that is your written record
15 of the interview, question and answer number <19>. I would like
16 to quote the specific names of villages, Chh'eh, Phal and other
17 villages, which were under the control of the Vietnamese troops.
18 Regarding these villages, were they located along <> Road No. 22
19 or where were they?

20 A. Thank you. Phal, Tnaot, Kradas and other villages were not
21 adjacent to Road 22, they were adjacent to the border <line>
22 running from <north of> the house of the President of the
23 National Assembly. Some of these villages now disappeared <from
24 the map>. That is what I can tell you.

25 [15.53.24]

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1 Q. Thank you. Regarding the same issue, the same answer and
2 question a little bit down, I would like to read it: "Farmers to
3 the south of National Road Number 7 still pay tax to Vietnamese
4 authorities." Do you recall the statement that you made?

5 A. Thank you. Yes, I recall it. If you do not believe me, you can
6 go with me. <We can go today.> People living close to the border
7 were required to pay taxes.

8 Q. Do you recall which year was that?

9 A. I do not know the year. <When I went to Memot,> villagers from
10 <south of> Phum Da (phonetic) were required to pay taxes to
11 Vietnamese authorities, <even the pepper plantation had to be
12 taxed>; they were living close to the border.

13 Q. You made mention about paying taxes. Was the requirement
14 applied in the DK time <or afterward>?

15 [15.54.55]

16 MR. PRESIDENT:

17 <Hold on,> please answer the question in relation to the period
18 of the Democratic Kampuchea, not about the current time. <The
19 Chamber does not want to hear about the current situation because
20 it is out of the scope.>

21 2-TCW-1065:

22 A. I did not know about that requirement in the DK.

23 BY MR. KONG SAM ONN:

24 Q. Thank you. In the same document, <E3/10688 (sic)>, answer and
25 question number 22, let me quote:

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1 "It was the goal and plan of the zone, because the zone had the
2 power to make such a decision."

3 End of quote.

4 And let me quote the question as well:

5 Question: "Am I right to say that it was part of the East Zone
6 strategy and plan to attack both military and civilian targets?"

7 Answer: "It was the goal and plan of the zone, because the zone
8 had the power to make such a decision." End of quote.

9 Do you recall that statement you made?

10 [15.56.32]

11 2-TCW-1065:

12 Thank you. That is true. It is the truth<. It was about the power
13 of the zone in making decisions>.

14 Q. Thank you. How did you learn such information? What is the
15 source of that information? Why did you know that it was the zone
16 who had the power to make plans and to make a decision in
17 relation to the attack against the neighbouring country?

18 A. Thank you. I was not referring to the civilian affairs; I was
19 referring to what happened within military sphere. Usually<, in
20 the military,> the affairs were not decided alone by <a division
21 commander because it was the border issue, it related to the zone
22 affairs>. <Therefore,> the zone <> had <the> power to decide
23 whether or not <we launched the> attack.

24 [15.57.52]

25 Q. Thank you. Did you ever attend the meetings of the divisions

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1 in relation to the attack or plan to attack <decided by the
2 zone>?

3 A. I never attended those meetings.

4 Q. Thank you. How did you know about the plan or the decision?

5 A. Regarding all the affairs, the zone <chief> usually invited
6 cadres from regiments and divisions to a meeting, <after the
7 decision had been made,> then those who were from regiments <>
8 would convey the content of the meetings to the subordinates.

9 Q. Thank you. I would like to have a follow-up question or
10 another question in relation to your testimony. You stated that
11 you had a casual conversation with<, the zone chief,> your
12 <uncle,> So Phim. You stated that you discussed with him about <>
13 who <the> traitors <was>, and you advised So Phim that Pol Pot
14 was the one who was a traitor.

15 Koppe, a while ago, asked you about the conversation you had with
16 So Phim. And now I would like to ask you a question. What were
17 the reasons that made you to believe that Pol Pot <was the
18 traitor and was the one who> wanted to conduct a "coup d'état"
19 against So Phim?

20 [16.00.12]

21 A. I made mention about the reasons. Number 1, the forces at the
22 <defense> line <were engaging in the attack against the>
23 Vietnamese, and troops from the Central Zone had their own forces
24 to be stationed at <the rear, namely Ta Hiev> (phonetic) for
25 example.

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1 Some of the forces from the Central Zone <summoned> forces <in
2 Division 4, including those who were from various companies for a
3 meeting. At that meeting, those commanders> were all arrested.
4 <This is the actual testimony from someone, who was shot and
5 wounded; and he ran to see me at the battlefield>. This is the
6 evidence that could show about that "coup d'état".

7 Q. I would like to ask you about the "coup d'état". Was the "coup
8 d'état" conducted because of the powers that Pol Pot wanted to
9 maintain or what were the purposes of having such "coup d'état"
10 <>?

11 [16.01.25]

12 A. Thank you. Regarding the "coup d'état" of Pol Pot, I cannot
13 read his mind. I did not know the purpose of such a "coup
14 d'état", because I did not have time or opportunity to discuss
15 with Pol Pot. As long as they had caused fatality or deaths to
16 other forces, that could mean they <were traitors>.

17 Q. Could you explain the Chamber about the plan of So Phim, was
18 it the case that because So Phim arranged forces to attack
19 Vietnamese <at the border area>, that's why he was punished by
20 the upper echelon <or Pol Pot>?

21 A. Thank you. I cannot make my own analysis or conclusion. I was
22 in the military; I had nothing to do with the zone. I know only
23 limited information about the small plan, but not the big plan.
24 The zone never disclosed in detail all the affairs, but I know
25 only the real situation that happened on the ground.

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1 Q. Thank you very much, Mr. Witness.

2 Mr. President, I have no more questions.

3 MR. PRESIDENT:

4 And you want to ask a question as well?

5 [16.03.33]

6 MS. GUISSÉ:

7 Yes, Mr. President, that is why I'm on my feet, to clarify
8 something.

9 We have made some calculations based on the time we've used this
10 afternoon for the document presentation and the 45 minutes that
11 Counsel Koppe had used when he started his examination of the
12 witness. We had thought that we, <the defense team,> still had 45
13 minutes, up tomorrow morning. I just wish to inform the Chamber
14 that I still have 45 minutes to use <in> my examination of the
15 witness for the rest of the <questions on behalf of the Khieu
16 Samphan team>.

17 MR. PRESIDENT:

18 And International Co-Prosecutor, you may now proceed.

19 MR. KOUMJIAN:

20 That wouldn't be the way I would calculate it. The Chamber used
21 three and a half sessions of the two days, which would leave the
22 parties with a bit more than two sessions or two and a half
23 sessions. The Defence has used two sessions this afternoon and 45
24 minutes last week. So I think they've finished their time unless
25 the Chamber grants an additional time.

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1 [16.04.45]

2 MR. KOPPE:

3 If I may respond quickly, Mr. President? I refer to the email of
4 the senior legal officer where it says quote:

5 "It is envisaged that the Trial Chamber will use up to half-days
6 -- 0.5 days, leaving up to 1.5 days for questions from the
7 parties."

8 That means that the Defence has three sessions. I used only 45
9 minutes last week, we started half an hour late this afternoon;
10 that would leave another 45 minutes for my colleague.

11 MS. GUISSÉ:

12 Mr. President, it's the same calculations, we the Khieu Samphan
13 team, have relied on. It appears that the Prosecution didn't want
14 to use all the time they had envisaged to use, but we intend to
15 use all the time allotted to us.

16 [16.05.46]

17 MR. PRESIDENT:

18 Yes, you are correct.

19 It is now time for the adjournment. The Chamber will resume this
20 hearing tomorrow on Tuesday, 8 November 2016 at 9 a.m.

21 Tomorrow, the Chamber will conclude the testimony of 2-TCW-1065,
22 and then proceed to hear <Civil Party,> 2-TCCP-237. Please be
23 informed and please be on time.

24 The Chamber is grateful to you, Mr. Witness. The hearing of your
25 testimony has not yet come to a conclusion, you are therefore

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1 invited to come here once again tomorrow, which may last only for
2 one session. Thank you as well, Sok Socheata, the duty counsel.

3 You are also invited to come and assist the witness, also
4 tomorrow morning.

5 Court officer, please work with the WESU Unit staff members to
6 send the witness back to the place where he is staying at the
7 moment, and please invite him back into the courtroom at 9.00.

8 Security personnel are instructed to bring Nuon Chea and Khieu
9 Samphan back to ECCC's detention facility, and have them return
10 into the courtroom before 9 a.m.

11 The hearing is now adjourned.

12 (Court adjourned at 1607H)

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