



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

ឯកសារដើម

ORIGINAL/ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ (Date): 25-Oct-2012, 11:51

CMS/CFO: Sann Rada

TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

19 October 2012

Trial Day 120

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

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:

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Andrew Ianuzzi
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For the Office of the Co-Prosecutors:

VENG Huot
Keith RAYNOR
SONG Chorvoin

For Court Management Section:

UCH Arun
SOUR Sotheavy

Extraordinary Chambers in the Courts of Cambodia
Trial Chamber – Trial Day 120
Case No. 002/19-09-2007-ECCC/TC
19/10/2012

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1 already presented by the prosecutor.

2 That, Mr. President, brings me to the conclusion of my
3 presentation. I thank you.

4 MR. PRESIDENT:

5 Thank you.

6 The time is now appropriate for an adjournment. We will adjourn
7 now until 10 to 11.00.

8 THE GREFFIER:

9 (No interpretation)

10 (Court recesses from 1025H to 1054H)

11 MR. PRESIDENT:

12 Please be seated. The Trial Chamber is back in session.

13 And next the floor is given to the defence team for Mr. Nuon Chea
14 so that they can present the document before the Trial Chamber.

15 Counsel, hold on.

16 (Judges deliberate)

17 [10.56.02]

18 International Defence Counsel for Mr. Nuon Chea, the Chamber
19 would like to inform you that the request to submit document
20 E119.1.3 (sic) -- we're not yet decided to make a decision on
21 summoning the witness to testify. So, regarding this expert
22 witness, the Trial Chamber will consider and make decision in due
23 course.

24 And document E/9 (sic), books by Philip Short, the Trial Chamber
25 plans to summon him to testify next year, and this document - the

1 Trial Chamber does not allow - now allow you to present this
2 document at this time. So, we should wait until the completion of
3 this witness, and then we can move on.

4 MR. IANUZZI:

5 Thank you, Mr. President. I have been trying, upon very good
6 advice, to be as amable as possible. However, this is the very
7 first time I've ever heard this. Such conditions were never
8 placed on these documents. We were told we could present any
9 document we felt was relevant to this stage of the proceedings.
10 So, to be told now, at 11 a.m., two minutes before I'm about to
11 begin my presentation - which, I might add, centred on those very
12 two documents you just mentioned - I find that remarkable -
13 remarkable, to say the least. And I'll leave it at that.

14 [10.58.02]

15 What - where are you coming from, Mr. President? Why weren't
16 these indications given to the parties ages ago? This is exactly
17 what I meant--

18 MR. PRESIDENT:

19 The Trial Chamber advised you earlier and also mentioned the
20 ground that you would hold the two documents for the moment.
21 The reason is that we - we will not repeat the ground. And the
22 opportunity to present documents -- the Trial Chamber will give
23 you another opportunity, especially on the schedule to hear the
24 witness who will come to testify on the document, in case of Mr.
25 Philip Short.

1 And Mr. Stephen Heder has not been yet decided on summoning him
2 to come to testify. However, the Trial Chamber will give
3 opportunity to the parties to present the documents in relation
4 to their books, or their essays, or their documents in an
5 appropriate time.

6 MR. IANUZZI:

7 Thank you, Mr. President. I obviously have a few questions about
8 that.

9 [10.59.33]

10 First of all, I would just like to state - for the record, I
11 would like to make my record. There were three documents that I
12 intended to discuss today: E - I repeat that - E190.1.398; E -
13 and again I repeat that - E3/1568; and E3/9. So, those documents
14 all have E numbers; they've all been on this Trial Chamber's case
15 file for a long time - for a long time.

16 And the indications that you made today are being made, as I've
17 said, for the very first time today, at 11 a.m., the second -
18 excuse me, the third day of the document hearing. I find this
19 practice strange. I find it to our detriment. We have spent
20 considerable amount of time preparing for the hearing based on
21 your--

22 [11.00.40]

23 MR. PRESIDENT:

24 I now hand over to Judge Jean-Marc Lavergne to clarify this.

25 JUDGE LAVERGNE:

1 Counsel Ianuzzi, the Trial Chamber does not wish to counter your
2 rights to admit documents that you deem relevant. We are simply
3 saying that this is not the juncture at which you are permitted
4 to do so.

5 The Judges are responsible for the conduct of these proceedings.
6 We have decided that when the experts shall provide testimony, a
7 decision will have been issued with respect to the appearance of
8 Mr. Stephen Heder.

9 I believe that it is inopportune on your part to make such
10 comments.

11 Thank you.

12 MR. IANUZZI:

13 Thank you, Judge Lavergne.

14 [11.01.42]

15 So, if we could just continue this conversation for a moment,
16 just so I have it clearly in my mind, what you're telling me is
17 that the Philip Short document cannot be discussed now; it can be
18 discussed if and when Philip Short appears before the Chamber. Do
19 I have that correct?

20 Okay. Thank you.

21 The next document is a document in - sorry.

22 (Short pause)

23 My second document - my second document is an interview conducted
24 by Ben Kiernan with Chea Sim and Heng Samrin. Am I to understand
25 that that document cannot be discussed unless and until Ben

1 Kiernan appears for testimony? Or may I – may I go ahead with
2 that document, E3/1568?
3 Judge Cartwright, I'm just trying to get some clarification. I –
4 really, honestly, that's all.

5 JUDGE LAVERGNE:

6 Counsel Ianuzzi, the Trial Chamber has referred to two documents.
7 The first is the publication written by Mr. Philip Short. Mr.
8 Philip Short is amongst the – an expert who is supposed to be
9 heard shortly, presumably at the start of next year. Therefore,
10 you will have the opportunity to present these documents during
11 the summoning-- or the appearance of Mr. Philip Short.

12 [11.03.17]

13 The second document that we are concerned with is a Stephen Heder
14 publication. He is also on the witness list, and no decision has
15 been taken. Those are the only two sole documents that we have
16 referred to, and there is no objection for you to present those
17 documents during the future hearings. You may only present
18 documents that are relevant to the current proceedings.

19 MR. IANUZZI:

20 Thank you again, Judge Lavergne. I think we're almost there.
21 I have one more question, and this relates to the Heder document.
22 Am I to understand what you've just said to mean that if Mr.
23 Heder does not appear as a witness before this Chamber, then
24 there will be no discussion of his document? I see heads are
25 nodding in agreement or shaking in the opposite (unintelligible).

41

1 Is that correct? I can only -- we, the Nuon Chea defence team,
2 can only make use of this particular article if Stephen Heder
3 appears before the Chamber.

4 JUDGE LAVERGNE:

5 No.

6 MR. IANUZZI:

7 No, no, okay. Then, obviously, I need further clarification.

8 Thank you.

9 [11.04.40]

10 JUDGE LAVERGNE:

11 Very well. With respect to documents written by Mr. Stephen
12 Heder, now, either Stephen Heder is summoned before this Chamber,
13 then the documents can be entertained; and if the Chamber does
14 not hear that expert, then there will be another opportunity to
15 contemplate whether or not those documents will be admitted. I
16 hope that things are crystal clear, Counsel.

17 MR. IANUZZI:

18 Indeed, they are now crystal clear. Thank you.

19 Well, then, my presentation, as it were, will be very brief. I
20 have one document to present to the Chamber today.

21 And before I begin, I would like to make some general comments --
22 some general comments to frame the issue, to sort of set the
23 stage, as I believe Mr. Raynor said the other day. So, before I
24 begin, I would just like to reiterate our position -- reiterate
25 our position -- now a well-established one, I would say --

1 regarding the scope of these proceedings.

2 [11.05.56]

3 And we do accept, as we must -- we do accept that much of the
4 proceedings in Case 002 as it's currently constituted relate to
5 matters not directly relevant to the factual allegations with
6 respect to the first two movements of the population and the
7 recently added crime site of Tuol Po Chrey.

8 And we further understand -- we further understand that the
9 rationale for this is to lay a foundation, as it were, for future
10 truncated trials in Case 002 -- within Case 002 -- at least,
11 that's the theory.

12 And I just wanted to say, on that point, we register our full
13 agreement with what Mr. Cayley said on that issue the last time
14 he was in Court, that that will never, ever happen. But I will
15 not belabour that point today.

16 Again, as to the alleged CPK administrative and related
17 structures, we should focus, then -- we really should focus on
18 the time periods that are relevant to the underlying factual
19 allegations. So, of course, CPK administrative structures are
20 relevant, obviously, that's true, but those structures are
21 relevant within the period -- and possibly shortly before and
22 shortly after the period -- the factual period that you,
23 yourselves, have set as the basis of this trial. And I'm
24 referring, obviously, to the first two population movements and
25 the newly added -- the newly added crime base at Tuol Po Chrey.

1 So I'd just like to say that.

2 [11.07.36]

3 I was going to make some comments about -- some introductory
4 comments about the length of the documents I was going to submit.
5 Obviously, that's - that's not necessary now. I'm not permitted
6 to deal with those documents today. I understand I may be able to
7 do that at a later stage. So I will just say that with respect to
8 the single document that I will be presenting, I urge Your
9 Honours to read the entire document, obviously, not just the
10 portions that I'm quoting from. And that, of course, is for the
11 sake of completeness.

12 So I will turn now to this document. And again, for the record,
13 this is E3/1568 and that is a written record of a series of
14 interviews conducted by Ben Kiernan with two individuals, Chea
15 Sim and Heng Samrin. There are two brief portions of that
16 document that I would like to read out. And I will begin and I
17 will do this very, very slowly because I did not provide copies
18 of these documents in advance - or, excuse me, I didn't pin point
19 in advance for the sake of the translators, so I will go very
20 slowly.

21 [11.08.45]

22 I'm now referring to ERN English, 00651878, and that's through
23 0065187 - 80 -- excuse me, 80; the Khmer - the corresponding
24 Khmer ERNs for that portion, 00713945 through 48; and the
25 corresponding French, 00743349 through 51. And so just let me

1 begin again at English 00651878. I'm at the bottom of the page,
2 and this is a portion of the interview with Mr. Heng Samrin: "At
3 that time -- at that time--" Excuse me.
4 "At that time I was still with Son Sen. And Son Sen had meetings,
5 divided us into groups. I took part in activities with Son Sen.
6 Then, after three months in Phnom Penh here following liberation,
7 I was sent back to the East. Then, after I got back to the East,
8 Division 1 was totally destroyed and" -- this is in parentheses,
9 I'm not sure what that means, what the author intended that to
10 mean; in parentheses -- "(its personnel) arrested. If I was still
11 in that division, I don't know what would have become of me. And
12 it was this 1st Division that Pol Pot praised highly in the
13 fighting."
14 That is the division that Heng Samrin was part of.
15 [11.10.34]
16 "There was only this division that [far hard] -- fought hard,"
17 excuse me, "and drove deeply [unclear] in the highway 1 Region
18 and along the Mekong River [unclear] right to the boarder and was
19 very active. The liberation of Neak Loeung involved this
20 division, and my" -- "my" referring to Heng Samrin -- "126th
21 regiment fought, liberate Neak Loeung from East and West and on
22 the water to liberate it on the 1st of April 1975. It was me" --
23 Heng Samrin -- "who liberated Neak Loeung from the East and the
24 West. Then I was ordered" - excuse me - "to send my troops to go
25 and fight into Phnom Penh, but fighting into Phnom Penh did not

1 involve strong fighting, the [unclear Khmer words] (Lon Nol
2 soldiers) rallied to us and let the troops go through at that
3 time.
4 "On 17 April at 9 a.m., I arrived at the Independence Monument.
5 After liberation there was a division of responsibility among
6 three divisions from the East. There was my 1st Division, my
7 younger brother's 2nd Division, and Chhieu" -- C-h-h-i-e-u -
8 "Chhieu's 3rd Division, who fought up to Chrouy Changva with the
9 marines. The 2nd Division fought its way up to opposite [unclear
10 Khmer words], and this 1st Division along Highway 1 and the road
11 from Takhmau into Phnom Penh. There were the three thrusts from
12 the East."
13 [11.12.27]
14 Moving on -- and I'm now on 00651880, and that's the same range
15 I've already read out -- quoting again: "Then, after staying
16 three months, they had my division leave, the division command to
17 Chbar Ampov and the troops to Preaek Aeng."
18 Skipping a bit -- I'm still on that same page:
19 "In that three months, I" -- this is still Heng Samrin -- "I did
20 a lot of work. Immediately after liberation, there was a meeting
21 in order to receive the plan distributed [unclear Khmer words]
22 from the Centre... it was for the whole country, not just one
23 division. It included both military and civil (officials). At
24 that time, all zones from throughout the country came to the
25 meeting to receive the plan from the Centre, Pol Pot. It was on

1 20 May, which he have fixed as the Day of Hatred, the day the Pol
2 Pot plan was fixed to distribute generally to implement the
3 political plan inside and outside the country as the time Pol Pot
4 announced it, so we took 20 May as the Day of Hatred, as his
5 [unclear]."
6 [11.13.44]
7 One more passage from this series of interviews, and then I'll be
8 quite finished. This is English - it's the same document --
9 E3/1568, English ERN 00651884, Khmer ERN 00713955, French ERN
10 00743356. And again, for the record, this is that very same
11 interview with Ben Kiernan and Mr. Heng Samrin, and at this stage
12 they're discussing a meeting, a meeting that apparently took
13 place in Phnom Penh on the 20th of May 1975. I'm quoting now:
14 "They didn't say 'kill' (the Lon Nol leaders). They said [unclear
15 Khmer words]. Don't allow them to remain in the framework. It
16 doesn't mean 'smash'. Nuon Chea used this phrase - [phrase]."
17 Excuse me.
18 "'Komtec' -- and that is an English transliteration of a Khmer
19 word, I assume - 'Komtec" means 'kill', but they used a general
20 word, 'komchat'." Again, I assume, a transliteration of a Khmer
21 word into English. "Nuon Chea talked of wiping out markets, not
22 allowing money. If there were markets and money, there was
23 property. The important heavy pressure was against property. If
24 there was money there were markets, and if there were markets
25 there would be people with money, and these people would have

1 property. So they wanted to wipe out property. Not allow private
2 property to exist."
3 [11.15.28]
4 So, again, perhaps just to emphasize, let me rephrase that
5 "komtec" means kill, but they used a general word, "komchat". And
6 I assume - I hope everyone on the stage and, perhaps, people who
7 have been following the trial will immediately be reminded of an
8 exchange between my colleague, Mr. Pauw, and expert witness David
9 Chandler on this very point. So, this is something that,
10 obviously, has come up already. It's an important issue, from our
11 perspective.
12 And it's the last thing that I will quote, I believe; I have
13 nothing more there.
14 Just a few general comments, then, to wrap up -- just a few
15 general comments. And I will refrain -- I will absolutely refrain
16 from characterizing the bits of evidence that I've just read, but
17 I would like to say very briefly -- and this goes to the limits
18 of the OCIJ's investigation -- I was not in a position today to
19 draw from the trove of material which -- as I'm listening to
20 myself, I realize now this is going to make very little sense,
21 since I was not allowed to quote from the other two documents.
22 The point I wanted to make - the point I intended to make with
23 the two documents that I was not allowed to quote from was that
24 there was a great deal - a great deal, according to two experts
25 -- an incredible deal of autonomy at the mid and lower levels -

1 the mid and lower--

2 I see my friend is on his feet; I'm going to stop talking now.

3 [11.17.05]

4 MR. PRESIDENT:

5 Prosecutor, you may proceed.

6 MR. RAYNOR:

7 Mr. President, we've taken a fairly relaxed approach to this
8 document presentation generally, but when my learned friend is
9 seeking to explain the relevance of points raised in documents
10 that are not before the Chamber, it's really, simply, just trying
11 to get the content of those two documents before the Chamber in
12 circumstances where you've ruled that they're not relevant and
13 admissible at this stage. So, let's not have points coming
14 through the back door, please.

15 [11.17.50]

16 MR. IANUZZI:

17 I will follow the lead of my friend from yesterday and take the
18 point as well noted. I'm certainly glad that he articulated at
19 least what I was trying to do -- what I had hoped to do during
20 this document hearing -- during this document hearing on CPK
21 structures. However, I will have to do that at a later stage, as
22 I understand it - at a later stage.

23 So, just coming to my last point -- and this clearly relates to
24 the discussion that we've been having -- it's very important for
25 us - it's very important for us, for our outstanding witness

1 requests - and, as Judge Lavergne noted, one of those includes
2 the request to hear Mr. Stephen Heder. Of course, it also - it
3 also includes a request to hear Mr. Heng Samrin.
4 Now, there's been a certain exchange between the Chamber and our
5 side about what's happening. It's quite unclear to us; we haven't
6 received any reasons. It seems that a lot of our witnesses have
7 been rejected -- it certainly seems to us that many of our
8 witnesses have been rejected. We haven't received any reasoned
9 ruling on that issue, and I just assume that it's perhaps
10 forthcoming. It's - it's been quite a long time now.

11 [11.19.03]

12 What I would like to note - and, Mr. President, before you tell
13 me to put it writing, I would just like to emphasize that a
14 written motion is indeed on its way -- a written motion from our
15 team -- and I'm simply highlighting this issue for the benefit of
16 the public, many of whom, as I'm sure you know - I'm sure you
17 know -- do not read Court filings or have access to the Internet.
18 So, again, let me just say that there are many witnesses that we
19 would like to hear in this - in this trial, and we've made the
20 request, and we've made it many times, and we've made it in
21 writing, and we've given reasoned-

22 MR. PRESIDENT:

23 You understand that the Trial Chamber gave you the opportunity to
24 present the documents relevant to the facts on the structure of
25 CPK. You use your right beyond the scope of the proceeding

1 decided by the Trial Chamber. The Trial Chamber will not allow
2 you to go ahead with this kind of statement.
3 Your request and other requests to the Trial Chamber – the Trial
4 Chamber will consider and rule on that in due course. And the
5 Internal Rules does not specify the time period for the Trial
6 Chamber to make any ruling on this case. So the Trial Chamber
7 will consider the request in due course, based on your request
8 and other parties' request. And those requests were decided and
9 ruled upon since 2011 until now.
10 The Trial Chamber hopes that the defence team follow the schedule
11 and the framework for each segment of the hearing.
12 [11.21.31]
13 MR. IANUZZI:
14 Thank you, Mr. President. As I said, we are working on that
15 written motion and we will file that in due course.
16 I would just like to say for the record that I do not agree that
17 you gave me the opportunity to discuss the communication
18 structure and the administrative structure. I told you a week ago
19 – I told Your Chamber a week ago that I intended to use those
20 documents; and, again, you didn't tell me until today that I
21 wouldn't be allowed. I'll leave it at that.
22 And, again, in terms of going off script -- I know this Chamber
23 likes to follow a script, I know this Chamber would prefer to
24 have a trial by script, a short trial of sorts, but that's just
25 not how things work. Issues come up-

1 MR. PRESIDENT:

2 It seems that you conclude you don't have any other document to
3 present before the Chamber. So, if you don't have any other
4 document, the Trial Chamber will not allow you to make any
5 further statement on that.

6 [11.22.38]

7 MR. IANUZZI:

8 Thank you, Mr. President. I have just one (recording malfunction)
9 to say, just to conclude--

10 MR. PRESIDENT:

11 Your presentation of document has been completed. So, you need to
12 present documents if you have.

13 MR. IANUZZI:

14 We have a client in this courtroom, as I'm sure you're aware. Mr.
15 Nuon Chea is our client. And what I wanted to say - what I wanted
16 to say - my last point was that, based on what's transpired, he
17 will not be taking you up on your offer to comment on documents.
18 So, thank you very much. That's all I have to say, in fact.

19 [11.23.40]

20 MR. PRESIDENT:

21 The Trial Chamber reminds you that the right to make comment or
22 respond to the document presented by the parties, including the
23 defence team for the two Accused -- the Accused indicated that
24 they remain - they reserve the right to remain silent on the 10
25 of October 2012.

1 And the Trial Chamber always gives an opportunity to make comment
2 by the Accused on the documents presented before the Chamber, and
3 the Accused can raise his hand to make an address to the Court,
4 but in relation or in response to the documents presented by the
5 parties only.

6 MR. IANUZZI:

7 Thank you, Mr. President.

8 I have one new matter - one incredibly new matter. I was - I was
9 just informed - I was just informed that the OCP, on the 10th of
10 October, was permitted to make some use of a Steve Heder
11 document. I will check the transcripts and confirm that and I
12 will get back to your Chamber.

13 [11.25.26]

14 If that is in fact the case -- and I'm just putting it as a
15 possibility, at the moment I don't have my notes in front of me
16 -- if that is in fact the case, if the OCP was in fact allowed to
17 make some use of material generated by Mr. Steve Heder -- and I'm
18 not saying conclusively they have, I will get back to you -- but
19 if that is the case, then I will strenuously object to my
20 treatment today in Court. And I will get back to you on that.

21 And Mr. Nuon Chea? Nothing from our client, he has confirmed; no
22 comments.

23 Thank you.

24 MR. PRESIDENT:

25 The Trial Chamber will not consider your assumption. And we

1 indicate that we will give you an opportunity at any time to
2 present the document before the Trial Chamber. And the Chamber
3 does not prohibit you from doing so, because the two expert
4 witnesses will be summoned to testify in the proceeding in the
5 future, especially in Case 002/01.

6 MR. IANUZZI:

7 Thank you.

8 If you would perhaps consult page 16 of the draft trial
9 transcript from 10 October, you may find an answer there. Thank
10 you very much.

11 (Judges deliberate)

12 [11.27.50]

13 MR. PRESIDENT:

14 Judge Cartwright, you may proceed.

15 JUDGE CARTWRIGHT:

16 Thank you, President.

17 Mr. Prosecutor, there has been a reference – an oblique reference
18 to a document involving the potential witness Steve Heder. Do you
19 know to what document that reference was? And if so, could you
20 give it to the Trial Chamber -- the reference now to the Trial
21 Chamber so that it can consider this matter over the lunch
22 adjournment?

23 MR. RAYNOR:

24 Your Honour, can I say that I'm actually at the draft
25 transcripts, at the moment, for that date, the 16th of October.

1 I'll just be checking that page reference to page 16. And can I
2 revert back to you as soon as I've got that document, please?

3 JUDGE CARTWRIGHT:

4 Yes, I - that would be helpful. Thank you.

5 MR. IANUZZI:

6 I've got a bit more information. I believe it's documents E3/27--
7 [11.29.02]

8 JUDGE CARTWRIGHT:

9 It's - it's all right, thank you. The prosecutor will inform us.

10 MR. IANUZZI:

11 Thank you. Thank you.

12 JUDGE CARTWRIGHT:

13 Thank you very much for being so very extendedly helpful.

14 MR. PRESIDENT:

15 Next, I now hand over to the defence team for Mr. Ieng Sary to
16 put the documents before the Chamber in relation to the
17 administrative structure of the Democratic Kampuchea. You may
18 proceed.

19 MR. ANG UDOM:

20 Good morning, Mr. President. Good morning, Your Honours, and good
21 morning to everyone. The defence team for Mr. Ieng Sary does not
22 have any particular document to put before the Chamber, but we
23 have a few observations to make at this stage of the proceeding.
24 I am wondering whether or not I will be granted leave to make
25 this observation now or anytime during the proceedings. Please

1 advise.

2 [11.30.10]

3 MR. PRESIDENT:

4 You may proceed. You may make any observation in response to the
5 documents presented by other parties before the Chamber.

6 And you have to be specific when you make such an observation.

7 Particularly, you have to make mention, as clearly as possible,
8 the document number and references. You're not allowed to make a
9 general observation.

10 MR. ANG UDOM:

11 Thank you, Mr. President, for the advice.

12 I still have some issues which I need clarification. I actually
13 need the clarification from the Prosecution. And listened to his
14 clarification, and following the explanation -- clarification by
15 the Prosecution, I do not have any comment.

16 (Short pause)

17 [11.31.38]

18 MR. PRESIDENT:

19 How about the defence team for Mr. Khieu Samphan? Do you have
20 anything to say, particularly if you have any documents you want
21 to put before the Chamber? If you do, please proceed.

22 MR. VERCKEN:

23 Thank you, Mr. President. In fact, I want to place myself in the
24 shoes of the members of the public here present who must be
25 wondering what is happening, what we are talking about.

1 The problem, as far as Mr. Khieu Samphan's defence is concerned,
2 is that for the past two days we have been expelled from the
3 proceedings. In fact, Mr. President, what we have before us over
4 the past two days has been a press conference, and that is why
5 the defence for Khieu Samphan refuses to participate in this
6 press conference.

7 We were informed by an announcement before these two days of
8 hearings that the proceedings will not focus on the admissibility
9 of documents that will be presented by the parties, and even less
10 so on their probative value. That is what we were told. And this
11 is how the previous hearing unfolded.

12 [11.33.15]

13 A while ago, Mr. President, you stated that parties could react
14 to documents.

15 MR. PICH ANG:

16 (No interpretation)

17 MR. VERCKEN:

18 Perhaps my learned friend would like to make a submission, but I
19 haven't completed my submissions, Mr. President. May I be allowed
20 to do so?

21 Mr. President, you pointed out a while ago that we could react to
22 the documents, but the problem we face is that we could not react
23 in a split second to dozens and dozens of documents presented by
24 the parties in what we consider as a press conference. And we
25 were told previously that we would not be allowed to react, and

1 we were also told in advance that we would not have to discuss
2 the admissibility of documents or their probative value.
3 That said and in that regard, even though a few minutes ago, Mr.
4 President – and this is how we understood your statement – you
5 amended rules governing these hearings, we were not prepared for
6 that, and so we were not expecting to be asked to react to
7 documents presented by the parties.

8 You must have observed, by the way, that over the past two days
9 of hearings the only reactions that came from our side were
10 purely technical, when the prosecutor used general terms to
11 describe documents that they used, whereas the terms of those
12 documents were more specific.

13 [11.35.12]

14 Now, the defence for Khieu Samphan does not intend to participate
15 any further in such a press conference, because we are not in a
16 trial, we are in a process in which the rights of the Accused are
17 not respected. And so we do not intend to participate therein.

18 MR. PRESIDENT:

19 The National Lead Co-Lawyer for the civil parties, you may
20 proceed.

21 MR. PICH ANG:

22 Good morning, Mr. President. Good morning, Your Honours and
23 everyone. I am afraid that my intervention now might be belated.

24 MR. PRESIDENT:

25 Well, since it is belated, it is not appropriate. Then you do not

1 have to proceed.

2 MR. PICH ANG:

3 (No interpretation)

4 MR. PRESIDENT:

5 You are not granted the floor to make this observation.

6 And, International Counsel for Nuon Chea, you are not granted

7 permission to make these observations because the matter has

8 already been dealt with.

9 How about the National Lead Co-Lawyer for the civil party?

10 [11.36.26]

11 MR. PICH ANG:

12 (No interpretation)

13 MR. IANUZZI:

14 Why not? Why not? There's a new matter on the floor.

15 MR. PRESIDENT:

16 Your time was up. So, the parties have already exchanged their

17 observations already, so you are not granted the floor to discuss

18 this matter anymore, because we allotted the time for you, so you

19 have already finished your part in putting the document before

20 the Chamber.

21 I now give the floor to the National Lead Co-Lawyer for the civil

22 party. You may proceed.

23 Now the National Lead Co-Lawyer for the civil parties -- and he

24 mentioned that he was - it was rather late for him to make this

25 submission, and I mentioned that if it was too late, then he need

1 not make any observation. But if he had anything to say, you may
2 proceed.

3 [11.37.41]

4 MR. PICH ANG:

5 Even if -- it is belated but it is very crucial for members of
6 the public at large. The purpose of the last two days hearing is
7 that, first, we want to put the documents before the Chamber, and
8 those documents are evidentiary documents which - which are very
9 important. They contain substantive information for members of
10 the public and in the future they may become in the public
11 domain. So we will have to make it clear; we cannot say that the
12 last two days hearing is not of use.

13 And I would also like to respond to the observation made by the
14 defence team for Mr. Ieng Sary. He were, of course, granted leave
15 by the Chamber to make specific comment on certain documents
16 presented by other parties.

17 And Mr. Vercken mentioned that the observation had to be in a
18 general nature simply because there were dozens and dozens of
19 documents, and he could not delve on this - any particular topic,
20 and he amounted the last two-day hearing was a mere press
21 conference. I did not actually intend to interrupt, but I simply
22 find that the intervention by Mr. Vercken was not appropriate.

23 [11.39.31]

24 MR. PRESIDENT:

25 Is there any issue for the international defence counsel for Mr.

1 Nuon Chea?

2 MR. IANUZZI:

3 Thank you, Mr. President. I apologize for speaking without my
4 microphone, but I was just trying to make the point that my
5 colleague, Mr. Vercken, raised a new issue, and that issue was
6 whether or not parties would be able to object to the documents,
7 and I completely agree.

8 This morning is the very first time anyone on this stage heard
9 that from you, Mr. President. It was never communicated to the
10 parties. Had it been communicated to the parties, obviously -
11 obviously - all of us on this side of the stage would have made
12 objections, would have made substantive comments, would have
13 responded, reacted -- done something in response to what
14 happened. What was communicated to us was a document
15 presentation.

16 And I think my friend's use of the word "press conference" is
17 quite accurate. It was simply to show document, without comment,
18 without debate. That was what we were told.

19 [11.40.35]

20 So, for you, Mr. President, to tell us this morning -- again, at
21 a very late hour -- that all of a sudden it's an adversarial
22 hearing, I find it remarkable - remarkable. You are a remarkable
23 Presiding Judge - truly.

24 (Judges deliberate)

25 [11.43.20]

1 MR. PRESIDENT:

2 I hand over to Judge Silvia Cartwright. You may proceed, Your
3 Honour.

4 JUDGE CARTWRIGHT:

5 Yes. Thank you, President.

6 The Chamber is going to deliberate on the recent comments made by
7 counsel for Nuon Chea and give it its - its response after the
8 lunch adjournment.

9 In the meantime, Mr. Prosecutor, do you have the reference,
10 please?

11 MR. RAYNOR:

12 Your Honour, 10th of October, the prosecutors placed before the
13 Court two English summaries of "Revolutionary Flags". They made
14 it plain, when doing so - they made it plain, when doing so, that
15 these were English summaries that the Prosecution thought had
16 been prepared either by Stephen Heder or Professor Ben Kiernan.
17 So, those were the references to Mr. Heder that day.

18 [11.44.20]

19 The document numbers for those two issues of "Revolutionary Flag"
20 are E3/724 and E3/731. Can I say that, whilst we're dealing with
21 Stephen Heder and Your Honours' earlier ruling in relation to
22 documents authored by Stephen Heder for the purposes of the
23 document presentation hearing, there's an obvious difference
24 between a record of an interview taken down by Mr. Heder and a
25 document such as "Revolutionary Flag", which we believe the

1 summary of which came from Stephen Heder.
2 Can I say, whilst on my feet, please, Your Honour, that the
3 Prosecution would have had comments to make about Mr. Vercken's
4 summary of this hearing. A document hearing is putting evidence
5 before a Court; it's not a press conference. And he might well
6 dwell upon a particular moment from a previous, very famous,
7 international court trial, when an English judge called Richard
8 May was dealing with the former President of Serbia, Mr.
9 Milosevic, and made it absolutely plain that the purpose of
10 counsel in these trials is not, to use an English phrase, to
11 showboat. The purpose of this document hearing was to put
12 admissible, relevant documents before the Trial Chamber that Your
13 Honours had not seen before.

14 [11.45.54]

15 I find it sad that defence counsel feel, in response to that
16 legitimate, legal exercise, the need to showboat and preen their
17 feathers. Perhaps it's time for defence counsel to put their
18 peacock feathers in and for us all to concentrate on the
19 evidence.

20 MR. VERCKEN:

21 May I say a very brief word without engaging in any polemics, Mr.
22 President?

23 Without engaging in any controversies, I would like to respond to
24 the last statement by the prosecutor and I would like to assert
25 here that the Chamber -- or Ms. Lamb, who represents the Chamber

1 -- told us during our consultations prior to the hearings -- we
2 were told that the documents presentation hearing neither had to
3 do with the submission of documents nor the discussion of the
4 probative value of those documents. We were told that the
5 documents presentation hearing was aimed at enabling the public
6 to take stock of the documents, most of which already have
7 reference numbers, which you are aware of, Mr. President. The
8 purpose of this hearing was to enable the Cambodian public to
9 better understand the documents used before the Chamber.

10 [11.47.42]

11 Today, in - in a very oblivious manner, my learned friend of the
12 civil parties said: "That is not at all the case; in fact, what
13 has occurred before the public over the past two days has been
14 proceedings, judicial proceedings."

15 May I - and I have adhered to what the Senior Legal Officer
16 announced, and we're not talking of proceedings or adversarial
17 debates, insofar as we're not discussing the validation of
18 documents with E3 reference numbers, nor the probative value of
19 those documents. In that regard, I think the discussion was
20 closed, unless you clarify the matter, Mr. President, and put an
21 end to any further misunderstandings.

22 MR. PRESIDENT:

23 Counsel Ang Udom, you may proceed. You have already heard the
24 comment made by the Prosecution.

25 MR. ANG UDOM:

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1 Mr. President, I know that the hearing that has been conducted
2 since the 10th of October was, according to the letter by the
3 Senior Legal Officer, not the hearing about the possibility of
4 rejection or admission of certain documents; it was a mere
5 documental - a mere hearing to listen to the various documents to
6 be put before the Chamber, the documents that have not been put
7 before the witnesses who have come to testify in this Court
8 before.

9 [11.49.52]

10 And just now the President made it clear that for the document
11 written by two experts, Mr. Philip Short and Mr. Stephen Heder --
12 should not now be appropriate to put before the Chamber, since
13 the Chamber has not yet determined whether or not these two
14 experts are to be called to testify before this Court. That is
15 the first thing.

16 But my question was that on the 10th of October, the Prosecution
17 put a document written by Mr. Stephen Heder. That was the
18 interview with Mr. Ieng Sary. And he read out a portion of this
19 interview with Mr. Ieng Sary out in the open Court. I was
20 wondering why he was allowed to do that, and I don't know whether
21 or not there was an opportunity for us to object such a document
22 and reading.

23 And, yes, now the Prosecution also made it clear in the Court
24 that they refer only to the "Revolutionary Flags", but to me, it
25 was not confined to the "Revolutionary Flags"; there were

1 statements and interviews written by the two experts, as well.
2 And you also mentioned that those documents were accorded the E3
3 classification.
4 So, my question is: When the Lead Co-Lawyer for the civil party,
5 particularly the International Lead Co-Lawyer, who mentioned
6 certain documents that were not accorded the E3 classification
7 yet, but those documents were allowed to read in open Court --
8 and I was wondering why there were such a controversy in the
9 presentation of the document. I do need the clarification from
10 the Chamber. And, if my understanding is incorrect, please advise
11 me.

12 [11.52.01]

13 I don't know whether or not the documents that are being put
14 before the Chamber are not subject to a rejection. I would like
15 to know whether or not the hearing here is all about the
16 presentation of the documents, and parties are not allowed to
17 object against the presentation of the documents. And I wonder
18 why certain documents are allowed to read out and others are not.

19 MR. PRESIDENT:

20 The Chamber has made it clear already in relation to the two
21 documents, and Judge Jean-Marc Lavergne also clarified the issue.
22 And as for the document in relation to the application to join as
23 a civil party, the Chamber has admitted, and there was subject to
24 adversarial hearing, as well. And you may have already been well
25 aware that there have been more than 4,000 applicants to join as

1 the civil parties.

2 And we have classified certain documents with the E3
3 classification. And as for -- the annexes to those documents may
4 be used in certain cases, particularly the document relating to
5 the application to join as the civil parties.

6 [11.53.32]

7 And I divide it into precise two points, one relating to the
8 experts and the other relating to the documents that parties are
9 supposed to put before the Chamber. And parties are allowed to
10 put this document at appropriate time in the proceeding. That is
11 meant to facilitate the flow of the hearing.

12 And on a separate issue, party ask us -- and if they wish to make
13 observation on certain documents presented, they can do so, but
14 they are not going to discuss the probative value and weight of
15 those documents. The parties were not supposed to assess the
16 probative value or weight of the evidence because this is not at
17 the closing stage of the proceedings.

18 Counsel, you may proceed.

19 MR. ANG UDOM:

20 Thank you, Mr. President. I would like to clarify the title of
21 the document that the Prosecution put before the Chamber in
22 relation to the interview by Mr. Stephen Heder. It's document
23 E3/89.

24 And just now I heard from the President very clearly, but I have
25 to double check with that. This is the hearing to present

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1 documents; it is not the hearing to admit or reject any
2 documents. And, if you do not mind, please clarify this.

3 [11.55.33]

4 MR. PRESIDENT:

5 It is true; we have not rejected any document presented by the
6 parties, but the Chamber asks us to defer two documents. The
7 documents relating to the witness who may be subject to be
8 summoned by the Chamber, we have to take into consideration the
9 circumstances involved with the summoning of those two experts.
10 And Mr. Philip Short has already been summoned, but due to his
11 busy schedule, we defer his testimony to early 2013.

12 And as for the other expert, we have advised the parties that he
13 is under the consideration by the Chamber -- whether or not to
14 summon him to testify. And Judge Jean-Marc Lavergne has already
15 clarified that very precisely and he also asked the parties to
16 proffer the Chamber with documents as well, at appropriate times,
17 when we hear - we may hear this testimony, sometime in 2013.

18 [11.56.55]

19 The - Mr. Prosecutor, do you have any issue to raise? Otherwise,
20 the time is also appropriate now for a break.

21 MR. RAYNOR:

22 No. Thank you, Mr. President.

23 MR. PRESIDENT:

24 Counsel, you may proceed.

25 MR. IANUZZI:

1 Thank you, Mr. President. Just two points today, before we sit
2 down.
3 I take Mr. Raynor's point, that there's a difference between an
4 article authored by an expert and an interview conducted by an
5 expert. The point I was trying to make – the point I was trying
6 to make is that we would have all done well to have been notified
7 in advance of the parameters.
8 And the difference that I – that I accept, it's not a fatal
9 difference. There are still potential issues with an interview
10 conducted by a person who is not an OCIJ investigator, if that is
11 in fact the rationale for not hearing or for not discussing a
12 report prepared by an expert. If the rationale for not discussing
13 a report prepared by an expert is that he's not here, then that
14 same rationale should apply to interviews conducted by that
15 expert who was not a judicial officer at the time of conducting
16 interviews.
17 [11.58.18]
18 I hope I'm making myself clear.
19 I do take Mr. Raynor's point, but it was not the point that I was
20 trying to make. It was not the point that I was trying to make.
21 If we're to be prohibited from discussing documents, we should be
22 told that in advance and we should be given reasons as to why
23 we're prohibited so we understand it, so it's clear for the
24 record, so we can make appropriate motions and/or appeals. That's
25 my complaint. That is my complaint.

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1 And, of course, my final application for the morning is that Mr.
2 Nuon Chea be permitted to spend the afternoon in the holding
3 cell. He's suffering from a headache, a backache, and a general
4 lack of concentration. I may do well to retire to the holding
5 cell myself. Enjoy your lunch, everyone.

6 MR. PRESIDENT:

7 The time is now appropriate for lunch break. The Chamber will
8 adjourn now until 1.30 this afternoon.
9 This afternoon, the Chamber will hear the testimony of one civil
10 party.

11 And the Chamber notes the request by Mr. Nuon Chea, through his
12 defence counsel, to follow the proceeding remotely, through
13 audio-visual means, for the remainder of today's proceedings, due
14 to his health concerns.

15 The Chamber grants the request of Mr. Nuon Chea. He may follow
16 the proceeding from the holding cell downstairs through
17 audio-visual means for the remainder of today's proceedings.

18 [12.00.05]

19 Mr. Nuon Chea has expressly waived his right not to be present
20 directly in this courtroom. The Chamber requires that the defence
21 team for Mr. Nuon Chea to submit to the Chamber immediately the
22 waiver with the thumbprint of signature of the accused Nuon Chea.
23 AV booth are instructed to link the audio-visual means to the
24 holding cell downstairs, where Mr. Nuon Chea can follow the
25 proceeding remotely for the remainder of today's proceedings.

1 Security guards are instructed to bring the co-accused Mr. Nuon
2 Chea and Khieu Samphan to the holding cell downstairs. Mr. Nuon
3 Chea is to remain in the holding cell for the remainder of
4 today's proceedings, and Mr. Khieu Samphan is to be brought to
5 this courtroom before 1.30 this afternoon. The Court is now
6 adjourned.

7 (Court recesses from 1201H to 1344H)

8 MR. PRESIDENT:

9 Please be seated. The Court is back in session.

10 As I advised the parties and members of the public this morning,
11 that -- this afternoon the Chamber will hear the testimony of one
12 of the civil parties, TCCP-169.

13 And before I call in this civil party, the Chamber wishes to
14 pronounce two rulings.

15 And, in this respect, I hand over to Judge Jean-Marc Lavergne to
16 pronounce the ruling on two issues:

17 1) The presentation of the documents by David -- by Heder, Mr.

18 Heder; and

19 2) The warning of the Chamber against the international defence
20 lawyer for Mr. Nuon Chea, Mr. Andrew Ianuzzi.

21 [13.46.22]

22 JUDGE LAVERGNE:

23 Thank you very much, Mr. President.

24 First and foremost, with respect to the observations made by the
25 defence lawyers with respect to the presentation made by the

1 office of the Co-Prosecutors of an interview involving the
2 accused Mr. Ieng Sary conducted by Mr. Steve Heder, upon
3 verification, the Trial Chamber acknowledges that, in effect,
4 document E3/89 is indeed the said interview that was used by the
5 International Co-Prosecutor during the hearing of the 10th of
6 October.

7 Nevertheless, the Chamber does not intend to amend its decision
8 to postpone the presentation of Nuon Chea's document
9 presentations of the written documents authored by Mr. Steve
10 Heder until the Chamber decides that the concerned person shall
11 be summoned to testify.

12 [13.47.34]

13 The Chamber intends to clarify that such postponement is entirely
14 consistent with the good administration of justice and that it
15 serves to avert repetitious arguments before this Chamber and
16 does not in any way curtail or have a detrimental effect on the
17 rights of the Defence to refer to such documents at an
18 appropriate time.

19 With respect to the second oral decision of this Chamber,
20 concerning Counsel Andrew Ianuzzi, sir, would you kindly rise?
21 Over the course of this morning's hearing, Counsel Ianuzzi,
22 international counsel for the defence of the accused person Nuon
23 Chea, proceeded once again to make several and various comments
24 with the view to contest or criticize the decisions that had just
25 been issued by the Chamber with respect to the conduct of

1 proceedings. On many occasions, counsel had been forewarned that
2 such behaviour and such comments were inappropriate and that he
3 was no longer authorized to continue.

4 [13.49.01]

5 In addition to these comments, he addressed the President in a
6 repeated manner by qualifying the President of this Chamber as a
7 "remarkable" Judge. The manner in which such comments were
8 uttered and the tone with which counsel delivered such comments
9 and addressed the President leaves no doubt of the discourteous
10 and disrespectful nature of his comments and is entirely
11 insulting towards the President and, indeed, the entire
12 composition of this Chamber.

13 Because of the entirely inappropriate and unacceptable behaviour
14 of the lawyer, the Chamber solemnly and hereby warns Counsel
15 Ianuzzi that, pursuant to Rule 38 of the Internal Rules with
16 respect to misconduct of a lawyer, continuance of such behaviour
17 may lead to refusal of his participation in the Chamber and a
18 refusal to be given audience.

19 Thank you.

20 MR. PRESIDENT:

21 Court officer is instructed to usher in the civil party,
22 TCCP-169, to -- into the courtroom.

23 (Witness enters courtroom)

24 [13.51.45]

25 QUESTIONING BY THE PRESIDENT: