

Defense Counsel Attempts to Distinguish Party Principle from Practice

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On Monday, April 9, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) continued trial proceedings in Case 002 against accused Nuon Chea, Ieng Sary, and Khieu Samphan. As scheduled, the day was devoted to the examination of prosecution witness Kaing Guek Eav, alias Duch, by Ieng Sary's defense team, which attempted to distinguish principle from practice during the Khmer Rouge Regime. In the words of Michael Karnavas, Ieng Sary's international defense lawyer, the day was "long" and "combative."

The public gallery was half full, with the proceedings attended by a group of about 300 Khmer high school students and around a dozen national and international observers.

Court Resumes Proceedings

Prior to handing the floor over to Ieng Sary's defense team, the Chamber President Nil Nonn informed the Chamber that Judge Lavergne is in good health and will participate in the day's proceedings.

Duch Continues to Evade the Defense's Questions

Mr. Karnavas began by having Duch confirm that his functions, movements, and knowledge were limited to S-21 while he served as its chief. He also prompted Duch to confirm that he was a mid-level cadre, meaning "not at the bottom, but certainly not at the top" and that it was fair to say that while at S-21 he tried his best to adhere to the party line and instructions by his supervisors, Son Sen and Nuon Chea.

The questions then turned to Duch's level of fear while he was at S-21, which Duch indicated was rather high. Duch specified that he became "terrified" when Nuon Chea allegedly ordered him to smash the rest of the prisoners in 1979. He went so far as to admit he was so shocked he could not move out of his house. Mr. Karnavas asked whether it was fear that kept him from

taking any action that would draw attention to him and motivated him to try his best to ensure the confessions had the information that was expected. In response, Duch reminded Mr. Karnavas that he already clarified that he would not accept everything as truth or not truth.

After denying Duch's request to provide a concrete example of his previous question, Mr. Karnavas reworded his question and asked, "You knew the confessions contained what can only be characterized as lies, correct?" Duch responded that the statements cannot be presumed to be lies or to be true. This answer prompted Mr. Karnavas to ask whether it would be fair to say that he was told in advance what needed to be in the confessions, at least with certain individuals, and further, the people arrested by the Community Party of Kampuchea (CPK) were determined to be enemies and needed to acknowledge they made mistakes. Duch confirmed that this was a common practice. Mr. Karnavas then further clarified with Duch that anyone accused of being an enemy had to acknowledge that s/he was CIA, KGB, or under the influence of the Vietnamese.

Mr. Karnavas next reminded the witness that he was not trying to be critical of him but wanted to clarify if Duch and his agents were trying, by way of torture, to get those being tortured to effectively lie about being CIA, KGB, or Yun (Vietnamese) agents. He requested that Duch provide nothing more than a "yes" or "no" answer. Duch, answering instead with a full sentence, responded that interrogation and torture were a last resort – all they wanted was a confession.

Mr. Karnavas became more forceful and instructed Duch just to say "yes" or "no." He then asked, "Did you get those being tortured to lie about their affiliation?" Duch appealed to the President, requesting he not be made to answer a leading question. Mr. Karnavas moved on.

Duch was next asked whether those confessing had to write the confession repeatedly in order to get the question "just right," also reminding Duch to answer with only a "yes" or "no." Duch, again answered in full sentences, confirming that some prisoners had to write the confessions "again and again." Mr. Karnavas asked whether this was because a "certain truth, that was a lie, was being requested of them." Duch said the confessions were repeated to make them more precise, not to encourage lies.

Mr. Karnavas then asked whether it was part of Duch's job to go over the confessions before sending them to Son Sen. This question prompted the International Deputy Co-Prosecutor William Smith to object on the grounds that the question was misleading because it failed to acknowledge the witness's testimony that some confessions were also sent to Nuon Chea. Mr. Karnavas repeated the question, this time also mentioning Nuon Chea, but clarifying he particularly cared about Son Sen. Duch responded that sometimes Son Sen would ask him to interrogate a person again and sometimes Nuon Chea would ask for clarification of words or phrases.

Mr. Karnavas next confirmed that Duch had no interactions with Pol Pot, excluding an anniversary celebration meeting on one September 30th where no important information was exchanged. Mr. Karnavas insisted on "yes" or "no" answers, causing Judge Cartwright to remind Mr. Karnavas that he could not restrict the answers to "yes" or "no." She further asked Mr. Karnavas to refrain from multi-level questions and pointed out that he was very "quick on the draw." Mr. Karnavas said he did not know "yes" or "no" questions were not allowed,



prompting Judge Cartwright to clarify that the questions could be asked but the witness's answers could not be restricted. She also reminded him that he could not ask leading questions. Mr. Karnavas informed her that the senior legal officer specifically told him that the defense was allowed to ask leading questions and that if he could not ask such questions, he would need more than one day to fully examine the witness. Judge Cartwright stated that she understood this is a different system from what counsel is used to, especially as this type of questioning is not considered cross-examination, and expressed her appreciation for his willingness to adapt. He joked that he hoped his abilities did not fail him.

Under further questioning, Duch then confirmed that he had no connections with Ieng Sary – he only saw him from a distance twice. Similarly, he confirmed he had no interaction with the Ministry of Foreign Affairs, including having never visited nor had discussions with the staff there. He also acknowledged that he never received instructions from Ieng Sary, even through Son Sen, nor did he have access to Ieng Sary's travel schedule or daily itinerary.

Mr. Karnavas then asked if Duch had ever visited where Ieng Sary lived or worked, prompting an objection by Mr. Smith. The prosecutor first acknowledged that the questions were flowing well, but then he attempted to instruct the defense counsel on how to better phrase the questions.

Remarking that he wished to move on in order to save time, Mr. Karnavas rephrased his question and asked whether Duch knew about the relationship between Ieng Sary and Son Sen. Duch testified that he did not. The counsel then asked whether Duch knew about the working relationship between Ieng Sary and Nuon Chea. Duch said he knew about it based on "an organizational principle in the party." Mr. Karnavas corrected him, saying he did not care about principles at this time; rather he wanted to know what the witness personally knew at that time Duch was chief of S-21. Duch said the question was "very difficult" and he "could not answer." The sound then cut off; when it returned, Mr. Karnavas was asking about Duch's understanding of the relationship between Ieng Sary and Pol Pot. Duch said that he did not personally know about their precise relationship, but he knew they were important.

Mr. Karnavas then asked if Vorn Vet was an important person; Duch confirmed that he was. The counsel then inquired if Duch knew, other than in principle, Vorn Vet's working relationship with Pol Pot. Duch responded, "If you don't refer to the principle, I do not know because I did not see it."

Duch then testified that he never visited Office 870 and when asked if he could describe it, responded he could not in a word or two. Mr. Karnavas asked if Duch knew where the office was located. Duch responded that he thought it was in the city complex but that "this was his wrong guess."

Duch also clarified that he never received any minutes from the Standing Committee, the Central Committee, or any committee meetings that Pol Pot might have presided over during the time in

question, with the exception of the minutes from one zone meeting that was published in the *Revolutionary Flag* magazine. He was then asked to explain how he could then testify “with any degree of certainty” about whether the minutes actually reflected what happened in the meetings. This question prompted Mr. Smith to request that Mr. Karnavas clarify on which minutes he was asking Duch to comment. Mr. Karnavas insisted he had laid a foundation that Duch never attended any of the meetings and never saw any of the minutes. He also said that he thinks the witness can tell them if clarification is required.

Mr. Karnavas then repeated the question, and Duch asserted that the minutes were accurately recorded and attempted to give an example. Mr. Karnavas interrupted him and asked if Duch attended that meeting. The President stopped Mr. Karnavas’ questioning to allow the witness to provide his example. Duch then testified that some meetings were not accurate, like in October 1975, when the secretary in charge of the minutes did not separate certain words. He stated that these inaccuracies were later revised. Mr. Karnavas then asked Duch whether he attended the meeting where the minutes were taken, and Duch admitted that he had not, stating that he knew what happened in the meeting from conversations with his superior.

Mr. Karnavas then attempted to focus Duch on the meeting of March 30, 1976, and asked whether his superior at the time was Son Sen, which Duch confirmed. Mr. Karnavas then asked whether Duch could point to a document that confirmed Son Sen told him about the meeting. Duch responded that the two had discussed the meeting. Mr. Karnavas repeated the question, informing the President he would interrupt Duch if the witness was non-responsive.

This statement prompted Mr. Smith to offer a “clarification,” in which he called the Chamber’s attention to the fact that the witness had many conversations. Mr. Karnavas said he could not see how the witness could be confused, as the question had to do with any contemporaneous documents from 1975-1979 that proved that he had these conversations with Son Sen. He reminded the Court that if the statement could not be verified, the Judges would have to rely on Duch’s word because Son Sen was no longer alive.

The President then asked the witness whether he understood the question, and Duch responded that Mr. Karnavas wanted to know whether a record was kept when Duch talked with his direct superior Son Sen. Duch then answered, stating he brought a book and wrote down all instructions given to him by Son Sen and Nuon Chea and that these notes were kept at S-21. Mr. Karnavas then specified that he was not interested in tasks but wanted to know whether Duch wrote what Son Sen told him about what was going on in the Standing Committee, particularly the “juicy details.” Duch clarified that he did not take notes on this.

Mr. Karnavas then asked Duch whether it was “healthy” for someone like him to be asking questions from someone like Son Sen about what was going on during the Standing or Central Committee meeting, especially considering what had happened to Vorn Vet. Mr. Smith then objected on the grounds that he believed the question to be misleading, as the witness had previously testified, that he was reporting to Nuon Chea, not Son Sen, when Vorn Vet was arrested in 1978. He suggested that the question would be clearer if it was consistent with the witness’s previous statements.

Mr. Karnavas chose not to respond to the objection and instead rephrased the question, asking whether in 1976 Duch was in fact “in fear” or “terrified” when working at S-21. Duch affirmed that he was. Mr. Karnavas then asked if it was fair to say Duch was “vigilant” to make sure he did not do anything to cause his arrest. Duch again affirmed the statement. Mr. Karnavas then repeated Duch’s testimony that during the Khmer Rouge regime there was a policy just to “know your own business.” He inquired whether that included asking about what was happening in the Standing Committee meetings.

Mr. Smith then interjected yet again, claiming the question was leading. This resulted in Mr. Karnavas accusing the prosecution of being “disruptive” of his “precious time” and vowed to be just as disruptive to the prosecution. Mr. Smith offered his guidance to Mr. Karnavas on how he thought the questions should be asked so as not to be leading.

Mr. Karnavas then moved on, asking more questions on what Duch considered to be “his business.” Duch admitted to asking the messenger, Pang, about the Standing Committee meeting after Vorn Vet was arrested. Mr. Karnavas asked whether this meant Duch trusted Pang not to inform on him. After some confusion, Mr. Karnavas clarified that Duch trusted Pang enough to inquire into information he was not entitled to know. Duch further clarified that if Pang told his superiors about his questions, he could be punished by Pol Pot.



Mr. Karnavas then switched his area of focus and asked if innocent individuals were ever interrogated, tortured, and killed. Duch accused him of asking a question that was trying to “illicit a presumption.” Mr. Karnavas rephrased, asking if individuals implicated in confessions were sent to S-21 where they were then interrogated, tortured, and killed. After further back and forth between the witness and counsel that led nowhere, Mr. Smith interrupted to state that the counsel’s question had actually already answered. Mr. Karnavas

responded that if the prosecution was willing to stipulate that there were false implications leading to people being tortured and smashed, he was willing to move on. Nothing more was said on this subject, however, and Mr. Karnavas proceeded with his questioning.

The defense counsel asked whether Duch had read any information, including a bundle of documents the prosecution gave him to review, before testifying in Case 002. Duch responded then he was entitled to read them. Duch was then asked whether he had access to the documents before appearing in Case 001. He responded that he did not understand the question. After much confusion, Duch finally clarified that he did not know whether he got the case file, adding that if counsel wanted to be certain he should ask about each document.

Mr. Karnavas did not respond to Duch but rather moved on to asking him about books he read before he was put on trial in Case 001. Duch asserted he did not rely on any books. Mr. Karnavas then clarified that he was not asking about relying on the books but rather about reading them. Further he mentioned Duch admitted to reading books in his previous testimony. Still, Duch

insisted that he had not read any books. This answer caused Mr. Karnavas to ask why the witness had told Nuon Chea’s lawyer that he read books, and he asked Duch to specify whether he was confused by the question or was being dishonest under oath.

Mr. Smith objected again because he thought the question was confusing to the witness. Mr. Karnavas became visibly angry, exclaiming that the prosecution’s objections amounted to coaching the witness. The President instructed him to “restrain himself” and “wait his turn.” Mr. Smith assured the Court that he was not trying to coach the witness and suggested the witness be asked whether he read the documents. Mr. Karnavas protested that he should be allowed to conduct his examination however he would like but then agreed to move on in the interest of time.

Mr. Karnavas then asked Duch to discuss whether he was given any documents prior to being interviewed by the Co-Investigating Judges, but the witness stated that he had not. Duch then asked if he could read part of a document to the court, prompting Mr. Karnavas to exclaim, “The witness is not in charge, we are not at S-21.” The President instructed Duch to put the documents aside and just answer the questions, reminding him not to answer questions that might elicit a presumption or conclusion.

Duch then clarified that before he was interviewed by the Co-Investigating Judges, he did not have access to any documents, but over the months he was given the documents “successively.” Duch also stated that he did not get the documents a long time before being questioned on them and that they were given to him in hard copy.

Duch then testified that he also had access to an expert, named “Mr. Jenner,” who was part of his legal team and testified in court. After some confusion regarding whether the witness meant David Chandler or Mr. Jenner, Mr. Smith objected and requested that counsel be directed to clarify how many meetings were held with Mr. Jenner. With obvious frustration, Mr. Karnavas asked Duch about the number of meetings he had “with a member of [his] defense team” for “several months, if not years.” Duch responded that it was only once, maybe twice, and that he could not remember the reason for the meeting but remembered talking to this person about the flag of China.

Court Takes Morning Recess

At this point, the Chamber adjourned for a twenty-minute morning break. Ang Udom, counsel for Ieng Sary, made his usual request that his client be permitted to waive his right to be present in the courtroom and retire to his holding cell to observe the remainder of the day’s proceedings via audio-visual link, due to his health concerns. As usual, the President granted the request, requiring a waiver be submitted to the court with the defendant’s signature or thumbprint.

Review of Duch’s Prior Statements

After the break, Mr. Karnavas resumed his examination of the witness by promising to be “ever mindful” of the rules put forward by the Chamber. He then asked the judges whether



documents familiar to the witness could be put forward in bundles, and the President permitted him to do so. Before proceeding, Mr. Karnavas reminded the Chamber that this was his “first try at this in this particular court.”

Counsel then had Duch turn to a study written in March 2012 on the lessons learned from the elders of former generations. The forward refers to “a researcher,” which Duch clarified was him. The study was determined to be based on evidence Duch heard, read, researched, analyzed, and “summed up.”

Mr. Karnavas then proceeded to the next document, which was a transcript of Duch’s testimony that contained lines reading, “If you really want me to only talk about what I knew back then, I am afraid that I won’t have anything to tell the world about this because I was confined to S-21 in particular.” Duch responded that the statement was “not just something on the script, but it is the truth.”

Mr. Karnavas then clarified that a typical day in the life of “Comrade Duch” was to go back and forth to S-21; he did not ride around Phnom Penh. Mr. Smith interrupted, stating that the witness’s evidence was that he attended meetings with Nuon Chea every three to five days and that there were other meetings as well. Mr. Karnavas then clarified with the witness that other than the meetings he was ordered to attend, Duch was not free to drive around Phnom Penh as he wished.

Duch was then asked to look at a written record of his interview with the Co-Investigating Judges in June 2008, and it was established that he said he had a better sense of the information on the day of the interview than he did the previous August or December because of the opportunity to go through the case file.

Duch was then asked to turn to another written record of his testimony from November 2009, where he responded to a question by the Co-Investigating Judges, “I prefer to wait to read [a specific] document before answering that question.” Mr. Karnavas asked whether this meant he wanted to look at documents before answering questions posed to him by the judges, and Duch qualified his answer by stating that the assertion was correct on that day.

The questions then turned to the written record of Duch’s interview by the Co-Investigating Judges in May 2008. Mr. Karnavas asked Duch to focus on a part where the witness had said, “I myself did not know other people’s work. From that point of view, one could not draw the conclusion the regime was criminal but simply that crimes were committed at S-21.” Duch clarified that he had answered this question based on his knowledge at the time and it was before he had access to the other documents.

Duch was then asked about another section of the document where he was recorded to have said, “I consider the declaration that I made to UNHCR is outdated and no longer useful.” Mr. Karnavas attempted to clarify that Duch had considered the declaration outdated because it did not have the benefit of all of the knowledge from the documents provided by Duch’s lawyers. Duch responded that it was not an assessment of his competency.

The questions then focused on the Closing Order from Case 001. Mr. Karnavas asked whether Duch agreed with the assessment that it was not clear what of Duch's testimony he actually remembered and what was based on information provided in the case file. Duch asserted that this assessment was not correct.

Mr. Karnavas then asked Duch to look at a similar passage contained in the Case 001 Closing Order, but Mr. Smith interrupted before Duch could respond, objecting that the witness was being asked to comment on the opinion of the Co-Investigating Judges despite the fact that the Chamber had already asked the defense not to ask these types of questions. Mr. Karnavas argued that he was just trying to give the witness a chance to explain, clarifying, "Just because I don't say 'I put it to you' does not mean that I am not in fact putting it to him." The President sustained the objection and instructed the witness not to answer the question because it did not "necessarily address the matter."

Although Mr. Karnavas was allowed to rephrase the question, he chose to move to the next document. He focused on a part where Duch was recorded to have testified about the secrecy amongst the leaders of the CPK by relying on information from the meeting on March 30, 1976, despite the fact that Duch neither attended this meeting nor read the minutes during his time as chief of S-21. Duch was asked whether he agreed with the Co-Investigating Judge's assessment that Duch was not actually aware of the decision-making process of the upper echelon.

The question provoked Mr. Smith to object again, accusing Mr. Karnavas of "cherry picking" the statements he chose to ask about and not putting them in context. Mr. Karnavas deemed the prosecution's remarks "comical," asserting that the prosecution did the same thing. He clarified that the question was not leading but was inviting comment. He also claimed that these questions were important because the prosecution had asserted that Duch was in a unique position to testify. He argued that the Court should be made aware that Duch's opinions were colored by documents and the opinions of his lawyers. Mr. Smith retorted that he does not find the comedy in failing to ask a fair question. Mr. Karnavas asserted that Duch is "very clever and educated."

Civil Party Co-Lawyer Lyma Nguyen then entered the conversation because she thought the Judges should consider that many of the extracts read by the defense team were taken out of context. Mr. Karnavas said that he did not interrupt her objection to avoid being rude, but promised that next time he will "interrupt forcefully" because the objection should have been made at the time the excerpt was being discussed.

The President gave the defense team the last word on the issue before ruling on the objection, and Mr. Karnavas used the opportunity to clarify that he is not taking information out of context; rather he is giving Duch the opportunity to comment on the findings of the Co-Investigating Judges.

The President overruled the objection from the Civil Party because it was not timely but sustained the one by the Prosecution. The President repeated that the witness should be questioned based on his experience and the events he has seen.

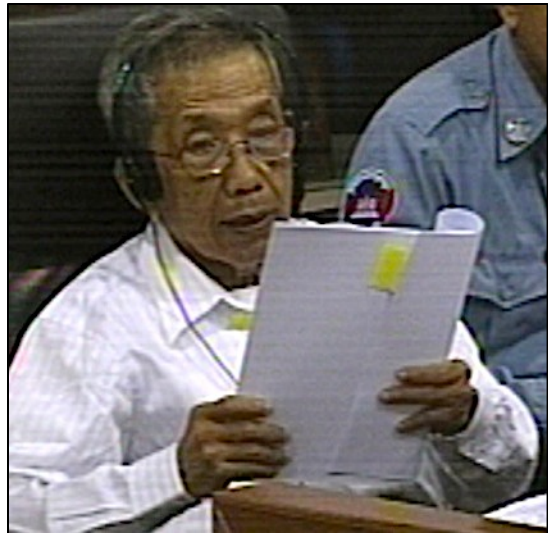
Visibly frustrated, Mr. Karnavas asked Duch to draw his attention to the written record of an interview from 2007. The document contains written testimony from Duch, including the following quotes:

- “Confession – I wish to confess concerning a letter that I previously denied”;
- “I forced myself to make a temporary denial out of fear and embarrassment. The reason being I was waiting for the falling into the place my request to receive a copy of evidentiary documents to read, and consider, and refresh my memory”;
- “In summary I need all kinds of evidence in order to enlighten the court on the crimes that were committed at S-21.”

Mr. Karnavas attempted to clarify that Duch confessed to giving false information because he wanted to read documents prior to giving an answer, but Duch provided a nonsensical answer that motivated Mr. Karnavas just to move on.

Help with Written Answers to the Co-Investigating Judges?

Duch was then asked about a series of written questions and answers between him and the Co-Investigating Judges. Mr. Karnavas began by drawing Duch’s attention to the fact that on one set of questions and answer, the questions are dated March 2009 and the written answers are dated December 2009. Duch, who at first requested significant handholding from Mr. Karnavas to understand the question, then refused to answer it. Mr. Karnavas chose again just to move on.



Duch was then asked to examine another document where there were four months between the questions from the Co-Investigating Judges and Duch’s written answers. Duch again asserted that he could not follow the question, but confirmed that the records were not falsified.

Mr. Karnavas then moved to the next document, where there was six months between the questions and answers. Duch again stated he could not follow the question.

Yet another document was then examined: a written request for answers dated January 2008, followed by a March 2008 reply. This time Duch stated that the dates were correct and admitted to receiving a copy of a magazine entitled *Searching for the Truth*. Mr. Karnavas then informed the Chamber that it was a good time for him to break for lunch.

Court Breaks for Lunch

At this point, the Chamber adjourned for the lunch break. Michiel Pestman, counsel for Nuon Chea, made his usual request that his client be permitted to waive his right to be present in the courtroom and retire to his holding cell to observe the remainder of the day’s proceedings via audio-visual link. As usual, the President granted the request but required that a waiver be submitted to the court with the accused’s signature or thumbprint.

More Prior Testimony Examined

Mr. Karnavas resumed the session by reminding the witness of the documents discussed before lunch where weeks or months lapsed between the time questions were asked and the responses were provided. He then asked Duch whether he got assistance providing answers to the questions asked by the Co-Investigating Judges. Duch responded that he wrote a few articles to clarify the events on his own initiative that were based on his own recollection.

Duch's attention was then directed to a written declaration he wrote to the Co-Investigating Judges that was added to the written record of his testimony in October 2007. In it Duch declared, "It was account of my trying hard to find the truth." He was asked whether he was always searching for the truth or it was just one isolated incident. Duch responded that it occurred on all occasions but thought it was more evident here.

Duch was then asked about another paragraph where he said, "At S-21 I evaded work to the maximum. I accepted only the work that was unavoidable. I never grasped anything concretely." He was asked whether he would like to qualify that statement while he was under oath today. Duch responded that the statement that he "evaded the work" meant that he tried to avoid the work of the police, but he could not actually do it. He also testified that he truthful when he said, "I thus never grasped anything concretely."

Mr. Karnavas then showed Duch another written record of his testimony, this time from March 2008. Duch confirmed that he provided comments on the book *The Lost Executioner*. He also testified that he could not remember if the book was part of the record or given to him by his lawyer.

They then moved to documents that Mr. Karnavas described as little "vignettes" for the judges. In one of the documents Duch provided testimony about David Chandler's book *Voices from S-21*. Duch began to read the document intensely, and Mr. Karnavas pointed out that there was nothing else in the document that he needed to see. Duch then responded to the questions, saying he only read half of the book because the rest was not important. Mr. Karnavas asked if that meant the sections commented on were the ones Duch considered to be important, and Duch confirmed that they were. Further, it was established that the Co-Investigating Judges did not ask him to respond to any other parts of the book.

Mr. Karnavas then asked whether Duch referred to any of the documents in the case file made available to him by his lawyers when he commented on the book. Duch provided yet another confusing answer, and Mr. Karnavas asked if a fair summary of the answer was, "Yes, I reviewed documents that were in the case file when commenting on David Chandler's book." Duch confirmed the summary. Mr. Karnavas further clarified that Duch was asked to comment on David Chandler's understanding of the March 30, 1976, meeting, but in fact Duch was not familiar with the specifics of this meeting prior his arrival at the ECCC. Duch claimed that he did not rely on other documents in making his comments about the book.

The next document to be examined was a written record of an interview by the Co-Investigating Judges with Duch from October 2009. Duch was asked to draw his attention to two statements in the document: (1) "You need to make a distinction between theory and practice. Theoretically

speaking the separation of powers was made through the decisions made on March 30, 1976”; and (2) “Practically speaking, all power was centralized in Pol Pot’s hands.” Duch commented that these statements meant, “In theory you say one thing but in practice something else might actually be put in place.”

Mr. Smith then interrupted and asked that the statement be put in context. Mr. Karnavas asked for the Court’s discretion, noting that due to the limited time he has to make selections. The President then requested he make the questions succinct and easy to understand.

Mr. Karnavas then asked Duch to explain what he meant by the difference between theory and practice. The witness responded that in principle the Secretary of the party could make the decision to smash, but in practice, it was not that clear.

They then moved on to another topic, and Mr. Karnavas reminded Duch that this morning they had talked about fear. He then asked Duch to turn to a document and discuss a question by the Co-Investigating Judges that read, “If your relations with Vorn Vet were so good, why did you allow torture in this case?” The document recorded Duch’s response as, “The idea was to behave in a way that would not give Pol Pot excuses that could allow him to arrest me easily.” In response, Duch testified that at the time his answer was broad; the purpose of the conversation was to protect him from giving Pol Pot excuses to arrest him easily.

Mr. Karnavas then asked Duch whether he was trying to get information from Vorn Vet, a man who was once his mentor, to see how he could best avoid being arrested by Pol Pot. Duch said he now remembered that when Vorn Vet arrived he asked for Duch’s forgiveness and asked why Pol Pot arrested him. Mr. Karnavas informed Duch that this information was already known, repeating that he was asking today whether Duch was also trying to get information from Vorn Vet about how to avoid arrest. Duch said that he was trying to protect himself.

Mr. Karnavas then went back to his question from this morning about asking Pang about the Standing Committee. Duch asserted that he did not think that actions such as asking these kinds of questions could get him in trouble. Mr. Karnavas asked whether there was any contemporaneous writing that would corroborate this conversation; Duch told him there was not.

The conversation then turned to another interview with the Co-Investigating Judges in March 2008. Duch confirmed that all the decisions of the Secretary or Deputy Secretary had to be respected and that people who did not respect them had to be eliminated. Mr. Karnavas then observed that from his answer it seemed like anyone could be eliminated except for Pol Pot and Nuon Chea. Duch did not agree with this conclusion. Mr. Karnavas responded, “Okay, but Vorn Vet for instance, he was eliminated?” Duch agreed. Mr. Karnavas then asked whether other high-ranking officials were eliminated, and Duch said they were.

The questioning then moved on to another written record of the interviews with Co-Investigating Judges, specifically the portion where Duch responded to a question, “Under the Khmer Rouge regime, there was frequently a person put in front as a façade to hide the important person.” Duch responded that he still stands by this response.

Then they went to another document, where Duch reportedly stated, “Among the seven members of the Standing Committee, three were responsible for security – Pol Pot, Nuon Chea, and Son Sen.” Duch said that he still stands behind that position, like he always does. He was then asked whether these three individuals had the power to arrest anyone. Duch responded that Pol Pot always had the highest power. Mr. Karnavas then requested that Duch clarify whether this meant that Pol Pot could have someone like Ieng Sary, Nuon Chea, or Khieu Samphan arrested. Duch agreed but put forward that another issue was the basis Pol Pot would use to arrest them. Mr. Karnavas asked whether it would “perhaps be the same grounds as to arrest, torture, and kill Vorn Vet.”

Mr. Smith then interjected, saying the question was not clear because the grounds of arrest were not specified. Mr. Karnavas asserted that Duch knew the grounds better than him, as Duch was the one who took the confessions. He then told Duch that if the witness could not answer the question he would move on. Duch asked for the question to be repeated, and Mr. Karnavas asked about whether false pretexts were sometimes used, such as wrongly accusing someone of being “CIA or a Cambodian with a Vietnamese mind.” Duch asked the question to be rephrased. Mr. Karnavas asked whether, in Duch’s opinion, Vorn Vet deserved to be smashed. Duch refused to answer on the grounds that it would cause him to speculate.

Mr. Karnavas then rephrased, asking if Vorn Vet had been tortured. Duch responded that he was. The counsel then asked why. Duch told him he would not answer because it would lead to speculation. Mr. Karnavas asked if Duch’s response meant “that you, the head of S-21, do not know why your mentor was tortured?” Duch was again asked why Vorn Vet was being tortured, and he responded that those arrested at S-21 were followed closely and beaten if deemed to deserve it. Mr. Karnavas again asked if Vorn Vet deserved the torture that he received under Duch’s supervision, and Duch refused to answer because the question was too general. Duch then proceeded into a monologue about who was tortured but was cut off when Mr. Karnavas asked him again whether Vorn Vet deserved to be tortured.

Mr. Smith then interrupted, stating that the witness was answering the question before counsel interrupted. He further voiced his agreement with the judges that it is not appropriate to ask a yes or no question for a complex question. He requested that the witness be freely able to answer.

Mr. Karnavas agreed to rephrase the questions and asked how long Vorn Vet was at S-21. Duch said, “I forget it all.” Mr. Karnavas asked if it was weeks or months. Duch said Vorn Vet arrived in November 1978. Mr. Karnavas asked when Duch had Vorn Vet smashed, but the witness said he could not recall.

Duch was next asked how many confessions Vorn Vet had to write before he got it “just right, that is, the story that was expected from him.” Duch said that there were no expectations, requesting that the word expectation be removed from the question. Mr. Karnavas then asked Duch if he reviewed Vorn Vet’s confessions. Duch said that he did so before sending the confessions to Nuon Chea.

Duch was then asked whether Vorn Vet confessed to doing wrong, and Duch responded that Vorn Vet admitted to being CIA. Mr. Karnavas noted that Vorn Vet was Duch’s mentor, they spent a lot of time together, and Duch asked for his forgiveness. He then asked whether Duch

really thought Vorn Vet was really a member of the CIA. Duch said he could not say if Vorn Vet was or was not but he never taught Duch any trick about CIA. Mr. Karnavas then asked if he believed Vorn Vet's confession that he was CIA at the time he was killed. Duch repeated that he never knew.

Mr. Karnavas then decided to change his strategy and ask more general question. He began by asking whether everyone who came through S-21 confessed to being CIA, KGB, or Vietnamese agents. The President said Duch did not need to answer because the question had already been asked. Mr. Karnavas argued that the question went to whether Duch believed the confessions. The President, however, refused to allow the question. Mr. Karnavas then asked whether the afternoon break could then be taken because he was at the end of this line of questioning, and it was the time normally set for break. The President allowed the request.

Examination of Written Records Continues

The afternoon session continued after the break by turning to yet another written record of an interview between Duch and the Co-Investigating Judges. Mr. Karnavas drew Duch's attention



to one of his answers recorded in the document as, "I do not have any information on the organization of the Ministry of Foreign Affairs. I have forgotten the details not having focused on that organization. I only remember that I met Pol Pot's nephew in 1978 who was in control of the staff of the Ministry of Foreign Affairs and may have been Ieng Sary's secretary." Mr. Karnavas also noted that on the same page Duch is recorded as talking about the "working principle," saying, "I can confirm however that based on our working principles Ieng Sary's consent was needed." The recorded statement went on to say that there was only one exception to this principle to which Duch had already testified.

Duch was asked about the phrase "based on our working principles," specifically in relation to whether he knew factually how the arrests were being conducted at the Ministry of Foreign Affairs. Duch responded that a lot of the staff at the Ministry of Foreign Affairs was arrested. Mr. Karnavas said that as he understood it, Duch did not speak with those messengers and that it was Son Sen and Nuon Chea who were making the decisions on who should be arrested. Duch responded that this was the principle, but he could not answer about the practice.

Mr. Karnavas then thanked Duch for making this distinction between principle and practice and pointed out that he wants to know the practice when it came to the Ministry of Foreign Affairs. Duch was unable to provide any concrete information. Rather he testified that all the work of the Ministry of Foreign Affairs "consisted of a lot of work," and he confessed that he does not even remember who brought people to S-21.

Duch was then asked about if he was in fact making assumptions and drawing conclusions when talking about things in principle. Duch said "in general" he saw the arrest, but when the questions became more specific, he admitted that he had no evidence that Ieng Sary was

consulted before any of the arrests. Duch went on to testify that if Ieng Sary did not attend that Central Committee meeting, Pol Pot would decide and then inform him.

Next, Duch was asked to furnish a document that would substantiate what he just said in principle and in practice. Duch referred to a document, but his quote appeared to reference the relationship between Son Sen and Pol Pot. Mr. Karnavas stopped him, prompting Mr. Smith to insist that the witness be allowed to continue. Mr. Karnavas remarked on the “anticipatory anxiety on behalf of the prosecution” and then asked Duch to clarify how this example proved Pol Pot conferred with Ieng Sary. This question caused Mr. Smith to object again that the question is misleading. Mr. Karnavas became visibly frustrated, and he argued that the document did not show Ieng Sary was consulted; he then asked Duch if there was one that does. The President then reminded him to ask questions simply so that the witness did not get confused.

Mr. Karnavas then turned to Duch and said, “The document you just chose as an example, Sir, does it contain any annotations from Ieng Sary?” Duch said that three documents he referred to were intended to show that Son Sen sought advice from Pol Pot. He said that there were no annotations concerning Ieng Sary and Pol Pot.

Mr. Karnavas then went back to his original question, asking if there is a document showing that the principle was put into practice at the Ministry of Foreign Affairs. He told Duch that if the witness did not have an answer, he would move on. Duch said there were documents, but they were in different forms, and he again gave the example of the person who was arrested under a false name so Ieng Sary would not know. Duch told Mr. Karnavas that if “we want to find the truth and not intimidate each other, we must look at this report.” Mr. Karnavas then cut off the witness and again exclaimed, “We are not at S-21 where the witness gets to lead the investigations.”

Mr. Karnavas then asked again whether the document exists. Duch again did not appear to be answering coherently, and again Mr. Karnavas interrupted him. Mr. Smith then objected again, asserting Mr. Karnavas interrupted the witness’s answer. Mr. Karnavas said that Duch’s behavior was consistent with his psychiatric report and reserved the right to interrupt if the witness was not responsive.

Mr. Karnavas then agreed to move on to another point in the same document where Duch was reported as stating, “In any case I never received orders from Ieng Sary with whom I was never in contact.” It was clarified that Duch never received any instructions from Ieng Sary through Son Sen, Pol Pot, or Nuon Chea to extract more information from anyone he was in the process of torturing, and further, that Duch did not communicate either verbally or in writing with Ieng Sary in any circumstance.

Mr. Karnavas then asked whether it is fair to say that the word “Angkar” meant Pol Pot and that Son Sen was acting as Angkar’s representative. Duch confirmed this assertion.

Mr. Karnavas then turned his attention back to the annotations on some of the confessions, commenting that Duch could not say with any degree of certainty where the annotations went. Duch stated that he could not reply. The defense counsel’s comment was then put into question

form, and Duch admitted that after the confessions left him, he did not know where they went. Duch was also asked, “Was your purpose at S-21 to search for the truth?” He responded that it was up to the people and the court to make a judgment, adding that S-21 was charged with anti-espionage tasks.

Mr. Karnavas asked the witness whether, while he sat here today and reflected back, it was fair to say that Duch didn’t know the details of how his superiors worked among themselves. Duch said the question was too general and asked not to respond.

Duch was then asked to turn to yet another prior testimony in which Duch stated he did not know the details of how the decisions were made in the absence of Ieng Sary, but rather his comments were based on assumption. Mr. Karnavas asked Duch what “assumption” means to him, asserting that the witness invokes assumptions when he thinks he does not want to answer a question. This claim caused Mr. Smith to object on the ground that the question itself was loaded with an assumption that the witness was attempting to avoid answer the question directly. He requested the question be retracted and repeated without commentary from the counsel.

Duch was then asked to look at another written record of his testimony, specifically the point where he stated, “I assumed that the decision must have been made after consulting Ieng Sary.” Duch asserted that he stands by his statement, further commenting that assumption cannot just be “bloody meat,” there has to be a basis. Mr. Karnavas asked him whether he allowed for the possibility that his assumptions were incorrect, and Duch responded that this may be true in a few instances but “in general they are correct.” Mr. Karnavas sought more clarity from the witness, but Duch responded that the counsel’s questions go “around and around” and refused to answer further.

Moving on, Mr. Karnavas returned to the comments Duch made about the children that Ieng Sary had saved. Duch said this has nothing to do with the confessions or the people who were arrested, but he recalled the comments about the children. Mr. Karnavas said that this is a new topic and asked if the witness would discuss whether this topic was “something else he refused to give evidence on.” Duch answered, “It is not my intention to not respond to your questions.”

Mr. Karnavas then asked if Duch first learned of the children in 1990, and Duch said this was correct. Mr. Karnavas responded, “In other words, at the time of the events, you were not aware of it.” Duch confirmed and went on to testify that no one else gave him information about this event. He was asked if it was fair to say that Duch did not know the details of the event, for instance, whether Ieng Sary objected to an order by Pol Pot or anyone else. Duch repeated that he does not know about the event. Mr. Karnavas asserted that commentary on the event should then be characterized as an assumption, prompting an objection from Ms. Nyugen, who, despite recognizing that the defense counsel was running out of time, asked the Chamber to remind counsel that he should not ask leading questions.

Mr. Karnavas then rephrased his question, stating, “Sir, if you were not aware of the facts of how the children were saved, were you in a position to then give details about Mr. Ieng Sary’s involvement on how those children were saved?” Duch responded that it was his “guilt feeling” or his “personal shame” that Ieng Sary kept those children and they survived. He further stated

that while hundreds of thousands of children “came along,” there were gaps, so “this is one of the few cases that happened in practice, so the principle was not put in practice here.” Mr. Karnavas repeated that Duch had no concrete information about whether Ieng Sary was involved in the arrest of the parents of those children. Duch said it is difficult for him to respond to the repetitive questions.

Was Duch Truthful?

Mr. Karnavas then decided to dive specifically into Duch’s credibility. He began by referencing the final trial submission where the prosecution “concretely” argued that Duch lacks credibility. Mr. Smith objected, but before he had the opportunity to state his reason, Mr. Karnavas asked to just read the paragraphs to which he was referring. Mr. Smith was allowed to continue with his objection, and Mr. Karnavas was scolded for not taking turns. Mr. Smith argued that Duch should not be asked to comment about specific allegations at trial. Mr. Karnavas then reminded Mr. Smith that just last week he had urged the defense counsel to “cite examples” and now “here I am pointing out examples.”

On behalf of the Trial Chamber, Judge Cartwright sustained the prosecution’s objection, stating that the basis is that this is exactly the same as asking him to comment on the Trial Chamber’s opinion. She then instructed Mr. Karnavas just to present a couple of examples, granting him ten additional minutes beyond the time court typically adjourns to complete his examination.

Mr. Karnavas acknowledged that the day had been “long” and “combative,” and he then asked Duch if it was fair to say that on numerous occasions during his trial, when he was confronted about his own powers, he gave incomplete, evasive, or misleading testimony. Duch said he tried his best to respond to the questions and that he felt he was honest. He also added that the Chamber and the citizens of Cambodia will make up their own minds. Mr. Karnavas asked whether the witness refused to tell the whole truth. Duch stated that he never refused to respond truthfully. When pressed again on the issue, he responded that there were hundreds of questions so if asked in that way, he cannot respond.

The Day Concludes

Mr. Karnavas then concluded his examination by apologizing to the judges, thanking the witness, and voicing a concern about the limited amount of time provided. The President reminded the parties that the Chamber had provided the parties with the time requested. Mr. Karnavas responded that he had originally asked for two days but had been willing to shorten his examination to accommodate other parties.

Mr. Smith then made his final comment for the day, which related to the party putting a case to a witness. He requested that going forward counsel be required to use the phrase “put it to you” before “putting it” to the witness. He went on to say that he thought either this afternoon or tomorrow the defense should be required to “put it” to the witness that it was not a working principle to allow the heads of the departments to consider and contemplate the arrest of their staff.

Mr. Karnavas forcefully objected to the comment, accusing Mr. Smith of “priming the witness” and submitting that it was done “in bad faith” because the witness was now allowed to think about the answer.

Without responding, the President then thanked the counsel and witness and adjourned the court for the day. According to the schedule, the Khieu Samphan defense will take its opportunity to question the witness on Tuesday.