



**Expert Witness David Chandler Begins His Testimony
with Frequent Objections by the Defense**

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Case 002 against accused Nuon Chea, Khieu Samphan, and Ieng Sary resumed Wednesday, July 18, 2012, in the Extraordinary Chambers in the Courts of Cambodia, after a month-long recess. Proceedings opened with a packed courtroom, with approximately 500 villagers present, hailing from Banteay Meanchey province, Kampong Cham province, and Sangkae district in Battambang province. In the afternoon, about 100 villagers Mukh Kahmpoul district of Kanval province attended.

All parties were present, except Ieng Sary who was granted leave by the court to observe the proceedings from his holding cell due to his health.

Before proceeding with the expert testimony of witness David Chandler, Trial Chamber President Nil Nonn addressed several preliminary matters. National Civil Party Lead Co-Lawyer Pich Ang requested the court recognize a new international lawyer who would be representing 95 civil parties with Civil Party Co-Lawyer Sin Soworn. President Nonn recognized the new counsel, stating that she has the same rights and privileges as her national counterpart.

Turning to a different matter, President Nonn addressed the delay of the proceedings, which had been scheduled to resume Monday, July 16, 2012. He expressed regret over the delayed resumption of the proceedings and explained that the delay had been caused by the illness of one

of the Co-Prosecutors, which resulted in their inability to proceed with the examination of David Chandler or with a substitute witness. He reminded the parties of the need to be ready to examine witnesses, experts, or civil parties out of sequence to avoid needless interruptions to the trial schedule.

Trial Chamber Rules on Requests to Put Documents before the Chamber

President Nonn next announced the court's ruling on two applications, one filed by the Co-Prosecutors and the other by the defense team for Nuon Chea. First, President Nonn addressed the Co-Prosecutor's application, in which the Co-Prosecutors requested to put two documents before the chamber and to be allowed to use these documents with a witness. President Nonn noted that the Chamber had previously decided that all prior statements of the witness who is heard at trial may be put before the chamber. He continued, stating that the two documents the Co-Prosecutors sought to put before the Chamber were used by the Co-Investigating Judges during their interviews with the witness. He ruled that the documents, therefore, form part of the prior statements of the witness TCW694, and they may be put to the chamber on this basis, subject to their conformity with the criteria of Internal Rule 87.3. President Nonn indicated that further direction would follow on the Co-Prosecutors' additional request that the Chamber make an order to the witness or the OCIJ to disclose missing sections of the document.

Turning to the request received from Nuon Chea's defense team, President Nonn issued an oral ruling. The defense team for Nuon Chea requested to put 20 documents before the Chamber and to be afforded the opportunity to use these materials during the examination of David Chandler, in order to test the credibility of the expert witness. President Nonn admonished that the first document need not have formed part of a Rule 87.4 request. He noted that the remaining attachments are not in the case file and that most of the documents sought by the Nuon Chea defense are not available in Khmer or French. Noting that Professor Chandler's testimony before the Trial Chamber was scheduled on May 25, 2012, he concluded that the defense's request could not be considered as timely and also that the Nuon Chea defense did not explain in sufficient detail when and by what means it discovered the documents, thereby preventing any analysis as to whether efforts to discover the documents could have been made earlier. Concluding his formal ruling, President Nonn stated that the Nuon Chea defense had not satisfied the requirements of Rule 87.4, so the Trial Chamber rejected the request with respect to documents B through T.

When International Co-Lawyer for Nuon Chea Andrew Ianuzzi attempted to register an objection to the ruling, President Nonn firmly stated that the issue had already been decided and that Mr. Ianuzzi could appeal to the Supreme Court Chamber if he had any objection. Mr. Ianuzzi replied he was trying to make a record for the ruling.

Ieng Sary's international co-lawyer Michael Karnavas spoke up in support of his colleague, suggesting that perhaps the Nuon Chea team could try to cure their application. President Nonn cut off Mr. Karnavas' comments, however, stating that it was not Mr. Karnavas' business as the issue had been raised by a different defense team and reiterating that the ruling was not subject to review by the Trial Chamber. While it was apparent that Mr. Karnavas was speaking, President Nonn did not turn on his microphone.

President Nonn then recognized Co-Lawyer for Khieu Samphan Arthur Vercken, who argued, “I think it is vitally important here that we say that a question raised by the defense team may concern the defense as a whole, and it consequentially seems to me to be logical that we all should be entitled to speak.” President Nonn succinctly stated that the matter had been ruled on, effectively ending the conversation.

President Nonn Questions the Witness on His Qualifications and His Works

President Nonn asked Mr. Chandler a series of questions on his qualifications and his research, eliciting the following information.

The witness’s name is David Porter Chandler. He is seventy-nine years old, and his nationality is American and Australian. His current residence is Melbourne, Australia. While he is presently retired, he was a Professor of History at Monash University in Melbourne, Australia. After verifying he has neither a blood nor marriage relationship with any civil party or accused party in this case, he took the required oath.

Regarding his tertiary education, he attended Harvard College, then Yale and University of Michigan in the United States. He practiced his profession at Monash University for 25 years before he retired.

Mr. Chandler testified that he can speak, but does not consider himself able to write, Khmer. Regarding his background, he studied the history of Cambodia and the Khmer Rouge period when it started up to the present day. The books he has written on the Democratic Kampuchea regime include: *History of Cambodia*, *The Tragedy of Cambodian History*, *Brother Number One*, and *Voices from S-21*. He has also written several articles on Cambodian history. He described his interest in Cambodia as starting from 1960, when he was posted in Cambodia as a young diplomat in the American embassy. After deciding to pursue an academic career, he decided to specialize in Cambodian history. From pre-colonial history, he shifted to more modern periods after the Khmer Rouge came to power.

President Nonn then went through his publications. Regarding *The Tragedy of Cambodian History*, he began work on it in 1985, published it in 1991, and slightly revised the paperback in 1992, and it has not been revised since then. Regarding the book titled *Pol Pot Plans the Future*, he co-edited it with Ben Kiernan and Chanthou Boua. He read all of the documents involved. It was published in 1988. Regarding *Brother Number One*, he started work on it in the late 1980s, written in parallel with the *Tragedy of Cambodian History*. It was published in 1992, and then in 1999 he revised it, covering events up to Pol Pot’s death. Regarding *Voices from S-21*, he started the work in 1993 in Melbourne, when he had access to the microfilm copies of many of the confessions; he worked also in the United States and Cambodia on this book at various points, finally publishing in 1999. The Cambodian documents for that book are almost entirely documents he studied at the Documentation Center of Cambodia (DC-Cam) or at the Khmer Rouge security center known as S-21. He did not examine all 4,000 of the confessions, but he did conduct interviews and study transcripts of interviews with survivors and guards of S-21. In his research, he noted, he has never interviewed the three accused.

Judge Cartwright Examines the Witness

When President Nonn asked if any judges wished to question the witness, Judge Cartwright took the floor. After reviewing Mr. Chandler’s academic qualifications again, she explained to the witness about the Trial Chamber’s severance of Case 002 and what evidence is being heard in this particular trial.

Judge Cartwright proceeded to ask him a series of questions about his book *Pol Pot Plans the Future*, expressing interest in his examination of documents that survived the regime. Referring to the preface, she indicated that during the period of 1975-1976, Mr. Chandler wrote there was a “verbal optimism about the prospects of achieving socialism in Kampuchea” but that after that initial period the party became more pessimistic, vindictive and secretive, with a greater emphasis on locating its enemies. Expanding on who the enemies were, Mr. Chandler testified that the primary enemies were anyone who had anything to do with the Khmer Republic regime or army. As time went on, he described, “the animosity spread out to people who had lived under it, the so-called ‘new people’ or ‘April 17th people’ who were evacuated in mass” from the towns and often became targets. He also described seeing a “widening of the net” after the opening of Tuol Sleng prison, also known as S-21, in 1976 that began to include members of the Communist Party of Kampuchea (CPK).

Mr. Chandler went on to amend the excerpted portion of his book read by Judge Cartwright, revising that he would say that the high tide of optimism in the Khmer Rouge regime extended from 1975 to mid-1976, with the final document coming from a period of greater uncertainty, violence, and pessimism.

Regarding the authorship of the eight documents he examined for *Pol Pot Plans the Future*, the witness indicated that no one signed the minutes of the meetings or the speeches so it was ambiguous. Regarding the December speech, he said it was given by either Pol Pot or Nuon Chea, contending that only the very top people were authorized to make this speech.

Judge Cartwright reviewed several more documents with the witness. Regarding a set of Central Committee minutes dated March 30, 1976, Mr. Chandler said this document would not have been distributed widely and estimated probably 10 or 15 copies were probably prepared at the time. Reading from the document, he referred to a particular excerpt on “the right to smash inside and outside the ranks,” saying that it provided, in a way, a national authorization for zone and sector people to proceed. He contended that the document detailed the plan the party laid down.

Judge Cartwright also referred to some Standing Committee minutes not included in Professor Chandler’s book. She started with a document titled “A Record of Meeting of the Standing Committee 11 March 1976,” which listed Nuon Chea, Ieng Sary, and Khieu Samphan as attendees. She summarized that at the meeting problems with Vietnamese on the Eastern frontier were discussed and the opinion of Angkar was given. Other similar documents recording the minutes of the Standing Committee were discussed. Judge Cartwright asked, “In the context of these



meetings, did the word ‘Angkar’ refer only to Pol Pot or could it have a wider meaning and include other CPK members as well?” The witness indicated that while at first he was inclined to think Pol Pot was referring to himself, on second thought the words indicate that the decision was made collectively by the organization itself. However, he added, “I have no direct evidence of that, of course; it’s an assumption on my part.”

Next, Judge Cartwright reviewed the record of the Standing Committee meeting from March 17, 1976, which stated that the meeting was chaired by Nuon Chea and attended by Khieu Samphan. During that meeting, Ya gave an extensive report concerning negotiations with the Vietnamese concerning eastern border. As described by Judge Cartwright, in those minutes Nuon Chea as deputy secretary is recorded as having given instruction and opinions, including orders about the use of mines, as well as the sinking of some Vietnamese boats. The witness testified that the record of this meeting with the accused Nuon Chea contradicts Nuon Chea’s assessment of himself as saying that politicians held less power than the military.

Turning to the Closing Order, Judge Cartwright noted that the Co-investigating Judges had identified five policies of the CPK. Mr. Chandler confirmed that these policies represent some of the more important policies of the party and described the first three as crucial; while the fourth and fifth were less so, they were still important. He described the movement of people as a national policy and noted that the policy of “going after bad elements” had always been a feature but did not come into operation until Lon Nol personnel were singled out. The Vietnamese, he said, were probably targeted from the beginning, and the Cham were not targeted from the beginning, adding, “if they were systematically targeted.” In summation, he said the first two policies came about before 1975, the third came into effect with the victory over Phnom Penh, and the fourth and fifth came later, specifically with targeting of the Vietnamese, which began very soon after the victory.

Some of these policies would have been explained at meetings that were held at districts and sectors and zones, Mr. Chandler explained, as well as in the magazine *Revolutionary Flag*, whose access was limited to party members. With this, Judge Cartwright concluded her questioning.

National Co-Prosecutor Begins Prosecution’s Questioning of the Witness

Senior Assistant Prosecutor Dararasmey Chan commenced questioning of the witness, starting with Mr. Chandler’s qualifications. The witness outlined again his academic credentials and moved on to the topic of his publications.

The prosecution first sought clarification as to the sources on which Mr. Chandler had based his research and writing. Professor Chandler indicated that his sources for each of his books were very different. *History of Cambodia*, which first came out in 1983, involved a lot of work in French, Thai and American archives, he recalled. Regarding the second book, *Pol Pot Plans the Future*, his main research was in the documents themselves. For *The Tragedy of Cambodian History*, his longest book with the widest range of sources, he drew upon foreign archives in France, America, Australia, and Great Britain, a wide range of secondary sources, American diplomatic correspondences, and over 100 interviews of people who had participated in Cambodian history during 1945-1979. For *Brother Number One*, which he wrote at same time,

there was an overlap of sources, but he also conducted different interviews with people who had personal knowledge of Pol Pot and his associates. In *Voices from S-21*, the main source was archival material from the S-21 facility, former members of staff, survivors, and from interviews others had done. He also looked at secondary sources to look at the behavior of regimes in which there had been wide-scale death, including books on the Holocaust and Stalin's reform in the Ukraine.

Mr. Chan asked Mr. Chandler if, among the books the witness has written, he had conducted interviews with refugees in Kao-I-Dang camp in Thailand. Mr. Chandler indicated that in 1984 he interviewed Cambodian refugees singled out by other sources as possibly members of the Khmer Rouge and thus ineligible for transfer to a third country. He conducted between 300-400 interviews of refugees, trying to clarify their status and their life histories.

Describing his research on the Party of Kampuchea and the Democratic Kampuchea period, Mr. Chandler said he was trying to build an accurate narrative of the years the Khmer Rouge were in power. He noted as a "personal footnote," he would have been happy to have material in the Closing Order when he was writing in the 1980s, which was not available to him at the time. He described the theme of his research as discovering as best he could what had happened in the period of this history, the life of a single man, or the operations of a single institution.

Continuing with an explanation of his background, Mr. Chandler testified that he started studying the Khmer Rouge and the Democratic Party of Kampuchea in 1975 and 1976. He described being baffled and confused about what was going on in Cambodia and said he conducted interviews of some refugees who had come to Australia and that he wrote "tentative" articles. He recalled that while his interest was sparked from April 1975, if not somewhat before, he began serious research writing in the early 1980s, and from 1981 on, he concentrated almost all his research on the Khmer Rouge period.

National Co-Prosecutor Questions the Witness on the Statute of the CPK

Mr. Chan moved on to a new topic, the Statute of CPK. David Chandler could not recall whether he had read the Statute before, saying he must have at some stage but that he could not clearly recall that. After reviewing the Statute put before him, he testified that his understanding was it was meant to set forth the ideas and purposes of the CPK as the governing party of Democratic Kampuchea and as an instrument of the Cambodian revolution. He was unable to answer when the Statute was first drafted.

Mr. Chan then proceeded to quote from the second paragraph of the Statute, but when he asked whether the witness had read the paragraph, defense counsel for Ieng Sary Ang Udom requested the floor. Before giving the floor to him, President Nonn asked Mr. Chandler to answer the prosecutor's question. Mr. Chandler indicated he had read the document.

Mr. Udom took exception to Mr. Chandler's previous remark that he had never seen the Statute before. He sought guidance from the bench on whether the document directed to the expert should be withdrawn.

President Nonn thanked Mr. Udom for his observation but indicated that the counsel might be mistaken. He explained that Mr. Chandler may have read the substance of the Statute but maybe not in the same form.

Mr. Chan proceeded to question the witness on a number of terms that appeared in paragraph two of the Statute. He specifically asked about the meaning of the following excerpt: “The party continues to lead the socialist revolution and construct socialism in an absolute monopoly, and the party’s nature is that of being the highest organization of the Kampuchea worker class and as the supreme commander governing and administering all revolutionary work.” The witness explained that it is “a fairly clear statement of a claim from a position of authority that this authority is not only legitimate but is also monopolistic – it is the only power that will be allowed to exist in revolutionary Cambodia.”

Regarding the term “absolute monopoly,” Mr. Chandler said it suggests a monopoly of power in Cambodia but also of information coming out. He described it as like saying the communist party from then on was going to be “the air that people breathed.”

As for the meaning of the phrase “the highest organization,” David Chandler called it an “ambit claim that says ‘we are in charge.’”



Next, Mr. Chan asked for an explanation of the role of the party in the Democratic Kampuchea. Mr. Chandler replied, “I wish I could,” continuing that the people who wrote the document conceived that the party would be unchallenged and unambiguous. He remarked, “I don’t think any party has been able to act with the kind of unquestioned and unambiguous power that this document mentions.” The question of how it did operate, Mr. Chandler said, goes to the real history of the DK regime that is still evolving and one he does not have a claim to have genuine authority about.

Moving on, Mr. Chan referred to the term “democratic centralism” in paragraph 6, seeking Mr. Chandler’s understanding of the term. In response, Mr. Chandler provided that it seems to be a contradiction of terms, expounding that “there’s nothing democratic widely about the centralism that characterized this party.” He noted, “This party considered themselves to be the embodiment of the popular will, of the people themselves They thought the people were being represented fairly by the centralized authority.” He added that this did not seem to make much sense to him, further noting that the Khmer Rouge “felt they were legitimate representatives of democracy, power of the people in a very centralized form.” He then acknowledged that it is a difficult term.

Mr. Karnavas rose with an objection, arguing that some of the questions as phrased were asking the witness to give a legal opinion, which this particular expert witness is not entitled to do. He requested that Mr. Chandler give his answers based on his understanding of the research or that the questions be rephrased. In response, President Nonn asked Mr. Chan to try to rephrase his

questions to be put to this expert. He stated that the Court may not be able to accommodate calling on a historian to explain every terminology, reminding the parties that questions should be “more general that could either capture the facts at S-21 or the entire case of Case 002.” President Nonn then interrupted Mr. Chan’s thank you, reemphasizing that “we are not asking him to explain to us terminologies.”

Moving on, Mr. Chan turned to Article 3 of the statute, asking further about democratic centralism. While noting that he is not an expert in political philosophy, Mr. Chandler noted that it seems that “party affairs can be discussed by members ... in accordance with directive and suggestions that have come down from above.” He described that only the party members were entitled to talk about party affairs, describing how there might be discussions at the lower level, but that if alterations were made at the top, it would have the force of law. If discussions at the lower level were thrown out, they would have to go along with it. To clarify his explanation, he resorted to a Czechoslovakian joke, to laughs in the media room, where the son asked the father what is democratic centralism, and the father said “I tell you – go down to the courtyard of our apartment and stand there,” at which point the father spit on the son from the apartment, and said “Now you spit up.”

Mr. Karnavas again objected, arguing, “Clearly the gentleman is not competent to discuss this particular document.” Mr. Karnavas particularly objected to the way the question was asked, in that Mr. Chandler was being asked for a legal interpretation. He concluded, “Where he is being asked to interpret a document as such, he is being asked to be a legal expert, he is engaging in a great deal of speculation ... and what happened in Czechoslovakia, I care not.”

After hearing Senior Assistant Prosecutor Tarik Abdulhak’s response, President Nonn noted Mr. Karnavas’s “observation” and asked the prosecutor to rephrase the question to make sure it was compatible with Mr. Chandler’s expertise. He further noted that the Chamber had already ruled on that observation and admonished that Mr. Karnavas’s objection was not appropriate because any objection to the counsel should have been made before the witness responded to the question.

Before the Court adjourned for lunch, international defense counsel for Nuon Chea Jasper Pauw requested that Nuon Chea be allowed to observe the proceedings in his holding cell this afternoon, due to medical reasons. Noting the request and Mr. Chea’s express waiver of his right to be in the courtroom, the Chamber granted the request.

Mr. Chan Continues with His Examination of the Witness, Amongst More Objections

After the lunch break, Mr. Chan continued with his examination of Mr. Chandler regarding the Statute of the party. Mr. Chan referred again to Article 3, dealing with the rights of the members to consider and join in on decision-making of all party affairs, and Article 6, which refers to democratic centralism. Mr. Chan asked whether the principles expressed therein manifested itself into the practices of the party.

Before the witness could answer, President Nonn acknowledged Mr. Karnavas, who objected to the Prosecutor asking the witness a yes or no question when he mentioned several articles. Mr. Karnavas insisted that the prosecutor should go article by article. President Nonn did not sustain

the objection and requested that the witness, who had been speaking at a fast pace up to this point, to speak slower.

In response to Mr. Chan's question regarding whether the principles expressed in Articles 3 and 6 were reflected in the practice the party, Mr. Chandler stated he was "unable to answer whether this was faithfully followed at every level through different years and districts." He pointed out that, according to the regime, some people lower down did not obey these rules, leading to their re-education or other punishment. He further noted, "What's interesting about the passage is the way it expresses a governing idea of Democratic Kampuchea, which is that what they call Kbal Machine: The governing group, has the final word on everything." He concluded his answer, however, by admitting that "as it was reflected in practice, I'm not equipped to answer."

Mr. Chan then asked about the lower and upper echelon, referenced in article 6, subsection 4. Mr. Chandler described it as being "a pyramidal structure" until you get the top. He went on to say that it is hard to say how large some of these lower echelon were, whether they are talking about zones or divisions. Clarifying, he said it is hard to say what was meant specifically by the phrase "lower echelon." He explained that the upper echelon goes up until one comes to the ruling echelon of the party.

Turning to the topic of the membership of the Communist Party of Kampuchea, Mr. Chan referred to the 10 criteria used to determine the membership, based on the Statute. He referred to Article 5, particularly paragraphs 1, 3, 5, 7, and 8. Asked what the criteria reflected, Mr. Chandler answered that they represented what the party or the drafters of the statute expected of all party members. He described that, reversing these principles, one can see that the party was against any kind of deviation in the party line in paragraph 1, any kind of deviation in party solidarity in paragraphs 3 and 5; and anything contrary to the policies of secrecy or the armed forces in paragraph 7. Mr. Chandler described the criteria as "a set of ideal conditions seemingly vaguely worded," saying that "anyone who sincerely, fully had all of these characteristics would have no trouble, would do fruitful work in the Communist Party." He continued, "But I'm stressing the judgments are not self-judgments, but are from others, from the collective leadership." He emphasized that the criteria was flexible and that people could be judged harshly, without thinking they made any mistakes. He concluded, "It's quite complicated."

Mr. Chan tasked if Mr. Chandler understood why the phrases "strong revolutionary stance on making and examining personal biographies" and "a strong revolutionary stance on class" were included in the criteria in the statute of the party. Mr. Chandler testified that while some people were "rushed into the party," if the procedures were correctly followed they went through a series of probationary stages proving at each they were correct, strong, and faithful. The witness described how, ideally, this procedure prior to membership would be lengthy, but explained that he thinks a lot of these criteria were rushed through in actuality. He concluded, laughing slightly, "It's a good question, but hard to answer because I haven't actually been at any of these meetings."

Mr. Chan then turned to Article 7, paragraph 1, of the Statute, asking about its reference to a "general conference." In response to Mr. Chan's inquiries on this matter, Mr. Chandler testified that he would need to refresh his memory but indicated that he was not clear that there was a

general conference. Mr. Chan indicated this topic would be revisited after Mr. Chandler had the opportunity to refresh his memory.

Once again referring to Article 7, paragraph 1, Mr. Chan focused on party organization and the Central Committee. When asked if the practice conformed with what is dictated in this article, Mr. Chandler indicated that due to the lack of Central Committee minutes, he does not know if this was the way it actually worked, but the statute outlined the way it was supposed to work.

Next, Mr. Chan addressed Article 23 of the Statute, which addressed the tasks of the Central Committee. When asked if these tasks were conformed to in practice, Mr. Chandler replied, "I'm not equipped to answer this," but continued on with his answer anyway, saying, "I would suspect most of these rules were followed." He also described his understanding that the organization ran fairly well, referring to the Closing Order and other documents with which he had recently familiarized himself. However, he concluded, to speak in terms of practice, he would have to have a much more knowledge of people *among* the Khmer Rouge, not just *under* the Khmer Rouge, so he would "rather not" speak to it at this time.



Mr. Karnavas objected again, stating that when the witness says he is not competent to answer, he should stop answering and not speculate. Acknowledging that he understands the parties are not before a jury but before judges who will know the difference, he nonetheless requested that the witness be advised not to speculate "as he has been all morning."

President Nonn thanked the counsel for his "observation" and reminded the witness that if he does not recall the answer, he does not need to answer that question. He reminded the parties to ask questions that are appropriate and proportionate to the time available.

Judge Cartwright was then heard. She stated that the Trial Chamber agrees with the objection. She explained to Professor Chandler that if he does not feel qualified to answer, he should not because they cannot use it.

After this clarification from the judges, the national co-prosecutor resumed his questioning, with an additional reminder by President Nonn to select the questions that are the most relevant or to reframe the questions that may elicit answers useful to understanding the truth.

The Co-Prosecutor Questions Mr. Chandler on the Standing Committee

Under further questioning, Mr. Chandler indicated in his testimony that he found evidence of the existence of the Standing Committee in his research. He described how the Standing Committee met more often than Central Committee and was a smaller group, with overlapping membership of the Central Committee.

Mr. Chan then asked, "Based on your research, did you find which committee or what organization level decided on matters such as financial matters or foreign affairs matters or

commercial matters? Or in other words, which committee had the responsibility to oversee the work of ... social affairs and others?”

Interrupting before the witness could answer, Mr. Karnavas objected again, this time on technical matters. Mr. Karnavas objected that the Co-Prosecutor’s question assumed that a committee was in place. Mr. Karnavas, referring to the Co-Prosecutor, stated, “He can shake his head all he wants,” but the question assumes facts not in evidence – that a committee was designed for these specific purposes. In response, Mr. Chan indicated that there might have been a translation error, as that was not what he asked.

After the judges briefly conferred, President Nonn instructed the witness that he need not answer the last question because the question was not clear enough. He then advised the Co-Prosecutor to move on to the next question, and reminded the prosecution, and all parties, that the time reserved for questioning the witness is “rather limited.”

The Co-Prosecutor Asks about Office 870

Moving on, the Co-Prosecutor asked about office 870 and Political Bureau 870, which Mr. Chandler indicated was a code name that showed up in many documents. Regarding the roles of this office, Mr. Chandler stated that the roles frequently overlapped, referring to the roles played by standing committee, the central committee, Pol Pot, and Nuon Chea together. He described Office 870 as a “catch-all address” for the central operations of the CPK but said that its roles were not defined in the statute and were “quite ambiguous.”

David Chandler continued, explaining that the Office 870 code name predated April 17, 1975, and was “certainly in use” throughout the DK period, noting that it was generally used to refer to Pol Pot or Pol Pot and a small group of people around him.

Regarding membership of Office 870, David Chandler stated, “I don't think this is something you can be a member of. It was a number towards which communications were directed and from which communication came; there was never a signed roster.” He then stated that its membership was very small and that its membership was kept secret. In his research, he did not find any document indicating the membership of Ieng Sary, Khieu Samphan, nor Nuon Chea; however, he stressed, “This is not an office with stationary.”

More Objections Raised

Shifting gears, Mr. Chen turned to the arrest of Soeu Vasy alias Doeun in 1975. Regarding the reasons why Doeun was arrested, Mr. Chandler said, “I didn't speculate at the time why this had happened on pages 63 and 64 of my book. I did say of the prisoners who had been brought in to S-21, this was the highest level person, confirmed by the fact he was replaced by Khieu Samphan.” He went on to say that he thinks the reason Doeun was arrested was because he was connected with Koy Thuon.

Mr. Karnavas got to his feet and objected again, saying, “If he says ‘I think’ does that mean he is speculating? Because if he is speculating, then obviously he should not be answering the question.” After Mr. Karnavas had concluded his objection, Mr. Chandler expressed his frustration, questioning whether anyone knows for sure what happened in S-21. He explained

that he uses documents to conclude what he thinks happened, summing up that “all I can do is think” and apologizing if that is not enough.

In reply, Mr. Karnavas insisted he was not being critical and was not asking the witness to do the impossible. Posing a series of questions, Mr. Karnavas asked whether the witness knows the answer and if so, how and what is he relying on. If not, he stated, then the answer should be “I don’t know” with no need for speculation. He concluded, “We are in a court of law, not in some historical conference where we are speculating.” After a brief conference among the judges, President Nonn handed the floor to Judge Cartwright to respond.

Judge Cartwright stated that the objection is “accepted in principle; however if this expert answers a question and he makes it clear that his answer is based on the research he has conducted, then it is not speculation.” Secondly, she identified an underlying issue of which the expert needs to be aware: “the problem of using as research the content of confessions which the expert is no doubt aware is not accepted as evidence in this court or in any other court.” She instructed the witness, “If you were talking about confessions and research into them, you would need to specify that so we can establish just how far we can except your response.”

In response, Mr. Chandler clarified his testimony, stating that his speculation was that Doeun was arrested because of that, not that he was associated with Koy Thuon or replaced by Khieu Samphan.

Judge Cartwright then reiterated the importance that the witness inform the Chamber when he is using confessions, indicating that confessions would not be relied upon.

After the afternoon break, Mr. Chan continued his questioning of the witness, returning to the subject of Soeu Vasy alias Doeun. Mr. Chandler testified that Khieu Samphan replaced Soeu Vasy alias Doeun following the latter’s arrest. When asked how he reached this conclusion, Mr. Chandler indicated that he would have to look at footnote 67 of his book on S-21, but, mindful of the previous admonition of the judges, indicated that “it certainly was not something that appeared in a confession.”

International Co-Prosecutor Tarik Abdulhak Questions the Witness

Senior Assistant Co-Prosecutor Tarik Abdulhak took the floor to continue the prosecution’s examination. Indicating that he was going to follow up on questions asked by his colleague, he proceeded to read several passages from Mr. Chandler’s book, *Voices from S-21*, relating to a group of people Mr. Chandler described as the party center. Asked to expand on the term “party center,” Mr. Chandler stated that this term referred to the Central Committee and that Kbal Machine is just another name for it. He then made a correction to the passages read, stating that based on information from the Duch Trial, Duch was in touch only with Son Sen and occasionally with Nuon Chea, so his connections with the other people and the center have not been defined, and therefore the book is mistaken.

Mr. Karnavas, laughing, once again rose to his feet, this time objecting that Mr. Chandler was giving testimony based on evidence that was provided by Duch at his trial and based on the Closing Order, as opposed to what he has learned in his historical analysis of documents.

Acknowledging that “we cannot now un-ring the bell and delete that information in his brain,” he suggested that Trial Chamber could instruct the witness to tell the Court when he is relying on that information, so that the judges can decide what weight, if any, to give to those portions of his testimony.

Mr. Abdulhak responded, arguing that this is “not the time for the defense to put forth a running commentary on the quality of the expert’s opinion.” Regarding Mr. Chandler’s references to the Closing Order in Case 001, Mr. Abdulhak argued that Mr. Chandler has been diligent in specifying what he is relying on. He concluded that these comments relate to the probative value that the judges might give to the testimony, which can be tested in cross-examination, and is not the proper basis for an objection.



International Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort was then recognized, inserting her suggestion that the expert should make it clear each time he answers the question whether what he is saying emerges from what he knew at the time or whether it emerged subsequently, for the sake of clarity.

After consulting with the judges, President Nonn handed the floor to Judge Cartwright. Judge Cartwright stated that the Chamber takes the view that the witness is entitled to read the Closing Order, a public document, and review the conclusions he has drawn from his own research in previous years and inform the court when his views require modification after reading the Closing Order. Therefore, the Court did not accept the objection but asked the witness, “as he’s been doing all along,” to explain whether he has modified his opinion after reading the Closing Order. Judge Cartwright explained, “Much of his research is more than a decade old, and he’s entitled to review those conclusions from that earlier period and all the Chamber needs to know to assess what weight it will place on the evidence are what those sources are.”

Mr. Abdulhak Questions the Witness on the Party Center and Office 870

Continuing on with his questioning of the witness, Mr. Abdulhak asked Mr. Chandler if, at present, he considered that the party center would have included the Nuon Chea, Ieng Sary, and Khieu Samphan. Mr. Chandler answered affirmatively, adding that it included other people as well. Regarding the relationship between S-21 and the party center, Mr. Chandler said that he knew from the Duch trial, Duch’s direct contact was with Son Sen, who was on the Standing and Central Committee, and that “anything related to S-21 thought by Son Sen to be important enough to be brought to their attention obviously was.... We know the Central Committee were certainly kept informed.” He continued on with a “key point,” that S-21 was not one of the major concerns of the party center. He explained that their comments were on agriculture, Vietnam, and internal enemies, which tied into it.

Referring back to Mr. Chandler’s earlier testimony regarding a pyramid structure with collective leadership at the top, Mr. Abdulhak inquired where Mr. Chandler would place S-21 and where he

would place the CPK party center. Appearing to misunderstand the question, Mr. Chandler replied, "It was not part of the party center.... Duch never attended these meetings he was not of the central committee, standing committee....; he was not in contact with them." When asked if there was a relationship of superior-subordinate, Mr. Chandler replied, "That's the only way it could have worked. Duch was a very subordinate person; he played his role very carefully and diligently."

Referring to Mr. Chandler's previous testimony that Khieu Samphan had replaced Doeun, Mr. Abdulhak inquired about the role that Khieu Samphan inherited. Mr. Chandler replied that as chairman of 870, Khieu Samphan supposedly inherited the duties but that he said he did not and that he did not do anything substantial in this job. Mr. Chandler concluded that, while it is clear from public record that Khieu Samphan took over the position, he could not speculate on what Khieu Samphan was told to do and how the job may have changed.

When Mr. Abdulhak sought clarification on what functionally the role of the chairman of 870 was, Mr. Chandler prefaced his answer by stating that he has better come to understand this through the Closing Order. Mr. Chandler then stated that 870 was the code name for Pol Pot but then described how, on the other hand, the office of 870 managed the paperwork and the flow going in and out of the party center, describing it as an "office job." He concluded with a remark on how "it is confusing," indicating that the head of the office could be Khieu Samphan or Doeun, but also that the head of 870 could refer to Pol Pot, or perhaps the collective leadership itself. He remarked, "All these things overlap; that's the problem with the definitions."

Further Objections Are Raised Regarding the Source of Mr. Chandler's Testimony

Mr. Pauw raised an objection relating to the previous discussion of the witness's having read the Closing Order. While noting Judge Cartwright's previous ruling, he stressed that it is important to verify whether the witness has read the underlying documents mentioned in the closing order, or whether he is just relying on the conclusion of the Office of the Co-Investigating Judges. Mr. Pauw noted that he believes this is relevant, because the defense takes issue with the Co-Investigating Judges' conclusions in the Closing Order. At this point, Mr. Vercken also asked to be heard, saying that it might be good to specify which Closing Order the witness is referring to, the one in Case 001 or the one in Case 002, to clarify the witness's testimony that he has read the Closing Order in 001, while he appears to be referring to the Closing Order in Case 002.

Mr. Abdulhak responded that what the expert is being asked to do is an "impossible task," as the closing order has thousands of footnotes. He argued that, as the judges had informed the expert that he was not required to bring with him all of the materials for his preparation, to now ask him to recall what documents he read is unreasonable. He suggested that the solution was to ask Mr. Chandler what specific sources he recalls and what his knowledge was before the Closing Order was ordered and how that has changed.

Mr. Karnavas joined the debate, questioning how the defense is supposed to challenge a statement if they do not know what the witness is referring to. He insisted that while he accepts Judge Cartwright's order, the witness just saying "I read it in the Closing Order" is "asking us to find a needle in a haystack." He concluded, "We don't want the haystack; we want the needle." Mr. Pauw concurred with Mr. Karnavas, adding that the defense needs to be able to verify the

sources used by Mr. Chandler. The starting point, Mr. Pauw said, is whether Mr. Chandler has gone back to the source documents in the Closing Order.

President Nonn informed the parties after conferring with the other judges as follows:

In order to proceed further, I would like to ask whether the witness can indicate the sources of those documents. Otherwise, the defense teams may pick up this issue when their turn arrives. We are of the view that if there is any gap in the testimony of this witness, we will have another chance, that is, when the parties can provide their closing arguments, either in writing or orally, concerning particularly this witness. Please be reminded that the scope of the facts in this case is very broad. Likewise, the work done by Professor Chandler is also broad. We will need a lot of time in order to thoroughly discuss the work of the expert.

At this point, Mr. Abdulhak provided a “general roadmap” as to where the prosecution will be going today and tomorrow. After “trac[ing] the most important milestones in the development of the party and the extent to which policies developed in the pre-1975 period,” the prosecution will move on to a discussion of Democratic Kampuchea institutions, alleged forced evacuations, policies as they related to cooperatives and collectivization, the alleged policy on enemies, and communications within the regime.

At this point, Mr. Chandler expressed a desire to comment on the previous discussion. Clearly frustrated, he stated, “I have not seen the questions I’ve been posed today.... If these questions have been mailed to me..., I could come in here as a trained, not an expert, witness.” Noting that while it is fair to have him note that he has changed his thinking subsequent to his original research, he implied it is not fair to expect him to cite a specific footnote, to say, “Oh, footnote 89 page 308, obviously.” He concluded that it is a demand he is unable to meet.

President Nonn issued a reminder to the witness that when it is not possible for him to answer that he should just state that he cannot.

Mr. Karnavas once again interjected, raising that on June 11, 2012, the Ieng Sary defense submitted a letter to the Trial Chamber where they requested that the expert witnesses keep track of all the information they are reviewing in preparation for trial. Mr. Karnavas represented that the prosecution, after adding a qualification that the witnesses do not need to review anything, agreed. On July 3, 2012, he recalled, a letter was sent to Mr. Chandler where he was asked to make a list of those documents he reviewed in preparation for his testimony. Mr. Karnavas argued that this was done so the witness would be able to point exactly to the footnote document, so the defense could check whether the source supports the witness’s assertions.

After Mr. Abdulhak confirmed that there was a request that the expert prepare a list, Mr. Chandler said he received it and did not prepare the list. He indicated that during the past two days, he had read the Closing Order of Case 002. While he had said he would focus on reviewing primary sources in his remaining nights before testifying, he indicated he would not be able to pinpoint a source as to where he got an answer unless he could prepare his answer in advance with a source at the bottom or “if I’m here for a month.”

Mr. Abdulhak, at this point, suggested that the Court might be able to move on from this point, stating that the prosecution's examination will be based largely on documents, and that in many instances they are going to ask him to opine or expand on documents being put before him, so perhaps it will not be an issue.

Conflict Arises Over the Potential Need for a Friday Hearing

President Nonn announced that proceedings will resume tomorrow at 9:00 a.m. and invited the expert witness David Chandler to be present then to continue his testimony. However, before President Nonn could close proceedings, National Civil Party Lead Co-Lawyer Pich Ang inquired whether there would be a hearing on Friday, referring to a request by counsel for Ieng Sary. President Nonn indicated that he had not received this request and explained that while typically there is not a hearing on Friday, it may take place if the circumstance necessitates, at which time he referred to the delayed resumption of the hearing. He noted that the schedule of other witnesses would be changed as well.

Mr. Karnavas again rose, arguing that they followed the same procedure as the prosecution did to inform the trial chamber of the delay. He argued that it appeared the senior legal officer failed to communicate their response to the trial chamber, indicating that it "may be a slip-up." He contended that, upon hearing there was a two-day delay and the possibility of having a hearing on Friday, they immediately contacted the senior legal officers regarding their Friday conflict. Specifically, Mr. Karnavas explained, he has a pre-existing commitment to do training for the International Bridges of Justice that is virtually impossible to reschedule, so he would not be able to attend on Friday. Further, he stressed the Trial Chamber's allowance of two extra days to the Co-Prosecutors, asserting that "were the trial chamber to say yes to the prosecution and no to the defense, it would be sending yet another signal that one party enjoys more rights than others. This was a situation that was created by the prosecution, not us." Lastly, he indicated Mr. Chandler might benefit from the extra day, indicating that he is going to "come under a great deal of fire" by the defense. Concluding, he reiterated his request that there be no hearing on Friday.

Mr. Pauw added his support to Mr. Karnavas's request, concluding that they think Mr. Ieng Sary has the right to be represented by the counsel of his choice.

After considering this matter, President Nonn acknowledged the concern over the delay in the proceedings and indicated that questions remain on whether the Chamber will schedule a hearing on Friday. He noted that the Chamber will advise the parties tomorrow.

Moving on to another matter, President Nonn stated that Mr. Ieng Sary shall be brought to the courtroom tomorrow, noting that the physician report provided on July 11, 2012, that described Mr. Sary's illnesses, had recommended that the President grant leave for the accused to remain in the holding cell only for ten days, until July 22, 2012. On that note, the proceedings were adjourned for the day.