

June 27, 2011

A Time of Transparency, “Not Sealed Envelopes”

By Christine Evans, Northwestern University School of Law, LL.M. (International Human Rights) 2011.



Nuon Chea (center) at the initial hearings in Trial 002

A week of initial hearings in Trial 002 at the Extraordinary Chambers in the Courts of Cambodia (ECCC) commenced today in what the U.S. Ambassador-at-Large for War Crimes Issues Stephen Rapp has called “the most important trial in the world.”

The four accused in Trial 002 are the most senior surviving leaders of the Khmer Rouge regime: Nuon Chea, who served as the deputy secretary of the party and known as “Brother Number 2”; Khieu Samphan, head of state of Democratic Kampuchea; Ieng Sary, deputy prime minister for foreign affairs; and Ieng Thirith, minister for social affairs. The accused face charges of crimes against humanity, genocide, grave breaches of the Geneva Conventions of 1949, as well as a number of domestic charges under the 1956 Cambodian Penal Code.

Many Cambodians and foreigners alike turned out to view the first day of hearings, which included spirited, and at times tense, debate on a number of preliminary issues, including a few items not included on the official court agenda. The public gallery in the courtroom, filled to capacity the entire day, included two full rows of Buddhist monks and nuns in the morning session, as well as a number of Cham Muslims, secondary school students, and foreign observers.

As the curtain blocking the courtroom from view was pulled back, the public gallery had its first look at the four accused, seated to the left of the judges and directly behind their respective defense counsels. Nuon Chea stood out in his black and white knit cap, dark sunglasses, and black jacket, incongruous in the warm courtroom where the air conditioning struggled to keep up and many in the public gallery used ECCC brochures as fans.

All four accused began the day apparently paying close attention as President of the Trial Chamber Nil Nonn called the court to order, naming the four accused and the charges against them. President Nonn laid out the agenda for the coming days, setting the first day for the distribution of the provisional list of witnesses and preliminary objections on *non bis in idem* and amnesty / pardon issues. As the day wore on, however, it became clear that the parties would have difficulty adhering to the prescribed agenda, and the court, pressed for time, had to push the amnesty / pardon issues to Tuesday's schedule.

Sequence of Trial

President Nonn announced the planned sequence of the trial, advanced notification of which had been provided to the parties. The sequence that the court will follow in the presentation of evidence is as follows:

1. The structure of Democratic Kampuchea;
2. Roles of each accused in the Communist Party of Kampuchea;
3. Roles of each accused, their assigned responsibility, and their lines of communication within Democratic Kampuchea; and
4. The policies of Democratic Kampuchea on the issues raised in the trial.

Based on this trial plan, the parties had previously provided the court with their lists of requested witnesses, civil parties and experts, from which the court determined a provisional list of witnesses. This list was distributed in court to the parties, and President Nonn announced that oral arguments on objections to the proposed witness list would be heard by the court at the end of the initial hearings on Thursday, 30 June.

Moving Away from the Agenda

After the provisional witness list had been distributed, Son Arun, Cambodian co-lawyer for the accused Nuon Chea, rose to speak to the court. His first request, however, steered the court off its previously stated agenda, to which the court struggled to return for the rest of the day. Arun described for the court a letter he had sent previously to the ECCC requesting that the desk for the co-lawyers of Nuon Chea be set to accommodate all three of the co-lawyers, in order that the co-lawyers may sit comfortably and that Nuon Chea may "enjoy the same equal rights as the other parties." Stating that it was a matter of respect, Arun proclaimed that "if the status quo remains..., we will have much difficulty consulting our client." President Nonn quickly answered Arun, stating that the desk issue was not a very big concern and that it would be resolved as soon as possible.

Before the court could continue with the agenda, however, Arun continued with his requests, moving on to perhaps the most discussed topic of the day – the advanced ages of the accused, a concern that would lead to a lively debate in the afternoon session. The discussion of the age of the accused, ranging from 79 to 85 years old, began soon after the court came to order and continued into the afternoon session with a lively debate on the court’s ability to require an accused to attend sessions when his/her health makes attendance difficult. President Nonn set the stage for these discussions early in the day, stating at the start of the hearings that, “in order to facilitate these proceedings and given the advanced age of the accused,” the curtains around the courtroom would be closed when the judges were off the bench. The court later announced that, any of the accused may be escorted out of the courtroom to take a break at any time without seeking leave of the court, an option Ieng Sary readily used, leaving the courtroom with the assistance of security guards often during the morning session.

This initial acknowledgement of the age of the accused was soon followed by the request from Nuon Chea’s defense counsel, Son Arun, for the court to allow Nuon Chea, due to his “advanced age and deteriorating health,” to wear the knit cap to shield his head from the air conditioning in the courtroom and his sunglasses to protect his eyes from the glaring light. The court granted both of these requests, and Arun followed quickly with a request for the court to grant Nuon Chea an opportunity to make a statement while seated as he could not stand easily.

As soon as the court granted this request, a number of the observers in the public gallery leaned forward in their seats, eager to hear one of the accused finally speak. Nuon Chea announced, “I am not happy with this hearing, and I would like to allow my co-counsels to explain the reasons behind this.” The brevity of Nuon Chea’s statement brought visible disappointment to a few onlookers, as they sat back in their seats, some with audible sighs. President Nonn, seemingly impatient to return to the proscribed schedule, rejected Nuon Chea’s request to have his co-lawyers speak about his discontent, as it was outside the parameters of the initial hearing.

Objections by Nuon Chea

In response, one of Nuon Chea’s international co-lawyers, Michiel Pestman, stood quickly to request that he be allowed to raise a point of order about the agenda. After the court allowed Pestman to continue, it soon became clear that his “point of order” was a thinly veiled attempt to circumvent the court’s rejection of Nuon Chea’s previous request. Pestman stated that the accused had proffered a list of 300 witnesses to the court but then went on to complain, “We wonder why we bothered,” asserting that the court has sent an agenda where objections to the exclusion of certain witnesses will not be heard. He explained that his client believes he has a right to raise preliminary objections to the exclusion of witnesses and explain why all his proffered witnesses will be necessary to the trial.

Rather than allowing the court to respond, Pestman then launched into a vehement attack on the judicial investigations that proceeded the hearings, stating that the investigations and the alleged failure of the trial chamber to acknowledge the accused’s objections to the investigations were “so unfair and so harmful to the rights of our client that we believe these hearings should be terminated.” He expressed sympathy for the prosecution’s frustration over the obstructions to

investigations involved in Trials 003 and 004 and stated that Nuon Chea had raised 26 requests for investigative actions, which were all largely ignored by the investigating judges. “Why were the terrible American bombings not investigated? Why was the Vietnam role in Cambodia not investigated?” Pestman asked. “Is this court trying to bury history?”

Pestman concluded his monologue by proclaiming, “A trial is like building a house – it needs a proper foundation or it will collapse.... If this court is to avoid a show trial, it should start showing its teeth.” Pestman called for a full discussion of what he termed the “secret investigation” against his client, calling for a time of transparency, “not sealed envelopes.” Pestman then announced that his client could not be forced to stay in the trial chamber and will leave the courtroom, only returning when the court recognizes his objections.

President Nonn angrily responded to Pestman’s speech by stating that “the Chamber will not allow such an interruption again.” As he attempted to return to the day’s agenda, Nuon Chea stood at his desk, assisted by two security guards, preventing President Nonn from moving forward. After being recognized by the court, the accused requested to leave the courtroom and return only when the court is ready to consider his objections to the hearings. President Nonn granted the request and instructed the security guards to take the accused back to the detention facility. Nuon Chea did not return to the courtroom for the rest of the day.

Discussion of Provisional List of Witnesses, Civil Parties and Experts

After Nuon Chea left the courtroom, President Nonn turned the court’s attention back to the agenda, moving on to a discussion of the civil parties list. Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort requested an opportunity to explain the good faith reasons for not providing a list of the civil parties to the court by the start of the hearings. In this statement, Simonneau Fort was clearly referring to the last-minute decision on Friday, 24 June, by the Pre-Trial Chamber to broaden the criteria by which the court recognizes victims, thereby nearly doubling the number of civil parties previously allowed in Trial 002, bringing the total to 3,850.

The court denied Fort’s request to present an explanation, stating that the discussion would be more appropriate for a closed session. This statement by the court then prompted a number of responses by the parties regarding whether the witness list should be discussed in a public or closed session. Michael Karnavas, international co-lawyer for Ieng Sary, stated that the general discussion about who can and cannot appear before the court is most appropriately handled in a public session, after which a decision can be made regarding who may testify in a closed session. Dr. Sa Sovan, Cambodian co-lawyer for Khieu Samphan, requested that the list of witnesses be discussed in a closed session, as not all of the witnesses proposed by his client have been given pseudonyms.

International Co-Prosecutor Andrew Cayley requested that all witnesses be coded, so that the list may be discussed in a public session. Cayley also took this opportunity to bring the court’s attention to the prosecutor’s recently filed opinion on the testimony of the accused, requesting that the provisional witness list be considered in light of that position and that all four accused be required to testify before all other witnesses. In this request, Cayley may have been referring

again to the advanced ages of the accused, attempting to ensure that the court obtains these testimonies while the accused are still able to attend court.

Fort expressed that the civil parties had no objection to the witness list being discussed in public because a number of the witnesses had already been coded with pseudonyms and then concluded by stating that the civil parties will file a revised list of civil parties by Thursday, 30 June. Fort urged caution in preparing the witness list, wanting to ensure that the distinction between the civil party role and witness role is maintained.

Concluding the discussion on the provisional list, President Nonn stressed that the Chamber will not, as rule, allow witnesses, civil parties or experts to be called if their testimony will be repetitive. Altogether, the parties had submitted the names of 1,054 witnesses and experts; the Trial Chamber has indicated that it will hear significantly less to ensure that valuable court time is not wasted.

Timeline for Preliminary Objections and Written Responses

President Nonn then moved forward on the agenda, discussing the planned procedure of the court with regard to preliminary objections. He stated that certain preliminary objections, notably those dealing only with matters of law, will be decided on written filings only. These objections include such topics as: (1) the ECCC's general jurisdiction over international crimes; (2) joint criminal enterprise and superior responsibility as alternative modes of liability; (3) whether the court should establish the conduct of rape as a crime against humanity, rather than the crime against humanity of other inhumane acts; and (4) whether crimes against humanity require a link to armed conflict within the ECCC.

President Nonn also announced an extension of time to 22 July 2011 for accused to respond by to certain submissions by the co-prosecutors. Foremost among these submissions is the co-prosecutors' request for the court to consider Joint Criminal Enterprise III (or "extended" JCE) as an alternative mode of liability.

The court also returned in this discussion to the topic of the advanced age of the defendants, articulating the timeline for completion of the expert reports on the fitness of the accused to stand trial. President Nonn took the time to explain that the holding cells within the ECCC had been equipped with video link to the hearings, as well as a phone connection to the courtroom; this equipment is now fully operational, and any accused may choose to use this equipment to observe and participate in the hearings. President Nonn also stated that, if any of the accused chose to remain in court, he/she may be escorted out of the courtroom to take a break at any time without seeking leave of the court. The accused are also not required to stand when the judges enter or leave the courtroom or when making a statement to the court.

The announcement of the extension of time to respond to the co-prosecutors' JCE III request prompted a heated response by Ieng Sary's co-lawyer Michael Karnavas. Karnavas stated that, while he welcomed the extension of time to respond to the co-prosecutors' submissions, he did not believe it was enough, requesting that the court articulate a strict cut-off date for all

submissions by all parties. He accused the co-prosecutor of deliberately waiting on some of the issues raised and seeking “another bite at the apple of JCE III.” Becoming animated, forcibly arguing with a raised fist, Karnavas then claimed that the prosecutor “has deliberately tried to sabotage this trial.” Stating that the trial cannot proceed until the modes of liability are defined, Karnavas concluded, “The people are waiting and the defense is not obstructing. We believe it is the prosecutor who is delaying this trial.”

Co-Prosecutor Cayley quickly stood to respond to this allegation, stating that the co-prosecutors were perfectly entitled to file the requests at the time they were filed. Obviously taking the attack by Karnavas personally, Cayley responded, “I take great exception – great exception – to being accused [of delaying this trial.] These kinds of terms are inappropriate, and I will not accept them.” He then requested the court instruct Karnavas to refrain from making these types of comments in the future.

In response, President Nonn announced the morning break.

Upon returning, President Nonn requested Co-Prosecutor Cayley to proceed with his earlier statements. Noticeably calmer after the break, Cayley acknowledged the court’s agenda for the day, requesting an opportunity at a later time to respond to Michiel Pestman’s earlier statements on the investigation of Nuon Chea, so that the public can hear “the whole story.” The court noted his request and continued the hearing.

At this time, the Cambodian co-lawyer for Ieng Thirith, Phat Pouv Seang, sought leave of the court for his client to return to the detention facility due to her deteriorating health. Acknowledging the right of the accused to decide whether or not to participate in the hearing, President Nonn granted the request and ordered the security guards to take Ieng Thirith to the detention facility.

Dr. Sa Sovan also addressed the court regarding Khieu Samphan’s desire to take part in the hearings, stating that his client “has better health” than the other accused and wishes to participate in finding the truth. Sovan asked that his client be allowed to leave for a break and return later to the hearings. President Nonn reiterated the court’s previous statements regarding the ability of the accused to take breaks at any time.

Preliminary Objections on *Non Bis In Idem*

President Nonn then closed the discussion on the provisional list of witnesses, civil parties and experts and proceeded to the second agenda item – the preliminary objections on the statutory limits of *non bis in idem* (double jeopardy) by accused Ieng Sary. Given the limited time left in the day, the court urged the parties not to repeat their written submissions in their oral arguments, an admonishment that few of the parties followed as they proceeded to reiterate many of the same points already made in their written submissions, monopolizing most of the rest of this day with this topic.

Ieng Sary's co-lawyer Ang Udom began the oral arguments by thanking the court for the opportunity to present these arguments, while at the same time seemingly lecturing the court, requesting that any questions be held to the end "for efficiency." Udom then proceeded to set out the basis for the preliminary objection of Ieng Sary to the trial on *non bis in idem* grounds. Namely, Udom explained, Ieng Sary had already been tried *in absentia* and convicted in August 1979 by the People's Revolutionary Tribunal in Cambodia on charges of genocide and other crimes. After conviction, Ieng Sary was sentenced to death, and all his property was ordered confiscated.

Udom argued that the present trial violates the concept of *non bis in idem* in (1) Cambodian law, (2) the International Covenant on Civil and Political Rights (ICCPR), and (3) international procedural rules. Turning to Cambodian law, Udom relied on Article 7 of the Cambodian Criminal Procedure Code (CPC), which requires criminal actions to be extinguished where they are *res judicata* or finally settled by judicial decision. Udom stated that Ieng Sary's case is "of course" *res judicata*, as the current case deals with facts that were settled in 1979. Udom dismissed the co-prosecutors' reliance on Article 12 of the CPC, which appears to limit *res judicata* to final acquittals, stating that limiting *res judicata* only to acquittals would lead to an "absurd result" as the purposes of *res judicata* is to protect the finality of all judgments, as well as to spare the individual accused from undergoing the emotional, physical, mental, and financial stress of repeated prosecutions. These purposes cannot be limited only to acquittals.

Udom then turned to addressing *non bis in idem* under the ICCPR. Article 14.7 of the ICCPR states, "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country." Udom argued that, despite the Pre-Trial Chamber's findings to the contrary, this article applies to the ECCC and bars the present trial because the ECCC is a Cambodian court subject to Cambodian obligations as a party to the ICCPR.

Finally, Udom addressed the applicability of international procedural rules to the present case. He stated that these rules should only be consulted in the case of ambiguity within domestic law. As both the CPC and the ICCPR clearly apply to Ieng Sary's case, there is no uncertainty and international procedural rules therefore do not need to be consulted. Udom concluded by stating that all three of these bases require the ECCC terminate the current prosecution of Ieng Sary as it does not have jurisdiction on the basis of *non bis in idem*.

Ieng Sary's other co-lawyer Michael Karnavas followed up Udom's argument by addressing the trial chamber's request that the parties answer whether the 1979 trial of Ieng Sary was conducted based on international legal standards applicable at the time and was therefore a proper trial. In response to this question, Karnavas relied on the finality of the sentence issued against Sary, stating that the "proof is in the pudding" of the death sentence that was handed down. Karnavas argued that, had Sary been present at the trial or apprehended soon thereafter, he would have been executed, and there would be no question as to whether the decision was final.

Karnavas then turned to address the Pre-Trial Chamber's rejection of the applicability of the ICCPR *non bis in idem* article to the ECCC. The PTC had decided the ICCPR was inapplicable in this instance because it has no "transnational application," rather it has only an internal effect

within the domestic courts of States Parties. Karnavas argued that the PTC was wrong – there are no issues of “transnational application” in the present matter. Rather the 1979 trial occurred in a Cambodian court, just as the present case is occurring in a Cambodian court. With this argument, Karnavas briefly turned to the accused’s contention that the ECCC is a national court, not an international court or something “in between,” such as an “internationalized” court. He argued that the court should not be allowed to work around barriers to prosecution just by calling the ECCC “internationalized.”

Karnavas concluded the accused’s *non bis in idem* arguments by addressing the co-prosecutor’s contention that the 1979 trial cannot be considered a final decision because, among other reasons, the decision was not subject to review by a second-instance court. “I am not going to lecture the court,” Karnavas stated, on when the second-instance court was finally put in place in Cambodia. “Is the decision to be made that every single trial tried between 1979 and the establishment of a second-instance court was not final?... That the accused did not enjoy their full rights? That is the implication.” Rather, Karnavas argued, the very fact that a second-instance court did not exist in 1979 bolsters the contention that the conviction of Ieng Sary by the People’s Revolutionary Tribunal was in fact a final decision, subject to *non bis in idem* protection.

With the conclusion of the oral arguments on *non bis in idem* by Ieng Sary’s team, the court adjourned for lunch.

Requiring the Accused’s Presence in Court

Upon returning from lunch, the court opened the afternoon session with a statement regarding the presence of the accused in the courtroom during the proceedings, which prompted a heated discussion among the parties.

Perhaps in reaction to the quick dismissal of Nuon Chea and Ieng Thirith in the morning session, which had appeared to occur with no consultation between President Nonn and the other judges, the court clarified the ECCC Internal Rules on this matter. Internal Rule 81 (3), (4), and (5) require the presence of the accused in the courtroom during the proceedings. The Rule allows for exceptions based on the health of the accused, but the court requires that the accused attend court each and every day, at least temporarily, before withdrawing to remote participation. The court urged all parties to be present and abide by this provision, allowing the court to decide whether an accused will be excused.

In response, Dr. Sa Sovan stated that Khieu Samphan’s team “will take this very seriously.” Sovan then proceeded, however, to request that Samphan be allowed to leave the courtroom for the afternoon session as he had become fatigued and because none of the remaining arguments planned for the day related to his defense. After conferring with the other judges, President Nonn declined Sovan’s request, noting that Samphan’s condition “does not appear to be deteriorating or severe.”

Michael Karnavas rose quickly to respond to the denial of Sovan's request, citing his work at the ICTY as a basis for his argument because "the Prosecutor likes to use the ICTY as an example" and urge the ECCC to follow its rulings. At the ICTY, no one is forced to attend court; the personal waiver by the accused of his/her presence blocks any complaint later that he/she was not allowed to participate in the trial. Karnavas urged the court to reconsider this new articulation of its policy and allow accused to sign a written document showing a waiver of appearance. Forcing an accused to attend court when they cannot, physically or mentally, or do not want to attend, Karnavas contended, "borderlines on a violation of an accused's fair trial rights and their human rights." Karnavas concluded by requesting that his client, Ieng Sary, who has problems sitting for long periods, be excused from the court for the remainder of the day.

Co-Prosecutor Cayley began to respond to Karnavas' argument, stating that, in all international tribunals, there is a basic requirement that an accused attend trial. Cayley was interrupted mid-sentence, however, by Ieng Sary's co-lawyer, Ang Udom, calling for the court to make a decision on the requests of his colleague Michael Karnavas. President Nonn pointedly ignored the interruption by Udom, urging Cayley to continue. Cayley urged the court to ensure the court record is very clear when an accused does not or cannot remain in court. The reason for the dismissal must be expressed in writing, and the accused must explicitly waive his/her presence, so that there is no opportunity for him/her to use as an argument in the future.

Karnavas attempted to respond to Cayley, quickly rising and punching the button on his microphone. However, the microphone refused to stay on, giving President Nonn the opportunity to cut off the discussion, stating that the court was not now in a position to decide this matter and that it will deliberate on the issue further at a later time.

Appearing to let the larger matter drop, Karnavas requested final decision on the request of Ieng Sary to leave the court. As the judges turned to confer, Judge Sylvia Cartwright tersely admonished the still-standing Karnavas to resume his seat while the judges discuss. "Please grant us this courtesy at least," she stated. This reprimand prompted much discussion and a bit of laughter in the public gallery, perhaps to ease some of the tension apparent in the courtroom.

Turning back to the courtroom, Judge Jean-Marc Lavergne clarified that the court was faced with two different situations under Internal Rule 81. First, where the accused refuses to appear, he/she can waive this right, but must make this waiver perfectly clear and transparent; in this situation, the trial chamber wishes to be informed by the accused at the beginning of each day. Second, where the accused has made known to the court that he/she is suffering from health problems, he/she may appear remotely, but only after the court is made fully aware of what the health issues are and the basis for the request.

Karnavas responded to the judges, first by apologizing for his previous discourtesy, explaining that, in his usual practice jurisdiction, he cannot take his seat until told to do so by the court. This response again prompted a few chuckles from the public gallery. He then went on to state that medical reports are available for his client's ailments and that he is willing to voluntarily waive his presence in writing in the future. But, Karnavas urged, "he is suffering right now, and the United Nations spent a lot of money preparing those holding cells," and therefore he requests Ieng Sary be allowed to leave the court.

Upon the request of the court, Civil Party Lead Counsel Elisabeth Simonneau Fort responded to the discussion, stating that, while she will defer to the court's decision, this issue is a "matter of respect for victims and civil parties." Some of the civil parties are also of advanced age and have still made every effort to be present; these parties would like to see the accused in court.

After conferring with the other judges, President Nonn granted Ieng Sary's request to remain in the holding cell for the rest of the day. However, he reiterated the court's request that all accused should be brought every morning to the court and that the court will consider then the request to leave on a daily basis. Upon conclusion of these remarks, the security guards assisted Ieng Sary out of the courtroom.

Non Bis In Idem Continued

The court then turned to the co-prosecutors to respond to Ieng Sary's preliminary objections based on non bis in idem. International Co-Prosecutor Cayley chose to respond first to the objections to the judicial investigations raised during the morning session by Michiel Pestman on behalf of Nuon Chea. Pointing toward the public gallery, Cayley said that his remarks would be made "for the purposes of the people." The allegation by Pestman of a "secret investigation" was a mischaracterization, Cayley argued; Nuon Chea's team were allowed access to the investigation documents. These files were confidential to the public because this is a requirement of the ECCC. Now that the trial has started, the investigation will be made public, Cayley stated.

Having finished his argument, Cayley yielded the floor to his colleague, Cambodian Co-Prosecutor Chea Leang, who proceeded with the co-prosecutors' response to Ieng Sary's *non bis in idem* argument. Relying on Article 12 of the Cambodian Criminal Procedure Code, Leang argued that the 1979 trial of Ieng Sary does not bar the current prosecution, as Sary had been convicted, not acquitted as required under Article 12. Leang then concluded her brief argument by responding to the accused's hardship argument. Acknowledging that one of the purposes of *non bis in idem* is to protect the accused from multiple trials or punishments, Leang argued that this principle does not apply here as Ieng Sary was not present at the trial, nor has he suffered any punishment. Therefore, the current case does not put Ieng Sary in a position where he would suffer any hardship.

Cayley continued the co-prosecutors' response by addressing the arguments of the accused on the ICCPR. Citing the Trial Chamber's own recognition of the ECCC as a separately constituted, international court, Cayley stated that the PTC was correct in finding that there is no international protection under the ICCPR for an internationalized court. Finally, Cayley addressed the argument regarding the international procedural rules, stating that all of the international tribunals currently in place contain provisions barring the tribunal from exercising jurisdiction when a national court has tried an individual for the same conduct unless the domestic trial did not abide by the norms of due process as recognized by international law, including trial by an independent judiciary. The trial of Ieng Sary by the People's Revolutionary Tribunal fell far short of this requirement, and therefore the *non bis in idem* provision does not

apply. Cayley concluded by requesting that the court deny the accused's preliminary objection, urging "please let us get on with the trial."

The hearings concluded for the day with two short statements on the *non bis in idem* issue by counsel for the civil parties. The first counsel urged that the *non bis in idem* principle not be applied to the present case because it would greatly affect the rights of the victims. The second counsel addressed Ieng Sary directly, although he was no longer in court, claiming that the accused himself "never accepted that [1979] trial." The civil party counsel urged the court to reject the accused's argument and help "bring closure to the process of grieving" for the victims.

With these final statements, the court adjourned for the day with a plan to continue the provisional agenda that was sidetracked for a large portion of this first day of hearings, beginning on 28 June with the preliminary objections by Ieng Sary on amnesty or pardon grounds.