



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 11-Jul-2011, 12:56
CMS/CFO: Uch Arun

TRANSCRIPT OF INITIAL HEARING
NUON CHEA, IENG SARY, IENG THIRITH, KHIEU SAMPHAN
PUBLIC -REDACTED
Case File N° 002/19-09-2007-ECCC/TC

30 June 2011, 0905H

Before the Judges:

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

Christine MARTINEAU
SAM Sokong
LOR Chunthy
Silke STUDZINSKY
Nushin SAKARATI
Emmanuel JACOMY

The Accused:

NUON Chea
IENG Sary
IENG Thirith
KHIEU Samphan

Trial Chamber Greffiers/Legal Officers:

Matteo CRIPPA
SE Kolvuthy
DAV Ansan

For the Accused:

SON Arun
Victor KOPPE
ANG Udom
Michael KARNAVAS
PHAT PouV Seang
Karlijn VAN DER VOORT
SA Sovan

For the Office of the Co-Prosecutors:

CHEA Leang
YET Chakriya
William SMITH
Tarik ABDULHAK
VENG Huot

For Court Management Section:

UCH Arun

For the civil parties

PICH Ang
Elizabeth SIMONNEAU-FORT
Martine JACQUIN
VENG Pov

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
MS. CHEA LANG	Khmer
MS. JACQUIN	French
MR. KARNAVAS	English
MR. KHIEU SAMPHAN	Khmer
MR. KOPPE	English
JUDGE CARTWRIGHT	English
JUDGE LAVERGNE	French
MR PRESIDENT, JUDGE NIL NONN (Presiding)	Khmer
MR. PHAT POUV SEANG	Khmer
MR. PICH ANG	Khmer
MR. SA SOVAN	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English
MS. STUDZINSKY	English

1

1 PROCEEDINGS

2 (Judges enter courtroom)

3 [09.05.30]

4 MR. PRESIDENT:

5 Please be seated. The Chamber is now in session.

6 Pursuant to our agenda for today's hearing the thematic session

7 is on the oral arguments concerning the Chamber's provisional

8 list of witnesses, civil parties, and experts.

9 Before we commence on the oral argument, we would like to remind
10 the parties of our instruction yesterday. The parties are

11 advised that when the discussion concerning the witness, expert,

12 and civil party list begins, they should bear in mind that until

13 a specific decision is made no witness, expert or civil party has

14 as yet been rejected. They are also asked to limit their

15 comments, as far as possible, to those witnesses, experts, and

16 civil parties whose names have been included in the tentative

17 list and to recall that this list is for the first phases of the

18 trial.

19 This morning the Chamber will also have an additional instruction

20 to all parties. I'd like to give the floor to Judge Cartwright

21 for the additional instruction.

22 JUDGE CARTWRIGHT:

23 Thank you, President.

24 The President has asked me to give the following indications.

25 The Trial Chamber has not yet made a final determination whether

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1 certain experts in the tentative list should instead be
2 classified as witnesses. It is aware of the comments and
3 objections by the parties concerning the qualifications of some
4 of the experts proposed by the parties. There is no need to
5 repeat those observations today.

6 [09.09.10]

7 Secondly, the Trial Chamber asks the parties to offer
8 observations only on the names on the tentative lists using the
9 pseudonyms provided. The parties are reminded that the Chamber
10 will review the whole list of witnesses and experts provided by
11 the parties as the first phase of the trial proceeds and will, as
12 needed, add to the list of those to be examined.

13 Thirdly, if any of the parties considers that it is essential for
14 the Trial Chamber to include a witness or expert in the list for
15 examination during the first phase of the trial, then the names
16 should not be referred to in open court. The name can be
17 provided to the Trial Chamber in writing by Tuesday 5 July. The
18 Trial Chamber does not intend that the parties reiterate their
19 requests made in writing, but wishes only to allow the parties to
20 assist it in ensuring that no vitally important, relevant witness
21 or expert is omitted. Given the need to expedite the trial, the
22 Chamber has limited scope for increasing the list.

23 Finally, the lead co-lawyers are reminded that they have been
24 given the opportunity to provide lists of relevant civil parties
25 at later dates and that there is no need to mention any

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1 additional names today or by the deadline that was imposed for
2 the other parties.

3 Thank you, President.

4 MR. PRESIDENT:

5 Thank you, Judge Cartwright.

6 The Chamber would like to inform the parties and the public that
7 previously the Chamber asked the parties to prepare in case the
8 hearing will continue to Friday the 1st; however, it is unlikely
9 as yesterday the two oral arguments were made and concluded on
10 time. There is only one remaining agenda today regarding the
11 list of witnesses, civil parties, and experts for the first
12 phases of the trial.

13 [09.12.18]

14 I would like to give the floor now to Mr. Sa Sovan.

15 MR. SA SOVAN:

16 Good morning, Mr. President. Good morning, Your Honours, for
17 giving me the floor. Good morning to the prosecutors, the
18 lawyers for the victims, my colleagues, and the people in the
19 public gallery.

20 I have consulted with my other defence counsels and they agreed
21 for me to have five or six minutes to talk and my client, Khieu
22 Samphan, also will have to take the floor for five or six
23 minutes.

24 [09.13.17]

25 After having heard the instructions from Your Honour and Judge

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1 Cartwright, it is much appreciated that there is no hearing on
2 Friday.

3 We are the defence counsel for Khieu Samphan. We are always
4 obliged to respect all the instructions by the Chamber and I'd
5 like now to seek your permission for my client to speak briefly
6 and, of course, we follow any instructions regarding the
7 tentative list to be discussed.

8 Would Your Honour permit my client to speak briefly?
9 (Deliberation between Judges)

10 MR. PRESIDENT:

11 Mr. Khieu Samphan, which subject would you like to talk about?
12 We'd like to know the intention that you are to speak.

13 MR. KHIEU SAMPHAN:

14 I'd like to talk briefly about my witness list. I clearly know
15 that the list is tentative. If Your Honour permits me to speak
16 then it would be much appreciated.

17 MR. PRESIDENT:

18 You are not allowed as instructed regarding the proceeding in
19 relation to the tentative list of witnesses, experts, and civil
20 parties.

21 We will now commence our oral arguments concerning the Chambers
22 provisional list of witnesses, civil parties, and experts.

23 [09.15.52]

24 Having provided the parties with its provisional list of
25 witnesses, civil parties, and experts on Monday, the Chamber will

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1 now give the parties opportunity to comment including in relation
2 to objections, if any, to this list. The parties are reminded to
3 refer to individual witnesses, experts, and civil parties on this
4 provisional list only by their assigned pseudonym.

5 The floor is now given to the Co-Prosecutors.

6 Mr. Sa Sovan, I notice you're on your feet again.

7 MR. SA SOVAN:

8 Mr. President, I think there is a misunderstanding or maybe the
9 information I gave to the President is incorrect. My client
10 would like to briefly talk about three or four minutes only on
11 the witness list and he will not go -- wander into any other
12 areas. He only speak on the subject of the witness list, briefly
13 only.

14 Thank you, Your Honour.

15 MR. PRESIDENT:

16 The Chamber has already decided that your client is not allowed
17 and, secondly, when your turn comes then you can speak. That is
18 your right and your client's right, but you need to ensure the
19 confidentiality and to use only the pseudonyms assigned and not
20 to reveal any names as discussed and instructed during the oral
21 argument.

22 [09.18.18]

23 Once again, the floor is now given to the Co-Prosecutors if you
24 have comments to make regarding the tentative list of witnesses,
25 experts, and civil parties as given to you by the Trial Chamber

6

1 on Monday.

2 MS. CHEA LEANG:

3 Thank you, Mr. President. Good morning, Your Honours. Good
4 morning everyone.

5 The Co-Prosecutors would like to present certain arguments
6 regarding the Chamber's tentative list of witnesses, experts, and
7 civil parties for the first phases of the trial. The question is
8 whether -- whose witnesses, experts, and civil parties should be
9 summoned to testify and whether they are not necessary to provide
10 their testimony before the Trial Chamber during the substantive
11 hearing.

12 After reviewing and discussing amongst ourselves on the tentative
13 list of witnesses, experts, and civil parties as given by the
14 Trial Chamber, we observed that we would like to remove one
15 witness from the list with the pseudonym TCW-482 for the
16 following reason; however, it shall be a closed hearing when we
17 provide our argument.

18 The Co-Prosecutors would like to have a closed hearing to provide
19 arguments regarding this witness, TWC-482 (sic).

20 (Deliberation between Judges)

21 MR. PRESIDENT:

22 Thank you, Co-Prosecutor.

23 [09.21.37]

24 Do you have any other comments to make regarding the tentative
25 list issued by the Chamber besides this one?

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1 The Chamber, of course, took note of what has been suggested by
2 the national Co-Prosecutor and you shall be informed in due
3 course of our decision. Also, depending on the comments likely
4 to be raised by other parties.

5 The floor is now given to the international Co-Prosecutor.

6 MR. SMITH:

7 Good morning, Your Honours. Good morning, counsel.

8 Your Honours, we welcome the list. We feel that the list will
9 address some of the central issues in the case and we note Your
10 Honours' statements this morning that this is not a final list.

11 And just to preview the prosecution's position, we will be filing
12 for another 15 witnesses to be heard in this part of the case.

13 As Your Honours are aware, the prosecution have the onus of proof
14 to prove the case and we feel as though those 15 will be
15 necessary. We will file those further names by the 5th of July
16 as you have ordered and, further, we also take note of your
17 comment that as the first phase of the trial proceeds, you'll be
18 reviewing the evidence and will create an opportunity for parties
19 to further make submissions as to whether or not further
20 witnesses are required into that part of the case.

21 [09.23.24]

22 And the only reason why I briefly say that is I think -- as Your
23 Honours are aware from the previous case and, certainly, other
24 cases -- some witnesses may not be able to attend, some witnesses
25 may have forgetful memories, some witnesses may be reluctant to

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1 talk. And because of all of those factors, we would certainly
2 take up Your Honours' opportunity to address you as the first
3 phase of the trial progresses.

4 Thank you.

5 MR. PRESIDENT:

6 Thank you, international Co-Prosecutor.

7 The floor is now given to the four defence teams starting from
8 Nuon Chea's defence team. Do you have comments to make regarding
9 the Chamber's tentative list of witnesses, experts, and civil
10 parties given to you on Monday?

11 MR. KOPPE:

12 Mr. President, Your Honours, good morning.

13 We have some general observations in respect of the matter of
14 witnesses and experts. That I make these observations today is
15 very important to our client. We understand your guidelines. We
16 know the tentative list is not a final list. We understand that,
17 but we wish to make these general observations nevertheless. I
18 will speak no longer than 30 minutes.

19 [09.25.30]

20 Mr. President, we were appointed as the defence lawyers for Nuon
21 Chea in the fall of 2007. After long talks with Nuon Chea, we
22 filed an important request to the Office of the Co-Investigating
23 Judges.

24 On 20 December 2007, we asked the Investigating Judges to allow
25 us to be present at the examination of all witnesses and although

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1 the Internal Rules do not provide us to be present -- for this
2 possibility to be present, we make this request for two reasons.
3 First of all, of course, to exercise the fundamental right of
4 every accused to cross-examine witnesses. In my jurisdiction,
5 the Netherlands, which like Cambodia has its origin in French
6 law, it is standard practice in a criminal procedure to be
7 present at the examination of witnesses by the Investigating
8 Judge for this very reason and secondly, to avoid the necessity
9 of examining all these witnesses again at trial.
10 Once an accused has had the opportunity to question witnesses at
11 the investigation stage, he does not need to repeat this
12 examination during trial. In fact, only in special circumstances
13 does he have the right to do so. This guarantees a speedy,
14 effective and, at the same time, fair trial.
15 Yet our request to question witnesses was unfortunately denied by
16 the OCIJ. In its letter of 10 January 2008, the Investigating
17 Judges wrote that the Internal Rules prohibit the presence of
18 defence lawyers during interviews of witnesses. And the OCIJ
19 added, rightfully, I might say, that confrontation of the
20 witnesses during trial would serve as an adequate remedy.
21 [09.28.06]
22 Now, in that same letter, the OCIJ also expressly prohibited us
23 from conducting our own investigation. The Investigating Judges
24 even thought it was necessary to inform us that it would be a
25 criminal act if we were to bring pressure on potential witnesses.

10

1 We talked again after this to our client and we decided this time
2 to make a number of requests to the Investigating Judges for
3 specific investigative action. If we were not allowed to do our
4 own investigation it was up to the Investigating Judges to do it
5 for us. Now, which subjects were -- investigative actions were
6 important? Which facts or events had to be properly investigated
7 by the judges? Allow me to give you four examples.
8 Our client instructed us that it was very important to
9 investigate the role of Vietnam not only in the period '75-'79,
10 but also in the time before and after the period of Democratic
11 Kampuchea. Many decisions in the DK period were taken because of
12 Vietnamese policy and such decisions can only be properly
13 understood if Vietnam's role and policy is thoroughly
14 investigated.
15 Now, also, the disastrous consequences of the American bombings
16 has to be properly investigated. Was there, for instance, a food
17 crisis before April 7, 1975; yes or no? And if so, what effects
18 did it have on the people of Cambodia at the time? Was the DK
19 Government able to do anything about it?
20 Our client thought it is also very necessary to investigate the
21 role of rogue commanders in, for example, the DK's Eastern Zone
22 of which the authorities in Phnom Penh did not exercise
23 centralised control, very important issue.
24 [09.30.37]
25 And our client also told us that Duch was not telling the truth

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1 about Nuon Chea's role in respect of the cruelties that occurred
2 in S-21. The reliability of his statements was another issue
3 which according to Nuon Chea needed thorough investigation.
4 As you know, over the course of the three-year investigation, we
5 filed 26 requests for investigative action. And in each request
6 we try to be as detailed and reasoned as possible. What did we
7 want to achieve with these requests for investigative action?
8 What did we expect and what did we hope for?
9 First of all, our client hoped that once the trial started many
10 of the issues we raised in these requests for investigative
11 action would not need to be investigated during the trial. Nuon
12 Chea has no interest in a lengthy trial. Our client is an old
13 man nearing the end of his life and he would like this trial to
14 be finished as soon as possible. But more important than a trial
15 which is concluded quickly, he wants this Tribunal to ascertain
16 the truth; not the story you can read in American or Vietnamese
17 history books, but the truth -- an historic truth -- which also
18 includes his view of the events which took place before and
19 during the DK years and the truth which also encompasses the rule
20 of Vietnam, the consequences of the US bombings, and other
21 important contextual issues; in other words, a proper and fair
22 trial, not a short trial as in 1979.
23 However, the responses of the Investigating Judges to our 26
24 requests were not promising, to put it very mildly. For
25 instance, the reliability of Duch's testimony was not examined.

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1 Key figures from the Eastern Zone who now hold very important
2 positions in the Cambodian Government were not interviewed and
3 the Judges seemed to make no effort to investigate the actual
4 role of Vietnam.

5 [09.33.39]

6 Mr. President, Your Honours, allow me to give one complete
7 example on the subject of Vietnam so that the Cambodians who are
8 present today in this courtroom or who are watching the
9 proceedings on television know what I am talking about.

10 On 20 December 2009, we asked the Investigating Judges to summon
11 as a witness a person who I will now refer to as Mr. X. Why
12 cannot I say his name? You know that because at the stage of the
13 trial -- or this stage of the trial, we are not allowed to use
14 the name of potential witnesses.

15 You have ordered us to refer to the witnesses -- potential
16 witnesses -- anonymously by pseudonyms, but I have to say we find
17 that this clarification -- this guideline -- remarkable because
18 this is a public hearing and we feel that the Cambodian people
19 are entitled to know about the individuals of whom we are
20 speaking today.

21 But in any event, our client is -- was of the opinion that the
22 testimony of Mr. X is very, very important for ascertaining the
23 truth; very important to understand the role of Vietnam. Now,
24 who is Mr. X?

25 Mr. X has been an active figure in Cambodian politics for many

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1 years. At the age of 15, he quit school to join the Khmer
2 Issarak, an anti-colonialist, nationalist movement. During this
3 period, he worked for Ta Mok whom the prosecution alleges was a
4 member of the CPK Standing Committee, alongside our client and
5 others.

6 [09.35.33]

7 From 1970 to 1974, Mr. X was a member of the Khmer Rouge.
8 However, he fled to Vietnam in '74 to help organise the
9 Kampuchean United Front for National Salvation and was ultimately
10 responsible for leading Vietnamese-backed resistance forces into
11 Cambodia in '78.

12

13

14 (Deliberation between Judges)

15 MR. PRESIDENT:

16 International Co-Prosecutor, you may now proceed.

17 MR. SMITH:

18 Just briefly, Your Honour, we note defence counsel's concerns
19 about not being able to state people's names publicly, but by the
20 same token, we do note Your Honours' concerns that until such
21 time that you're in a position to know whether there is any
22 protective issues for a particular witness, that out of an
23 abundance of caution you have decided that certainly at least for
24 today we use pseudonyms, the prosecution's view would be that in
25 a short period of time those witness assessments be made and then

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1 once they're made and if there's grounds or no grounds then names
2 can be used publicly.

3 But I think it's not appropriate to call someone Mr. X and then
4 start to bring out every detail that would identify Mr. X. So
5 either this should be in closed session or alternatively, I think
6 the details should stop coming and I think counsel and all
7 counsel is to be reminded that until such time that you change
8 the order, we use pseudonyms today. But we also appreciate
9 counsel's view that this should be a public hearing and that can
10 happen, of course, very shortly once the assessments have been
11 done.

12 [09.38.20]

13 Thank you.

14 MR. PRESIDENT:

15 We thank you, the international Co-Prosecutor.

16 The Chamber would like to remind the defence team for Nuon Chea
17 that the agenda for the tentative list of witnesses have already
18 been well communicated and instructed to the parties to the
19 proceeding.

20 With regard to other list of witnesses and experts, if you feel
21 that they are not yet included in the tentative list and that you
22 believe these people are potential witnesses and expert, for the
23 interests of your client, you are then advised to list them in
24 writing and submit to the Chamber.

25 The observation by the international Co-Prosecutor is very

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1 appropriate. Any explanation or any observation that leads to
2 the revealing of the identity of the so-called pseudonym that you
3 refer to is -- and this, of course, violates the protective
4 measures and also the witness protection principle has already
5 been the principle rule and provision to be abided by everyone
6 and internationally.

7 The Chamber will also notify the parties with regard to what kind
8 or what form of protective measures or whether such protective
9 measure will be also given to any particular witness or experts
10 and we believe that parties will be well informed.

11 [09.40.29]

12 We once again wish to inform the defence counsel of this and
13 please be carefully reminded we will give the floor to the
14 defence counsel to continue his observation, but please refrain
15 from going back into the discussion of the detailed identity of
16 any particular witness or potential witness.

17 MR. KOPPE:

18 Thank you, Mr. President.

19 I will stop talking about Mr. X. I was just mentioning him as an
20 example, nothing more. My point was -- or the point that I
21 wanted to make was that the Investigating Judges simply refused
22 to even interview Mr. X. They said his testimony was
23 unnecessary.

24 When my client heard that he was shocked. How could that be
25 possible? Were the Investigating Judges not interested in the

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1 role of Vietnam or in his story? Did they not care? Were they
2 only interested in uncovering inculpatory evidence? Was it true
3 then, after all, what an Australian policeman with many years of
4 experience -- a man who had worked for years in the OCIJ -- had
5 said? You may recall the story. The newspapers wrote about it.
6 This Australian policeman [REDACTED] revealed that
7 during a meeting in August 2009 at the private residence of
8 Investigating Judge Lemonde --

9 MR. PRESIDENT:

10 The international Co-Prosecutor, you may now proceed.

11 [09.42.25]

12 MR. CAYLEY:

13 Thank you, Your Honours.

14 When the direction was issued for this week's initial hearing,
15 you stated that today would be a discussion about witness lists
16 and you also said it this morning, it will be a discussion about
17 the witness list that you put before us. As Your Honours are
18 well aware, the fairness of the judicial investigation is a
19 matter that's before you. The defence have made that as a
20 preliminary objection and you have specifically decided not to
21 list that today.

22 I'm certainly -- we certainly want to be absolutely clear that we
23 want all of the issues that are raised by all of the defence
24 counsel completely public, but I think as the Trial Chamber
25 Judges -- the managers of this case -- you have the right to

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1 manage the trial as you see fit and, certainly, my understanding
2 is that this trial will be fully public, but as far as today is
3 concerned, I would ask that the defence counsel keep his remarks
4 to the specific agenda remarks that you made and we would support
5 the defence in public hearings of all of the issues that they
6 make, but otherwise you will lose control of this trial if people
7 are allowed to make speeches and not confine themselves to the
8 agenda that you set.

9 [09.43.49]

10 Thank you.

11 MR. PRESIDENT:

12 Thank you, Mr. Co-Prosecutor.

13 (Deliberation between Judges)

14 MR. PRESIDENT:

15 Since the observation by the defence counsel is not relevant to
16 the item of the agenda with respect to the witness list and the
17 observation is of a broad nature and, at the same time, the
18 counsel keeps revealing the identity of potential witness,
19 perhaps -- and this, of course, interrupts our proceedings, the
20 Chamber wishes to, therefore, stop the defence counsel from
21 making further observation with respect to that aspect.

22 Would you wish to make any other observation with regard to the
23 tentative list of witness?

24 MR. KOPPE:

25 Mr. President, do I have to understand the Trial Chamber's

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1 decision that we are also not allowed to speak about the
2 selection of the tentative list -- the selection of the
3 witnesses? As I indicated, it was -- it's only maximum 30
4 minutes that we are speaking about the very important issue of
5 witnesses.

6 [09.46.19]

7 Our client has waited four days for us to give this half hour --

8 MR. PRESIDENT:

9 The Chamber has already made our decision that you are not
10 allowed to make any observation beyond what has been allowed in
11 the agenda and the Chamber would not wish to allow you to speak
12 or take this opportunity to touch upon other issues that are not
13 related to the potential witness list.

14 Of course, the Chamber has already made it clear that if you
15 would wish to add any names of potential witness of your
16 interests and your client's interest into the list then you still
17 have time to do that in writing and have it submitted to the
18 Chamber. And if, for the time being, you do not have any further
19 comments with respect to the tentative list of the witnesses then
20 we would like to give the floor to other teams for the defence.

21 We might proceed to the counsel for Ieng Sary if they would wish
22 to make any comment with regard to the tentative list of
23 witnesses.

24 MR. KARNAVAS:

25 Good morning, Mr. President. Good morning, Your Honours, and

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1 good morning to everyone in and around the courtroom.

2 We do object to one particular witness, Your Honour, and that is
3 TCE-44 -- TCE-44. We have stated our reasons in writing and we
4 would appreciate the opportunity to be heard in closed session
5 concerning -- to elaborate more on the reasoning with this
6 particular witness.

7 [09.48.30]

8 I would also like to observe that it is somewhat difficult for us
9 in going through these lists when not knowing what the other
10 topics will be in the future; however, we understand how the
11 Trial Chamber has reached this tentative list. I just make that
12 observation that the sooner we know it would assist us.

13 I also would like, if it is at all possible, for the prosecution
14 to turn over at least a courtesy list of the 15 names it intends
15 to identify. Since they seem to know who they are, we need not
16 wait until 5 July for that.

17 Also, if I may make one brief comment with respect to one comment
18 made by the prosecution concerning the identity of witnesses, I
19 believe it would be a fundamental flaw in these proceedings if
20 the list of witnesses were to be revealed prior to the witness
21 appearing here in court. The public is entitled to an open and a
22 transparent trial proceedings.

23 I do not -- I submit that the public is not entitled to know the
24 names of the witnesses prior to the witnesses appearing. I think
25 in most jurisdictions that's forbidden. In any event, why?

20

1 Because witnesses can be tampered, can be pressured; harm may
2 come to those witnesses.

3 In light of the proceedings and the charges and the events and
4 what have you, I think we should be more cautious. The public is
5 not going to lose anything by simply seeing who will be -- who's
6 giving testimony at the moment they appear in court. That is the
7 proceeding that is usually abided by at the ICTY and at the other
8 tribunals.

9 Publishing the list so neighbours, friends, enemies, and what
10 have you know who the witnesses may be could cause a tremendous
11 amount of problems for this trial and so I ask that you consider
12 these remarks in your deliberations as to whether the list should
13 be made public.

14 [09.51.07]

15 And with that I have one other observation, if I may, as sort of
16 an amicus to the Khieu Samphan team. If I may make one remark,
17 Your Honours, and that is under the ICCPR article 14.3 (a) an
18 accused is entitled to defend himself through himself or through
19 others. Now, I understand he has counsel; however, just for you
20 to be aware, at the ICTY there are instances where the Trial
21 Chamber would allow accused -- even if represented -- to provide
22 comments or observations to the Trial Chamber.

23 In this instance, it would seem to me that perhaps you may wish
24 to consider or reconsider your decision and allow Mr. Khieu
25 Samphan to be heard. Perhaps he's in a best position -- in the

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1 best position to comment about the witnesses or this event. Now,
2 in the event, of course, he goes outside, you could cut him off,
3 but it would seem to me that since we are -- if you're going to
4 consider this sort of a hybrid tribunal -- national,
5 international, this internationalised, which -- I hate using this
6 term, but I believe that it would not be unusual to allow the
7 accused to make submissions to the Trial Chamber, and I think in
8 light especially of the circumstances that we find ourselves here
9 today.

10 Thank you, Mr. President and Your Honours.

11 MR. PRESIDENT:

12 Thank you, Counsel Karnavas.

13 The Chamber actually asked the accused person whether he would be
14 talking on the list of witnesses and civil parties as delivered
15 to the parties. And, of course, as I made it very clear, the
16 Chamber wishes to hear from the prosecutors and followed by
17 defence counsel for the four accused persons.

18 [9.53.37]

19 And Khieu Samphan team, of course, will have an opportunity to
20 have a say in this hearing. And I really remember that counsel
21 of Sa Sovan asked whether, when the opportunity comes, he would
22 be able to make any observations and whether his client would be
23 able to make such observations. And the Chamber really agreed
24 that, of course, when the time comes then your client would make
25 the most of that allocated time to really make such observations.

22

1 We never say no to his making such observations. It is only just
2 to restore order in the courtroom and so that the flow of the
3 argument can be seen in the order.

4 Next, we would like to give the opportunity to the defence team
5 for Mrs. Ieng Thirith to make any observations.

6 MR. PHAT POUV SEANG:

7 Good morning, Mr. President, Your Honours.

8 I am representing Mrs. Ieng Thirith. I do not have much to say
9 with regard to the list of witnesses that distributed to us on
10 Monday. So we can conclude that we, for the time being, have no
11 comments.

12 MR. PRESIDENT:

13 Thank you, counsel. Next we would like to proceed to the defence
14 counsel for Khieu Samphan. If you would wish to make any
15 observations with regard to the tentative list of the witnesses
16 and civil parties, the floor is yours.

17 MR. SA SOVAN:

18 I am representing Khieu Samphan.

19 [9.55.35]

20 Good morning, Mr. President, Your Honours, once again.

21 My client would not really talk far beyond the agenda, so could
22 the Chamber allow him five or six minutes to make his statement
23 or observations concerning the list of the witnesses and the
24 civil parties.

25 MR. PRESIDENT:

23

1 Mr. Khieu Samphan, you may now proceed.

2 MR. KHIEU SAMPHAN:

3 Thank you, Mr. President, for allowing me to address the Court.

4 Now, Mr. President and Your Honours who are present today, and

5 good morning to my fellow Cambodian citizens, and my sincere

6 salute to monks who are in the public gallery.

7 I think it is the very important moment for me and for my fellow

8 Cambodian citizens who are hungry for understanding what happened

9 between 1975 and 1979. I personally have been waiting for this

10 moment for so long. I am very fortunate I am healthy enough at

11 this time. As long as I am still as healthy as I am today I will

12 contribute to the best of my capacity, of course, to the bottom

13 of my heart, to assist or cooperate with the work of the Court.

14 [09.58.21]

15 In order to make sure that what happened during the period that I

16 indicated will be revealed to the surface, I personally am not

17 fully knowledgeable of everything but I will do my best to make

18 sure that I can ascertain the truth to the full capacity, if I

19 can.

20 With regard to the list of witnesses I have already observed the

21 comments made by the President during the hearing that this list

22 is a tentative one. The tentative list for the four initial

23 steps for this trial proceedings, and I still recall the

24 observations -- remarks made by the President that no witness

25 shall be objected or omitted. So I would not wish to talk much

24

1 further on the list of the witness.

2 My general observation here is of course aimed to make it known
3 to the public I have observed that the majority of the witnesses
4 in the list belong to the prosecutors -- the witnesses of the
5 prosecutors. The majority, I mean, super majority of the
6 witnesses -- or I may say almost all the witnesses are proposed
7 by the Co-Prosecutors. I haven't even spotted any of the
8 witnesses I proposed. I have noted very few, but those witnesses
9 that we had earlier proposed have now belong to the
10 Co-Prosecutors, they become eventually the inculpatory witnesses
11 rather than the exculpatory ones.

12 I note that my contribution to make sure that these proceedings
13 are smooth and proper and to make sure that the truth is finally
14 ascertained and that the fairness and that my honesty will be
15 revealed. This can only be made if the Court agrees to pay
16 attention, to listen to, or to hear the key witnesses that my
17 team proposed.

18 [10.02.09]

19 Many of the witnesses I proposed have known me very well. They
20 have been closer to me, they know where I would be doing
21 anything, and of course they had a very good account of me.
22 Those witnesses can talk about their work and at the same time
23 those accounts will reflect of what I could have been doing back
24 then. To that I would really request that the Chamber take note
25 and include those witnesses and summon them for testimony. They

25

1 shall be heard. I don't say they should, but they shall be
2 heard.

3 Some witnesses, of course, actually did not really tell the true
4 story or sometimes they just exaggerated the information. That's
5 why it is really important that our witnesses be included.

6 And finally, I would like to request that the Chamber take our --
7 or my request seriously, and I will eventually present the list
8 of my witnesses in writing at a later date so that clarity has
9 been added -- will be added.

10 And that is all from me and I am very grateful to Mr. President,
11 and Your Honours. I thank you, my fellow Cambodian citizens and
12 the monks who are in this public gallery also. Thank you.

13 MR. PRESIDENT:

14 Next, the Chamber would like to give the floor to the lead
15 co-lawyers for civil parties if they have any comments to make,
16 or any objections to make regarding the tentative list issued by
17 the Chamber on Monday.

18 MR. PICH ANG:

19 Good morning, Mr. President. Good morning, Your Honours. Good
20 morning, everyone, and my respect to the monks.

21 [10.04.00]

22 The lead co-lawyers have some observations to make and I'd like
23 to seek your permission for my colleague, Ms. Fort, to make an
24 observation regarding a witness. Therefore, I'd like to -- and
25 next I'd like to give the floor to Ms. Martine Jacquin to make

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1 observations regarding two witnesses, and then the floor shall be
2 given to Ms. Studzinsky in relation to three witnesses.

3 MR. PRESIDENT:

4 Yes, the Chamber allows for your request.

5 MS. SIMONNEAU-FORT:

6 Just a few specifications given the timelines that we have been
7 communicated and the instructions issued by the Chamber. We have
8 very few remarks to make today. They will deal, certainly, with
9 the status of certain witnesses who have been proposed. Our
10 fellow counsel may also have a few very brief observations to
11 make.

12 I simply want to state that there is a witness under TCW-608.
13 This proposed witness must be heard. The Chamber, however, must
14 change this person's status in light of the decision of the PTC
15 as this person is now on the list of civil parties. I wish to
16 hand the floor over to my colleague.

17 MS. JACQUIN:

18 Good morning, Mr. President, Your Honours.

19 [10.07.17]

20 I have three observations to make. The first concerns TCW-348,
21 this person is going to be on the list of civil parties. The
22 second person concerns TCW-531, whose civil party status has not
23 been determined. And on that point this proposed witness has
24 told me that he does not want to participate unless he is
25 admitted as a civil party.

27

1 And as a general comment, we believe that the identity of civil
2 parties who may appear before this Court may not be known
3 publicly before they speak. This is for reasons of security, as
4 well as the protection of their privacy and personal safety.

5 Thank you, Mr. President.

6 MR. PRESIDENT:

7 Ms. Studzinsky, you may now proceed.

8 MS. STUDZINSKY:

9 Good morning, Mr. President. Good morning, Your Honours. Good
10 morning, everyone.

11 I would like to submit some remarks on policies, which is one of
12 the segments that the Trial Chamber has selected as -- for the
13 first phase of this trial. Among these policies during the DK
14 period, I would like to discuss the witness list with regard to
15 the policy on regulation of marriages, and, second, the enemy
16 policy.

17 The first point, the policy on regulation of marriages is
18 different from the other policies under the Khmer Rouge during
19 the DK period. Why is this the case? This policy was practiced
20 --

21 [10.09.57]

22 MR. KARNAVAS:

23 Mr. President, I wish to be heard. I have --

24 MR. PRESIDENT:

25 Ms. Studzinsky, you may stand down and the floor is now given to

1 Michael Karnavas.

2 MR. KARNAVAS:

3 Thank you, Mr. President. Thank you, Your Honours.

4 This is not the time or place to be making speeches. This is
5 what we were instructed to and everybody has to abide by it. We
6 understand that the civil parties play a role; we respect that
7 role, we encourage that role, but they don't get to have
8 exceptions made to the rules.

9 They can tell us simply, like everybody else, whether they agree
10 to the list or object to anybody on the list. But as far as
11 policies, and what those policies meant, and how they're
12 different, that's irrelevant.

13 MR. PRESIDENT:

14 I notice Mr. Sa Sovan would like to speak. You may now proceed.

15 MR. SA SOVAN:

16 Of course, like in the case of Mr. Koppe, I also wanted to talk
17 about the procedure, but it is outside the agenda today. Today
18 we have four accused, so please focus on them, not on the regime
19 itself.

20 [10.12.06]

21 MR. PRESIDENT:

22 Thank you, counsel, for your comment.

23 Ms. Studzinsky, please be advised that your comments shall only
24 be related to the tentative list of the witnesses issued by the
25 Chamber. Your comments means you focused on, or do you agree

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1 upon those lists or do you object to those lists? For example in
2 the case TCW-608, who is currently recognised by the Pre-Trial
3 Chamber as a civil party so the Trial Chambers will consider the
4 status of that person again, whether the person shall be under
5 the witness list or should be removed and put in the civil
6 parties list.

7 That is what we want regarding this procedure on the list of the
8 witnesses, civil parties, and experts that we already determined
9 and set in our agenda.

10 If you have other comments outside to this topic then you are not
11 allowed. Do you have any comments to make in regards to the
12 tentative list?

13 MS. STUDZINSKY:

14 Yeah, thank you, Mr. President.

15 [10.13.44]

16 Of course I do have, and the only thing what I wanted to do is to
17 explain what I would like to say to three witnesses who are on
18 the tentative list of the Trial Chamber. And of course to --
19 that you can understand what I mean, I think I should be allowed
20 to explain a little bit and without saying only TCW-604, TCW-707,
21 and TCW-126. These are perhaps, to start in another way, the
22 witnesses on whom I would like to give some comments with regard
23 to their knowledge, or their purpose to talk, among other things,
24 about the regulation of marriage. And maybe I would like then --
25 I would need perhaps ten minutes for this to explain why I would

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1 not -- or we would not object to these listed witnesses.

2 But with regard to the policy -- and this is one of the issues

3 today, and therefore, I think the defence as well, should

4 understand what they say instead of only listing pseudonyms and

5 listing numbers to get a little bit more the floor.

6 So I would request the -- Mr. President, again with regard to

7 these witnesses whose pseudonyms I mentioned to explain why I

8 think that these witnesses are not sufficient to elaborate on the

9 policy of --

10 MR. PRESIDENT:

11 Once again the Chamber would like to advise Ms. Studzinsky that

12 other parties who have made comments, they made comments to the

13 point precisely. But in your case you rather cause complications

14 and your comments does not seem to be straight to the point

15 regarding the list of witnesses, experts, and civil parties

16 determined by the Chamber.

17 I hope you follow the examples of the lead co-lawyers, it means

18 to only make comments on the point precisely. And the three

19 witnesses that you would like to comment upon, is it your

20 intention to make an objection to it? Can you make it more

21 precise and not to make a general comment?

22 [10.18.18]

23 You should make comment for each of the three witnesses that

24 you'd like to make comments upon, whether they should provide the

25 testimonies. Because each of them would provide testimonies on

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1 different facts as they are concerned and related through various
2 facts, or even to the same fact but the understanding may be
3 different.

4 So this is the last chance that the Chamber would like to give to
5 you to be precise to the point, otherwise you will be stood down
6 if you persist to make it repetitive in contradiction to the
7 instructions given by the Chamber.

8 MS. STUDZINSKY:

9 Thank you, Mr. President.

10 I start with the discussion of TCW-126. This witness is with
11 regard to regulation of marriage only, could contribute partly
12 for the temporal -- with regard to the temporal jurisdiction, but
13 would not cover the whole period.

14 With regard to the witness TCW-604, and with regard to regulation
15 of marriages, this witness would also cover only a very short
16 period of the time, the period that is before this Court.

17 With regard to TCW-707, this witness seems to be a victim, but to
18 my understanding not representing the majority and -- of those
19 who were married. Therefore, we suggest for the faith of this
20 segment with regard to this specific policy, to include -- and
21 this is already before you -- evidence that was submitted as a
22 statement but which we would like to present to you now and --

23 [10.22.14]

24 MR. PRESIDENT:

25 Counsel Karnavas, you may proceed.

1 MR. KARNAVAS:

2 Mr. President, Your Honours, I don't mean to be disputatious, but
3 I am going to be objecting each and every occasion when all of us
4 are not abiding by the rules.

5 Now, Your Honours have indicated that the parties have an
6 opportunity to supplement this list and that was the reason why,
7 I understand, counsel for Mr. Nuon Chea sat down when he was
8 asked to move on. Khieu Samphan stood up and made the same
9 observation; that he would be adding to the list.

10 Now, there's no need for this particular counsel to be giving
11 commentary. There is the opportunity provided by the Trial
12 Chamber; we welcome that, we're grateful for that. But I think
13 it's an abuse of Your Honours' generosity to allow someone to
14 simply be making speeches as to what should be included. If
15 anyone feels that the list is not representative sufficient for a
16 particular segment of their case, or for a particular point, they
17 have the opportunity -- because you provided it to us -- to
18 supplement that list.

19 And I apologise for having to object, but I will do this -- and
20 I'm doing this early now -- so that hopefully we won't be having
21 problems throughout the proceedings.

22 MR. PRESIDENT:

23 Thank you, counsel, for your remarks.

24 [10.23.55]

25 Counsel Studzinsky, you are not allowed to stand anymore to make

1 comments regarding this topic.

2 The Chamber would like now to give the floor to Judge Cartwright
3 in order to ask counsel Studzinsky regarding the three witnesses.

4 JUDGE CARTWRIGHT:

5 Thank you, Mr. President.

6 Ms. Studzinsky, the role of the civil parties led by the lead
7 co-lawyers, who should have the primary role in these proceedings
8 in representing the consolidated group, is to support the
9 prosecution during the trial. Of course there are other roles.
10 I am still not clear whether you on behalf of the consolidated
11 group accept the three witnesses; 126, 707, and 604. Can you say
12 in one word, "Yes, I accept them", or, "I object to one or more",
13 please?

14 MS. STUDZINSKY:

15 If I have the choice to say I accept them or object them, I can
16 let you know I accept them.

17 JUDGE CARTWRIGHT:

18 Thank you very much. Given that all three were proposed by the
19 prosecutors that is a very appropriate indication.

20 (Deliberation between Judges)

21 [10.30.25]

22 MR. PRESIDENT:

23 Counsel Ang Udom, you may proceed.

24 MR. ANG UDOM:

25 Good Morning, Mr. President and Your Honours.

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1 Since Mr. Ieng Sary has experienced lumbago problem, could he be
2 excused and observe the proceedings from the holding cell this
3 morning and this afternoon?

4 MR. PRESIDENT:

5 We have taken note your request and that Mr. Ieng Sary is allowed
6 to be excused from this courtroom, and that he can still observe
7 the proceedings in the holding cell through the video link.
8 The security personnel are now instructed to, of course, take him
9 to the holding cell, and the AV officials are now instructed to
10 make sure that the video link is well installed so that he can
11 observe the proceedings through remote participation.

12 Next, it is an appropriate time for the adjournment, but before
13 the adjournment the Chamber would like to inform the parties and
14 the public that the public hearing session during the Initial
15 Hearing that has been conducted so far has come to the
16 conclusion, and the following session after the adjournment will
17 be in camera as requested by the national Co-Prosecutor.

18 [10.32.39]

19 During the closed session the hearing will be conducted very
20 briefly and there will be no hearing session this afternoon. We
21 hope this information will assist the public to make sure they
22 can return home this afternoon.

23 Counsel Karnavas, you may now proceed.

24 MR. KARNAVAS:

25 Thank you, Mr. President.

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1 I don't mean to upset the calendar for the Court, but I was under
2 the understanding that we were going to be discussing any other
3 matters that might be outstanding -- that was my impression -- at
4 the conclusion of dealing with this issue.

5 Now, if I misunderstood the Trial Chamber, then my apologies.
6 But there are some other issues which we feel should have been
7 included in, if not this Initial Hearing, a subsequent Initial
8 Hearing or hearings prior to the commencement of the trial.

9 So with all due respect, if it would be at all possible to deal
10 with those matters when we come back first, that will take about
11 15 or 20 minutes --15 minutes for me to raise, at least, what I
12 believe, are other additional matters which should have been
13 included in this or perhaps a subsequent initial hearing or
14 hearings, and then we can go into private session concerning the
15 one witness which the prosecution has objected to since the
16 public will no longer be needed to or be available to watch the
17 proceedings.

18 [10.34.44]

19 There are three matters that I believe are jurisdictional.

20 MR. PRESIDENT:

21 Could you please make it clear what would be the three issues
22 that you would like to be heard? We -- you can do that before
23 the break, and I think the Chamber will take the opportunity to
24 address these issues before the adjournment to save our time.

25 MR. KARNAVAS:

1 Very well, Mr. President.

2 Now, I will not go through my entire presentation, just briefly

3 to mention the three issues. One is the applicability of

4 international law; the second is the applicability and

5 application of command responsibility; and another one deals with

6 the application of crimes against humanity.

7 It is our respectful submission that all three of these issues

8 are jurisdictional even if -- even if -- the matters that we are

9 contesting may go to what is considered the contours of the

10 applications of these laws. So that's essentially in a nutshell.

11 If this is not the appropriate time, but nonetheless these are

12 issues that must be resolved prior to trial, we can deal with

13 them in another hearing. But it is our respectful submission

14 that even if not characterised, or even if they don't come within

15 the strict definition of a jurisdictional issue, these issues, as

16 well as the issue on JCE must be addressed and resolved prior to

17 the commencement of the proceedings.

18 Whether we will be afforded the opportunity to give oral

19 argument, or rest on our pleadings, or make further submissions

20 as by way of a reply, if we were the moving party, we would

21 surely welcome instructions from the Trial Chamber.

22 [10.37.07]

23 I hope that has been of some assistance.

24 MR. PRESIDENT:

25 Thank you, Counsel Karnavas.

37

1 Mr. Koppe, you may now proceed.

2 MR. KOPPE:

3 Thank you, Mr. President.

4 We have only one request for clarification, and it is something I
5 feel should be discussed in public and we could do that after the
6 break. But the request of clarification is about Rule 80(b), the
7 rule on the Initial Hearing.

8 We understand this provision to be as follows, it stipulates that
9 the Trial Chamber shall, at the Initial Hearing, consider the
10 list of potential witness. Now, we have understood this rule to
11 imply that the Initial Hearing is the time to debate publicly the
12 requests for witnesses from the parties, and that prosecution can
13 object to witnesses requested by the accused, and that we can
14 object to witnesses of the prosecution.

15 So, I mean, I'm speaking about the witnesses not included in the
16 tentative list. And we would like to have guidance on the word,
17 "consider" as laid down in Rule 80(b).

18 [10.38.38]

19 Is there going to be another Initial Hearing where we can argue
20 why our witnesses who are not on the tentative list should be, at
21 one point or another, on the final witness list. We just need
22 clarification on that specific issue.

23 MR. PRESIDENT:

24 Lead co-lawyer Fort, you may now proceed.

25 MS. SIMONNEAU-FORT

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1 Yes, Mr. President.

2 We also believe that another Initial Hearing will be necessary in
3 order to discuss the lists, among other things, and also legal
4 points, and we would like to receive extra clarification
5 regarding another initial hearing, and we would like to know when
6 this Initial Hearing may be scheduled.

7 MR. SMITH:

8 Thank you, Your Honour.

9 Perhaps just briefly; the prosecution certainly supports as much
10 of a public hearing on these issues as possible, and we are aware
11 that a number of matters haven't been dealt with today, and we're
12 aware of your Order stating that you would advise us shortly as
13 to how they'll be dealt with.

14 [10.40.19]

15 But certainly we would like to support the defence and the civil
16 parties that as much of this hearing should be as public as
17 possible. And certainly because of the size of this trial, the
18 number of accused and civil parties, there's certainly quite a
19 number of issues that need to be resolved before the beginning of
20 the case. And so any more Initial Hearings, trial management
21 meetings, and meetings of that sort in the courtroom, we think
22 would be invaluable to ensure that once the trial starts it will
23 run smoothly.

24 MR. PRESIDENT:

25 Thank you, the Co-Prosecutor.

1 Judge Lavergne, you may now proceed.

2 JUDGE LAVERGNE:

3 Yes, thank you, Mr. President.

4 I have a few questions to put to Counsel Karnavas, because I am
5 afraid that his statements were not fully translated into French.

6 He brought up three issues that he would like to see covered
7 during an Initial Hearing, if I understood properly, but as far
8 as I know, I only heard the first issue regarding the
9 applicability of international law. So I do not exactly
10 understand what this means in this case, and I also heard about
11 crimes about humanity, but -- against humanity.

12 [10.41.58]

13 So what I'd like to know, if you are speaking about issues for
14 which you -- he was not able to file written submissions until
15 now, or these are completely new issues. What exactly is at
16 hand?

17 MR. KARNAVAS:

18 Thank you, Judge Lavergne.

19 To recap, there were three issues: the applicability of
20 international law, the applicability and application or the
21 extent to which command responsibility is applicable, and the
22 application of crimes against humanity.

23 To answer the latter part of your question, or the second part,
24 we filed written submissions. Rarely do we take a chance in
25 having an opportunity for all submissions, so we avail ourselves

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1 to filing written submissions.

2 So we have submissions, we have not filed replies. The
3 prosecution has filed their responses. Of course, our
4 submissions are based on what the Pre-Trial Chamber found, so the
5 issues have been litigated before the Pre-Trial Chamber. We made
6 submissions before you by way of a motion. The prosecution has
7 responded. We have not filed replies.

8 [10.43.31]

9 It is our understanding that these fall within the ambit of
10 jurisdictional issues and, therefore, can or should -- more in
11 the way of should -- be heard as jurisdictional issues, even
12 though when dealing with the contours under Rule 89.1(a) and
13 89.1(b). But even if -- even if -- the Trial Chamber were to
14 find that these are not necessarily jurisdictional issues because
15 it's not a matter of whether they apply but whether to what
16 extent they would apply, then we feel that these are the sort of
17 issues that need to be fully resolved prior to the commencement.
18 Now, with respect to JCE, since we're dealing with JCE 3, it is
19 our respectful submission that this is, indeed, a jurisdictional
20 issue; we're not talking about the contours because JCE 3 is
21 distinct. A decision was made that it doesn't fall within
22 customary international law during the temporal jurisdictional
23 period of this particular Tribunal. The parties had 30 days to
24 file the jurisdictional issues. The prosecution did not avail
25 itself, nonetheless, they filed this one. In any event, when we

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1 -- we already made a submission that it's untimely and should be
2 outright dismissed.

3 There's a pending motion which we filed on an expedited basis.

4 The reason for filing that motion was we want to know whether we
5 need to respond to it or not, or whether it should be objected
6 for lack of timeliness in the fact that it's a jurisdictional
7 issue. And I say this with all due respect.

8 And let me take this opportunity also, Your Honours, to extend an
9 apology to the prosecution. On Monday, I did not intend to say
10 that they tried to sabotage the Tribunal or the trial itself.

11 What I wished to convey is that it's -- they're delaying the
12 process. And I apologised privately to Mr. Cayley that I -- and
13 I say -- I take the opportunity now to do so in public, that it
14 is not my intention to delay the trial myself, but with respect
15 to this issue we feel that a decision was made.

16 [10.46.20]

17 The prosecution knew they were going to challenge it. We feel
18 it's a jurisdictional issue, and the reason we want a decision
19 now is because we're at the stage where we have to deal with the
20 facts and get ready for trial. And there's a lot of work that
21 needs to be done in filing a submission, and I can say with all
22 degree of certainty and humility that when we do file
23 submissions, we don't do so lightly. We try to present,
24 essentially, academic articles to you in trying to distil the law
25 into -- provide the best possible analysis that we know how. It

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1 is a lot of work that goes into making a -- preparing a
2 submission within the page limitations.
3 Now, some may not be accustomed to this sort of trial advocacy.
4 This is based on my own jurisdiction, but we try -- a lot of work
5 goes into this and that's why we feel that a decision, at least
6 early on, should be made on whether it should be accepted. We've
7 already begun the process because I'm not going to assume that
8 I'm going to win every motion that I file.
9 But, in any event, we believe that these three issues, and others
10 as well, must be resolved prior to the commencement of trial so
11 the parties have notice and certainty.

12 MR. PRESIDENT:

13 Counsel, could you please hold on because we have been advised by
14 the A/V Unit that the DVD has run out. We may take a one minute
15 break so that the DVD is ready, installed, and we can then
16 continue.

17 (Short pause)

18 MR. PRESIDENT:

19 Counsel Karnavas, you may continue.

20 [10.48.41]

21 MR. KARNAVAS:

22 As I was indicating, it is our submission that these three
23 particular issues that I've raised, these three motions, deal
24 with jurisdictional matters. Even if the Trial Chamber finds
25 that they do not, they're vitally important and they need to be

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1 resolved in advance so we can have some certainty and notice as
2 to what it is that we're going to do.
3 With respect to JCE, and JCE 3 in particular, I strongly disagree
4 with the prosecution's position that even if you were to find
5 that it doesn't apply, that you should seek further clarification
6 through amici. Why? Because when you begin the trial and we
7 begin the question of the witnesses, depending on where the law
8 is, what the contours are, that will -- from there, we will
9 decide to what extent we are going to cross-examine the witnesses
10 or question witnesses. And, therefore, we need certainty.
11 It is not a matter of re-characterisation. That mode of
12 liability was found not to have been a part of customary
13 international law. And if you were to buy the prosecutor's
14 argument that it needs to be re-classified, we would respectfully
15 request that that issue be resolved prior to the commencement of
16 the trial. It would also assist the prosecution because I'm
17 certain they would like some certainty.
18 That's all, Mr. President and Your Honours, and I appreciate and
19 I thank you for extending me this opportunity to make my
20 presentation.
21 MR. PRESIDENT:
22 International Co-Prosecutor, you may now proceed.
23 MR. SMITH:
24 Just a brief response, Your Honour.
25 [10.50.42]

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1 As you know, this matter is before the Court. We certainly agree
2 with the defence that early resolution of the matter would assist
3 the parties.

4 As Your Honour is aware, we believe this matter is not
5 jurisdictional. I won't go into the argument of that; that is
6 not the purpose of today.

7 But perhaps one response about the remark the prosecution is
8 delaying things in this Trial. I think Your Honours are
9 well-aware and the parties are well-aware, the prosecution has
10 been as prompt, if not more prompt, than many of the other
11 parties in the proceedings in complying with Trial Chamber Orders
12 and, certainly, over the last five or six months, as Your Honours
13 are aware, the filings from particularly the Ieng Sary team have
14 been absolutely voluminous and we've responded to every one of
15 those on time, asking for very few extensions. And to say that
16 somehow or another that is not delaying the Trial and filing
17 three motions is I think is slightly contradictory.

18 So, Your Honours, just to make it clear for the record, we did
19 not wait to file these motions until this date. They are
20 re-characterisation motions. We could have filed them halfway
21 through the Trial, but we thought in the interests of the parties
22 we'd file them earlier so that there would be more clarity.

23 Thank you.

24 MR. KARNAVAS:

25 Mr. President, I do need to respond briefly.

45

1 First and foremost because the impression is being given to the
2 public that somehow by filing voluminous filings, somehow is --
3 we're trying to delay. As I've indicated yesterday, these are
4 all new issues. Under the procedure, I'm entitled to represent
5 my client and to vigorously make filings to assist the Trial
6 Chamber in knowing what the law is. That's the reality in this
7 particular case.

8 The prosecution did not ask for, regrettably, a mere
9 re-characterisation. When you look at the substance, you look at
10 the first paragraph and then you look at what they're asking.
11 What they're asking is the dismissal of the Pre-Trial Chamber's
12 decision.

13 Now, as I've indicated earlier, a rose by any other name is a
14 rose, and you call the motion however you wish and you can dance
15 and dazzle around the issue but, at the end of the day when you
16 look at substance of it, what they're asking you to do is a
17 jurisdictional issue.

18 And if I've been filing a lot it's because I have an obligation
19 to be due diligent, and the prosecution on this instance has not
20 been due diligent or, in the alternative, have purposely waited
21 in order to get an advantage in this particular case. And that
22 was my -- that was what I was trying to convey.

23 [10.53.43]

24 I am not suggesting that they are purposely trying to delay the
25 trial -- let me make that clear, Mr. Smith -- that is not what

1 I'm saying. What I am saying, however, that making these filings
2 at this late of the day, one, are prejudicial because they're
3 untimely and the Trial Chamber should not accept them. But, more
4 importantly, I think it is galling to say in your pleading, even
5 if you decide that the Pre-Trial Chamber was correct, then seek
6 outside legal assistance, as if you're not capable of it, to tell
7 you whether JCE 3 was part of customary international law.
8 That was the thrust of my argument. So, let me make it very
9 clear. We are not suggesting that the prosecution is attempting
10 to delay the process; they never have. I am suggesting, however,
11 that that motion is untimely; that most likely it was done for
12 tactical purposes; that it should be denied outright and we
13 should not even have to take the time to respond to it.
14 We will do as instructed, but we do feel that suggesting to you,
15 Your Honours, that somehow you should seek outside help even when
16 you -- even if you find that JCE 3 does not apply as the
17 Pre-Trial Chamber did in a 68-page decision and they've had five
18 or six months to get this act together to file the motion, then I
19 do think that would delay the process of the trial because I
20 don't feel that I should be able to -- that I can properly
21 represent my client if I don't know whether JCE 3 applies or does
22 not apply. And I would be making, at that point, a submission
23 for a stay of the proceedings until that is fully resolved.
24 And I also think it's almost insulting to suggest that you, Your
25 Honours, would need outside help after you make a decision.

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1 [10.55.44]

2 We would request, simply, that all these matters be resolved
3 early, and I trust that my extended apology to the prosecution
4 for my unfortunate use of the word "sabotage" will be accepted by
5 the prosecution and we can move on.

6 Thank you.

7 MR. PRESIDENT:

8 Thank you.

9 I think it's now the real appropriate time for the adjournment
10 and we will take 25 minutes break and resume afterward. And the
11 session will be in-camera.

12 (Judges exit courtroom)

13 (Court recesses from 1055H to 1128H)

14 (Judges enter courtroom)

15 MR. PRESIDENT:

16 Please be seated. The Chamber is now back in session.

17 Before the adjournment, the Chamber advised the parties and the
18 public that when we resumed it will be a closed session hearing,
19 however, after the announcement there was a request by a party.

20 Therefore, there is a need to respond to the request by the
21 party. As the request was made in public, then the Chamber
22 decided to have the -- to reply to their response in public as
23 well.

24 I would like now to give the floor to Judge Silvia Cartwright to
25 respond to the request by that party.

1 The floor is yours.

2 [11.30.11]

3 JUDGE CARTWRIGHT:

4 Thank you, President.

5 As indicated, the President has asked me to clarify certain
6 matters in relation to requests made by the parties before the
7 break.

8 First, in relation to legal issues, the Chamber has already
9 indicated on the first day of the Initial Hearing that if further
10 filings or submissions are required the Chamber will indicate
11 this at a later date. In addition, if any further public
12 hearings for oral argument are required, those hearings will be
13 announced giving as much notice as possible.

14 The Chamber needs to confirm that it is well aware of the
15 difficulties faced by counsel and the parties when they do not
16 have a precise agenda for future hearings and will take this into
17 consideration on all occasions.

18 The Trial Chamber secondly confirms that whether it considers
19 legal issues are jurisdictional or not, it will rule on all those
20 it considers are necessary for determination as soon as possible.

21 Thirdly, the Trial Chamber has already indicated that, if needed,
22 hearings on the issue of fitness-to-stand-trial will be scheduled
23 in late August.

24 And, finally, in relation to the indication from the Office of
25 Co-Prosecutors that it intends to put forward an additional 15

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1 witnesses for the Trial Chamber's consideration and prospective
2 addition to the tentative list, it has until the 5th of July to
3 provide that list, which is to be circulated to the parties who
4 will have the opportunity to make comment on those additional 15
5 witnesses by Friday 8 July.

6 The Chamber wishes to emphasise that any comments by the other
7 parties should be only new information, that is, information that
8 the Trial Chamber has not already been provided with in earlier
9 comments on the circulated witness lists.

10 [11.34.05]

11 President, I think that's everything at this stage, unless there
12 is something that you wish to add?

13 MR. PRESIDENT:

14 Thank you, Judge Cartwright, for the clarification to the
15 parties.

16 We shall now have an in-camera hearing. We would like to
17 instruct the AV Unit to disconnect the audio and video output to
18 the public gallery. When it's ready, please advise us so the
19 in-camera hearing can proceed.

20 Court Officer, can you advise the Chamber how long does the AV
21 Unit need, so that the in-camera hearing can be conducted without
22 having the audio/visual out to the public gallery?

23 MR. PRESIDENT:

24 I noted Pich Ang is on his feet.

25 MR. PICH ANG:

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1 Mr. President, I'd like to get a clarification from you.

2 The civil parties who are parties to the proceedings in Case 002,

3 would you allow them to stay and hear the in-camera hearing?

4 They are also part of the proceedings of the case, Your Honour.

5 (Deliberation between Judges)

6 [11.39.52]

7 MR. PRESIDENT:

8 In order to clarify the matter, firstly, the Chamber allows the

9 civil parties who are present right now in the courtroom behind

10 the civil party lawyers to stay during the in-camera hearing, but

11 they shall ensure that the confidentiality of the in-camera

12 hearing shall be maintained.

13 If it leaks out, then the Chamber will consider for future

14 in-camera hearings not to allow them to participate.

15 MS. SIMONNEAU-FORT:

16 Thank you, Mr. President. We don't want to make a case today

17 because this is not the time, but we do wish that in future if

18 there are any in-camera meetings, if civil parties are not in the

19 courtroom but instead are in the public gallery, that they may

20 stay. We will not insist on that today, but in future we wish to

21 receive indication.

22 Thank you.

23 MR. PRESIDENT:

24 Judge Lavergne, you may proceed.

25 [11.41.22]

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1 JUDGE LAVERGNE:

2 Yes, there's a straightforward reason which underpins our
3 decision.

4 It is rather complicated to determine who among the public are
5 civil parties and who are not. It is absolutely impossible from
6 here to decide who is whom, therefore, we shall allow those who
7 are present here in the courtroom to remain so long as they
8 respect confidentiality. I believe that this is abundantly
9 clear.

10 Thank you.

11 MR. PRESIDENT:

12 Counsel Ang Udom, you may proceed.

13 MR. ANG UDOM:

14 Good morning, Mr. President.

15 For the in-camera hearing, I would like to check whether my
16 client, who is in the waiting room downstairs, whether the
17 communication is liaised to him? I've just received a call from
18 my client that he cannot hear or see the proceeding.

19 Is it also in-camera for him? Thank you.

20 MR. PRESIDENT:

21 Court Officer, what is the progress now?

22 And also the communication between the courtroom to the waiting
23 room downstairs for the accused, has it been connected?

24 (Court adjourns at 1149H into closed session)

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