



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

TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC
Case File N° 002/19-09-2007-ECCC/TC

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CMS/CFO: Kouv Keoratanak

16 February 2012
Trial Day 33

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

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IENG Sary
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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
MS. DEBNATH	English
JUDGE FENZ	English
MR. IANUZZI	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. NUON CHEA	Khmer
MR. PAUW	English
MR. PESTMAN	English
MR. PICH ANG	Khmer
MR. SENG BUNKHEANG	Khmer
MS. SIMONNEAU-FORT	French

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1 P R O C E E D I N G S

2 (Court opens at 0903H)

3 MR. PRESIDENT:

4 Please be seated. The Court is now in session.

5 As scheduled, today hearing is dedicated to hear parties'

6 arguments concerning the documents as referred to in the

7 footnotes of the Closing Order concerning the communications and

8 administrative structures.

9 [09.04.30]

10 Parties are now advised to refer to document E170, starting from

11 paragraph 5 onwards.

12 However, yesterday, we left off with some certain things that

13 have not yet been complete and that we are going to hear the

14 statement by the accused person who would wish to respond to

15 documents put before the Chamber by the Co-Prosecutors and the

16 Lead Co-Lawyers for the civil parties. The Chamber therefore,

17 during this morning's session, provides -- the accused persons

18 with the opportunity to do so.

19 To help the Chamber be informed, we would like to ask Nuon Chea

20 counsels how much time they would need to respond to the

21 documents put before the Chamber by the Co-Prosecutors and the

22 Lead Co-Lawyers.

23 Mr. Nuon Chea or counsel for Nuon Chea, please advise the Court

24 on how much time you need first, before you can be given the

25 floor.

2

1 Counsel, you may proceed.

2 [09.06.11]

3 MR. PAUW:

4 Thank you, Mr. President. Good morning, Your Honours. Good
5 morning, everyone in and around the courtroom. We will be very
6 brief.

7 This morning, we would like to start, with your permission, with
8 Nuon Chea, who wants to speak for, I understand, about 15 to 20
9 minutes about certain issues relating to documents. And then my
10 colleague, Mr. Andrew Ianuzzi, would speak for another 15 or 20
11 minutes. So, in short, we would expect to be done in 45 minutes.

12 (Judges deliberate)

13 [09.07.18]

14 MR. PRESIDENT:

15 Counsel for Nuon Chea -- international counsel, according to our
16 schedule, you have already been informed that today's session is
17 for -- in the morning session, we will commence the hearing by
18 giving the opportunity to the accused person, Nuon Chea, to
19 respond to documents put before the Chamber by the Co-Prosecutors
20 and the Lead Co-Lawyers for the civil party. And yesterday we had
21 already been informed that that would take 15 -- 10 to 15
22 minutes, but just now you indicated that you would like to have
23 some more time.

24 The Chamber would like to know what would you wish to address
25 further than that. As I indicated early, that we are now

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1 complying with the document E170 with regard to the subject
2 matters being discussed. Could you please, therefore, advise the
3 Chamber what kind of topic you are going to ask the Chamber to
4 discuss on top of the time you asked for your client to respond
5 to documents?

6 [09.09.10]

7 MR. PAUW:

8 Excuse me. Thank you, Mr. President. I think we're in total
9 agreement.

10 Indeed, as you indicated, our client would like to speak for
11 about 15 minutes. I understand this morning that it might run
12 into 20 minutes. I hope you allow our client to speak for that
13 amount of time.

14 And the rest of the submissions that we would like to address are
15 indeed related to this document E170, for which we would need
16 another 20 minutes.

17 And also I want to announce that probably, after Nuon Chea has
18 spoken, I will ask for two or three additional minutes of your
19 time to raise a procedure issue, but again, that can be very
20 short, so we should be done in about 40 to 45 minutes, including
21 the reference to the E170 document.

22 MR. PRESIDENT:

23 Thank you.

24 Since the accused person Nuon Chea may take 15 to 20 minutes to
25 make his statement, the Chamber allows Nuon Chea to make such

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1 statement when remain seated at his seat.

2 The Chamber would like Nuon Chea now to proceed with the
3 statement in response to the documents put by the Co-Prosecutors
4 and the Lead Co-Lawyers.

5 [09.10.57]

6 MR. NUON CHEA:

7 Good morning, Mr. President, Your Honours.

8 First of all, allow me to tell Mr. President that I truly have
9 difficulties in reading all the documents effectively because I
10 am a gentleman of advanced age. In particular, my concentration
11 and memory are too poor to allow me to understand fully the texts
12 I have read.

13 Even though I am represented by my counsels, I feel the need to
14 have an appreciation of every inculpatory document parties put
15 before the Chamber against me as stated by my counsels.

16 In order for me to effectively respond to documents put before
17 the Chamber, may I, therefore, request that I and my team be
18 offered more time so that we can have significantly looked at
19 documents put before the Chamber before they are examined?

20 [09.12.23]

21 I would like to now discuss about the documents put by the
22 Co-Prosecutors. And I would like to briefly refer to document IS
23 9.1, the Statute of the CPK.

24 It is my observation to the Chamber that Article 7, sub-paragraph
25 1, indicates very clearly the supreme power organization --

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1 organization that has the supreme power, as follows: "The Party
2 organization has the supreme power, the power that governs the
3 whole country and this power is adopted or was adopted by the
4 general Congress."

5 This is the official Party document, the only Party document
6 about the organizational structure of the Party. Any document
7 concerning the Standing Committee or the Military Committee that
8 only adopted by some individuals are not appropriate.

9 [09.13.57]

10 With regard to the interviews with me, I would like to access to
11 the record of the interview to see whether it was I who spoke in
12 the interview.

13 With regard to IS 20.34, the prosecutors indicated that the
14 interview was conducted in English, and I would like to specify
15 that I am Cambodian. I have devoted myself. I have to abandon
16 everything for the purpose of my nation, and there is no point
17 that I had to give interview in a foreign language which is not
18 my -- in my mother tongue. In short, I never gave any interviews
19 in English. I feel that I never gave such interview. If it were
20 some interview as claimed, I would like the content the interview
21 to be reviewed because I am Cambodian and I believe that the
22 interview could have been conducted in Khmer.

23 [09.15.25]

24 Among the interviewers, there is Mr. Ea Meng-Try, the person who
25 has written two books discussing his ill will towards the

6

1 Democratic Kampuchea regime. And the worst thing is that, at --
2 or on one occasion, this author had worked at the Office of
3 Co-Prosecutors, the office that is looking for inculpatory
4 evidence against me.

5 With regard to the remaining documents, including the
6 "Revolutionary Flag" magazines, I would like to inform to the
7 Chamber that I am not able to comment or to respond effectively
8 unless the authenticity of these documents have been ruled on by
9 the Chamber first. My request on this is very simple because,
10 after having heard the testimonies of two witnesses representing
11 the Documentation Center of Kampuchea, in particular the
12 testimonies of Mr. Chhang Youk, who had good will in cooperating
13 with the Chamber in verifying all the documents -- the copied
14 documents against the original ones that he claims are being
15 stored at the DC-Cam.

16 May I, therefore, insist that the Chamber verify the documents
17 placed before the Chamber, the documents that have been
18 transferred from the DC-Cam? So these hard copies of the
19 documents before the Chamber shall be verified again the original
20 documents to ensure that its authenticity has been well considered
21 before the topics can be examined before the Chamber.

22 [09.18.04]

23 If the Chamber notes that this request is too ambitious or is too
24 big, I would like the Chamber to review the documents that are
25 being put before the Chamber during this first segment of the

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1 trial. Indeed, the prosecutors have the rights to investigate --
2 to conduct a preliminary investigation finding evidence against
3 me. In the contrary, I rely heavily on the Office of
4 Co-Investigating Judges, who have already been biased and not
5 trustworthy. By and large, this office is playing the same role
6 as the role performed by the Office of Co-Prosecutors. Your
7 Honours may have been already familiar with the statement by the
8 former senior officers of the office -- of this office concerning
9 the biasness in their investigation. I would like not to
10 reiterate this again.

11 It is therefore beyond reasonable doubt that the documents
12 presented by the prosecutors, who claimed that they are accurate
13 and authentic documents as opposed to the original one. Such
14 assertion by the Prosecution only fits their needs, not the whole
15 Chamber.

16 [09.20.11]

17 We, parties, would like to also access to the original documents.
18 I feel that there is only the Chamber who has the appropriate
19 authority to provide me -- or to grant me this request in order
20 to facilitate the proceedings in ascertaining the truth, justice
21 that benefits all parties in the courtroom -- in the proceedings.
22 I am hopeful that the Chamber will consider my request. This
23 request is very appropriate in order to enable me to effectively
24 participate in this mission to find the truth for the whole
25 nation. I think that this request is legitimate and plausible,

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1 and there is no obstacle, whatsoever, to stop the Chamber from
2 granting such a request, having considered the position of the
3 DC-Cam.

4 I would like to also make my observation before the Chamber that
5 I strongly believe that, according to Cambodian laws, I have the
6 right to put evidentiary documents -- additional evidentiary
7 documents from now until the completion of the proceedings. I,
8 therefore, hope that the Chamber will allow me to exercise this
9 right more effectively, pursuant to the laws.

10 [09.22.27]

11 Moreover, I see that some witnesses who already had given their
12 testimonies are not significant, it is not significant to
13 conclude the topic on the historical background of the Party
14 before 1975, because all these witness -- or the majority of whom
15 were requested to be summoned by the Co-Prosecutors -- and there
16 was lack of cooperation among these witness to the Chamber.

17 The witnesses our team had requested to be called to give
18 testimonies concerning this context have not been asked to come
19 to the Court. We have not heard any witness testimonies yet. I,
20 therefore, can see that there are still holes, or gaps in the
21 context of the historical background of the Democratic Kampuchea
22 and that the general public has not been well informed of what
23 happened back then.

24 [09.23.58]

25 Furthermore, pursuant to the scheduling concerning the first

1 segment of this trial, I can see that this is already, as stated,
2 the conclusion of the historical background of the Democratic
3 Kampuchea; what happened before 1975.

4 To me, it should not be concluded now because we seem to only
5 have understood portion of the story. We only got the head of the
6 crocodile, not the whole body, and we failed to discuss the
7 policy of the Americans who dropped bombs on Cambodia. Why have
8 we not discussed these documents -- or relevant documents as
9 well? The bombings, the intention to wipe out Cambodian race from
10 Cambodia, these sort of things have not been discussed. It is
11 simply put.

12 I can say that the Office of Co-Prosecutors are longing for
13 nothing less than establishing an incomplete version of history.
14 However, I hope that the Chamber will rule on these matters
15 freely and independently.

16 [09.25.51]

17 Once again, I would like the Chamber to provide me with an
18 opportunity which makes me have some faith in the Chamber in
19 finding the truth and justice that benefit all parties equally. I
20 thank you very much, Your Honours.

21 MR. PRESIDENT:

22 Thank you, Mr. Nuon Chea.

23 Next, we would like to ask whether any of other accused person
24 wish to respond to any of the documents put before the Chamber by
25 the Co-Prosecutors and the civil party lawyers.

10

1 Counsel for Khieu Samphan, you may proceed.

2 MR. KONG SAM ONN:

3 Thank you, Mr. President. Mr. Khieu Samphan has nothing to
4 respond for the time being, but he reserves his right to respond
5 at a later date.

6 [09.27.15]

7 MR. PRESIDENT:

8 Thank you.

9 Next, we would like to proceed to counsel for Nuon Chea to have
10 an opportunity to raise their arguments concerning the documents
11 relevant to the footnotes of the Closing Order, as already
12 indicated by the Chamber, the documents that relevant to the
13 communication and administrative structures of the CPK and as
14 guided in E170, starting from paragraph 5. You may now proceed.

15 MR. PAUW:

16 Thank you, Mr. President. As indicated, my colleague, Mr.
17 Ianuzzi, will be speaking about those specific documents.
18 But I would like to ask you for the opportunity to speak for two
19 or three minutes on an issue that is directly related to what
20 Nuon Chea just spoke about, his feeling that not enough attention
21 has been given to the broader historical context. And I will not
22 repeat or again enter into submissions like I did yesterday; I
23 will just ask you for an opportunity to make these arguments at a
24 later stage.

25 [09.28.31]

11

1 I want you -- I want to ask you to not close the
2 historical-context segment yet.

3 Basically, I will ask you to set aside 45 minutes at a later
4 stage. I will -- I will wait. I'll see -- I see that--

5 MR. PRESIDENT:

6 Counsel, you can continue.

7 MR. PAUW:

8 Thank you, Mr. President. As I stated, the Nuon Chea defence team
9 would like this Chamber to set aside 45 minutes, no more,
10 somewhere in the near future, for us to make submissions on the
11 importance of historical context. We want to explain why it is
12 important that this Court looks at the--

13 [09.29.39]

14 MR. PRESIDENT:

15 Unfortunately, the Chamber does not allow you to make such a
16 statement. This opportunity is given to you only to raise
17 arguments concerning the relevant issues as indicated, the
18 documents relevant to the footnotes of the Closing Order with
19 regard to the communications and administrative structures of the
20 CPK. This topic will be examined in the trial segment 2. You
21 already stated on this yesterday, and that the -- that the
22 Chamber already ruled on that, and you are not allowed to take
23 the opportunity given to address other irrelevant issues.

24 [09.30.39]

25 The Chamber has already made it clear concerning how the Chamber

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1 would see arguments raised by the counsel in response to
2 documents by the other parties. Counsel for Nuon Chea had already
3 been advised to submit their request in writing and that the
4 Chamber will rule on the request in due course, no later than
5 next week.

6 So, again, we would like to advise him -- counsel that the topic
7 being discussed this morning is about the footnotes -- relevant
8 footnotes of the Closing Orders. I hope that my message has been
9 well conveyed by the interpreters to you already, I hope.

10 [09.31.50]

11 MR. PAUW:

12 Thank you, Mr. President. And I understand what you're saying
13 today, but indeed there might be a translation issue because, as
14 far as I am aware, we have not been ordered to file written
15 submissions on the importance of historical context.

16 And I would say that this lack of transparency and this reliance
17 on written submissions is simply unacceptable. The public--

18 MR. PRESIDENT:

19 The issue has already been ruled upon, so you are not permitted
20 to raise any issue concerning this matter. And if you have other
21 observation on this historical background, you may make a written
22 submission on that.

23 And as for the four documents you intended to place before the
24 Chamber, the Chamber will rule on this matter at a later stage.

25 As for witnesses who may testify on the historical background,

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1 that may be someone at a later stage, then it will be done at a
2 later stage as well.

3 So the issue is dealt with, so you are not allowed to make any
4 other comment other than complying with the memorandum of the
5 Chamber from paragraph 5.

6 [09.33.56]

7 MR. PAUW:

8 Thank you, Mr. President. I understand your message.

9 And will cede the floor to my colleague, Mr. Ianuzzi.

10 Just in relation to the witnesses that you just mentioned, we
11 feel also on that point -- we want to make it very clear that we
12 want to have an open debate in a public courtroom as--

13 MR. PRESIDENT:

14 Counsel, you are not allowed to make any other observation on
15 this issue.

16 [09.34.31]

17 MR. IANUZZI:

18 Thank you, Mr. Pauw. Thank you, Your Honour. Good morning.

19 If I could just clarify for a moment before I begin addressing
20 the objections regarding the communication and administrative
21 structures, I'd like it to be very clear -- we'd like a clear
22 direction from the Chamber that the contextual issue is still
23 open -- it's still open -- and we may submit written submissions
24 in due course. And in fact it seems like you're expecting that.
25 So that's clear.

1 MR. PRESIDENT:

2 I hand over to Judge Fenz to clarify the issue to the defence for
3 Nuon Chea.

4 JUDGE FENZ:

5 I was under the impression that it was clarified yesterday, when
6 the issue was raised by counsel. We clarified that, at this
7 point, we not foreseeing in Court debate on that, but obviously
8 counsel can file submissions in writing, which we will take into
9 consideration, on this issue as on many others.

10 MR. IANUZZI:

11 Thank you, Judge Fenz. That's - that's quite clear now.

12 [09.35.50]

13 And moving along, I will begin to address the objections
14 regarding the communication and administrative structures as set
15 out in document E170. As usual, I'll be very brief. I have three
16 main points to make today.

17 First, I would simply reiterate the general objections made by
18 our team at the previous hearing on documents -- I believe that
19 was 16th January -- and I would reserve our right to make further
20 objections to the documents in writing, as stipulated by the
21 senior legal officer in her memo of 9th February.

22 [09.36.25]

23 One of those points that was made previously, which I'd like to
24 reiterate today, is that we say, we argue, we submit that, where
25 witness statements go to either the acts or the conduct of the

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1 Accused or -- or a pivotal issue in the case -- and I would
2 submit that communication and administrative structures appears
3 by your own assessment to be such a pivotal issue -- that in such
4 cases, the makers of those statements, the individuals who made
5 those statements, where available, should appear in this
6 courtroom for examination.

7 And, as I recall, the OCP has more or less agreed with this
8 position. In fact, I believe they're the ones who've advanced it
9 in the first place.

10 I do notice that counsel for the Prosecution is on her feet.

11 MR. PRESIDENT:

12 The representative of the Prosecution, you may proceed.

13 MS. DEBNATH:

14 Thank you, Mr. President. And I apologize for interrupting.

15 [09.37.27]

16 I want to clarify that witness statements are excluded, by the
17 terms of the memorandum from the senior legal officer, from
18 discussion in this part of the hearings regarding the footnotes
19 for administrative, communications structure.

20 We are awaiting a decision from the Court with respect to witness
21 statements, and so that part should not be a part of objections
22 at this time. Thank you.

23 MR. IANUZZI:

24 If I could respond very briefly to that, I'm using "witness
25 statements" in a very general sense.

16

1 And I'm looking now at a document distributed by the Chamber on
2 the 10th of February, with a long list of the documents for
3 discussion today, and the second document on this list, IS
4 19.111, which was the first document I was going to deal with, is
5 an interview with Meas Muth, former Secretary of the Central
6 Committee for Division 164, former commander of the Navy -- as we
7 all know, a suspect in Case 003. I see this on the list.

8 Am I to be -- understand now that we cannot discuss that?

9 (Judges deliberate)

10 [09.39.36]

11 MR. PRESIDENT:

12 The International Co-Prosecutor, you may proceed.

13 MS. DEBNATH:

14 Thank you. If I could clarify, there are two lists with regard to
15 this particular document hearing.

16 The first list was provided by the OCP, and it contains 15
17 documents.

18 Subsequently, the senior legal officer provided another list of
19 120 documents.

20 Both lists actually contained documents that were in fact the
21 subject of the first document hearing. For example, both lists
22 contain documents that were referred to in the footnotes with
23 respect to historical documents and, as such, have already been
24 the subject of debate.

25 Furthermore, some of those documents on both lists appear on

17

1 Annex 1 to 5, also the subject of debate in the first document
2 hearing. Those documents should therefore not be a subject of
3 debate again at this time.

4 [09.40.45]

5 The document that has been referred to, IS 19.111, is one such
6 document because it's a witness statement which also is excluded.

7 In fact, the next document is also a witness statement, and there
8 are many documents on the list which are witness statements, were
9 in the footnotes for historical background or are in Annexes 1 to
10 4. Thank you.

11 [09.41.13]

12 MR. IANUZZI:

13 Your Honour, if I may, I'm incredibly confused.

14 As I understood it, this document was circulated by the Chamber
15 as a list of documents to be discussed today. Now, if I'm wrong,
16 I stand to be corrected, but this document was circulated
17 earlier, it was re-circulated in an abbreviated form. The one I'm
18 looking at was circulated on the 10th of February.

19 Maybe my colleagues can assist me here, if I'm off-base, but this
20 is clearly, clearly, what I perceived to be the agenda for today.

21 (Judges deliberate)

22 [09.45.52]

23 MR. PRESIDENT:

24 I hand over to Judge Fenz to explain on this particular matter.

25 JUDGE FENZ:

18

1 It's true that, in the memorandum dated 19 of February, we have
2 restricted today's debate to the documents on the list of 2nd of
3 February 2012 -- this is paragraph 5 of this - of this document
4 -- so the Chamber wishes to stick within these limits in order to
5 avoid further confusion.

6 [09.46.29]

7 We have however taken note of the general comment of the Defence,
8 which, if I understood it correctly, is to call the authors of
9 reports or documents in relation to this -- to this segment of
10 the trial as witnesses in Court.

11 MR. IANUZZI:

12 Perhaps I could request a clarification.

13 Are you telling me that I cannot refer to this table of
14 documents? Because I'm looking in the same document, E170 at
15 paragraph 5, and it says: "...a table showing the limited number of
16 documents that are therefore intended for adversarial argument
17 during [the] hearing (since amended by the Chamber...)", which is
18 the version I'm looking at, the amended version. It seems to me
19 that that is very clearly the agenda for today.

20 Unless I'm completely mistaken and this table in my hands is not
21 the table referred to in the memo.

22 (Judges deliberate)

23 [09.48.08]

24 JUDGE FENZ:

25 The Chamber will take a break of a couple of minutes to clarify

19

1 it, get hold of the -- get hold of all the documents that are
2 actually mentioned in here, and we'll clarify, hopefully beyond a
3 reasonable doubt, afterwards, exactly what will be allowed today.
4 So we'll take 15 minutes break.

5 MR. IANUZZI:

6 Thank you.

7 MR. PRESIDENT:

8 (No interpretation)

9 [09.48.40]

10 MS. DEBNATH:

11 Thank you. Would it assist Your Honours if we provided our list,
12 which is the list of 120 provided by the SLO? But we did
13 double-check to make sure there are no documents overlapping from
14 the first hearing, and we have that list and we are happy to
15 provide it to you in the break if it would assist. Thank you.

16 MR. IANUZZI:

17 And if I may just add for the record, we did prepare today to
18 debate these documents, so I would insist, to the extent I'm able
19 to insist in this courtroom, that I'd like to discuss these
20 documents. Thank you.

21 [09.49.27]

22 MR. PRESIDENT:

23 The Defence Counsel for Ieng Sary, Mr. Karnavas, you may proceed.

24 MR. KARNAVAS:

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

20

1 morning to everyone in and around the courtroom. Perhaps I could
2 be of some assistance as well.

3 There were some lists; the Prosecution provided a list, then
4 there was another list, and then, on the 2nd -- on the 10th, we
5 noted to the senior legal officer that there was some duplication
6 and we pointed out what we believed were the duplicates.

7 We then received an email back from the senior legal officer, who
8 then provided us with a comprehensive list, reducing the total
9 amount of documents to 95 -- 95 documents that we were supposed
10 to discuss.

11 So we're all under the impression that it is this list that is
12 the controlling list, the one that the senior legal officer
13 prepared after we pointed out that the previous list, which was a
14 hundred and some documents, 120 or whatever, contained some
15 duplicates.

16 [09.50.42]

17 So that's our understanding, Your Honours. I believe we received
18 this list last Thursday or Friday. Thank you.

19 MR. IANUZZI:

20 And, Your Honour, excuse me, If I may -- and this may assist in
21 your deliberations -- I intend to refer to six documents on this
22 list, only. I'm more than happy to read those out now if that
23 would assist in your deliberation.

24 [09.51.11]

25 MR. PRESIDENT:

21

1 The Defence Counsel for Khieu Samphan, you may proceed.

2 MR. KONG SAM ONN:

3 Thank you, Mr. President. I would like to make an observation in
4 respect of the requests made by the Prosecution on the new list
5 of documents.

6 The acceptance of the new list is not possible because, if we
7 have to admit the new list, then certain time should be given to
8 other parties to study the lists of the documents.

9 However, with regard to the document sent by the senior legal
10 officer containing 95 documents, if we take out certain documents
11 I don't think it poses any question. However, if any additional
12 documents or documents different from the list of 95 documents,
13 time should be given to parties so that we can study those
14 documents.

15 [09.52.12]

16 So, once again, I would like to object to any proposed addition
17 of new lists. Thank you.

18 MR. PRESIDENT:

19 Thank you for all parties for your observation.

20 And it is now an appropriate time to take adjournment. We will
21 break until 10.30.

22 The Court is now adjourned.

23 (Court recesses from 0952H to 1038H)

24 MR. PRESIDENT:

25 Please be seated. The Court is now back in session.

1 [10.39.28]

2 We have had some issues concerning the documents to be put before
3 the Chamber. However, we have had a deliberation on this.

4 In my capacity as the President, I would like now to hand over to
5 Judge Lavergne to enlighten these matters to the parties so that
6 it can be clarified. Judge Lavergne, you may now proceed.

7 JUDGE LAVERGNE:

8 Yes. Thank you, Mr. President.

9 For the purposes of this hearing, the Chamber published - or
10 issued a memorandum dated 9 February 2012. And in addition, to
11 facilitate the preparation of this hearing, different lists of
12 documents that might be debated today have circulated among the
13 parties. The latest list is a list that was addressed to the
14 parties on the 10th of February, and this list contains 95
15 documents. So it is possible that some of these documents
16 contradict or are at odds with the indications that were
17 initially listed in the memorandum, but this latest list,
18 however, is the basis on which each of the parties were invited
19 to work with. And therefore objections will be heard regarding
20 the 95 documents included in this list.

21 And the Chamber also wishes to remind that the purpose of this
22 hearing is to discuss the possibility or not to put these
23 documents before the Chamber. So the point is not to examine the
24 content of these documents, but to see if these documents are
25 reliable, or authentic, because the documents are - are listed in

1 the footnotes, and to see - to debate on this question.

2 So, I hope that this makes the Chamber's position clear.

3 And now I will give the floor back to the parties.

4 [10.42.31]

5 MR. PRESIDENT:

6 The Counsel for Nuon - for Ieng Sary first, rather.

7 MR. ANG UDOM:

8 Thank you, Mr. President, Your Honours. My sincere apologies that

9 I have to be on my feet to put this request to the Chamber again,

10 concerning my client's request to be excused from this courtroom

11 due to his lumbago and that he asked the Chamber to grant him

12 permission to observe the proceedings from his holding cell.

13 [10.43.22]

14 MR. PRESIDENT:

15 The Chamber has noted the request by counsel representing Ieng

16 Sary, asking that Ieng Sary be excused from this courtroom and

17 that he be allowed to observe the proceedings from his holding

18 cell because of his lumbago problem.

19 The Chamber, therefore, grants such a request. Ieng Sary is

20 therefore allowed to observe the proceedings from his holding

21 cell for today hearing.

22 However, the Chamber asks that counsels for Ieng Sary produce the

23 waiver signed by Ieng Sary or give a thumbprint by the accused

24 person.

25 The AV officers are now instructed to ensure that his holding

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1 cell is linked to the courtroom so that he can observe the
2 proceedings through remote participation.

3 Security personnels are instructed to bring Ieng Sary to the
4 holding cell.

5 Co-Prosecutor, you may now proceed.

6 MS. DEBNATH:

7 Thank you, Mr. President. Mr. President, I would ask the Chamber
8 to remind all counsel to refrain from using the actual names of
9 potential witnesses on our trial witness list in open Court.

10 Thank you.

11 [10.45.27]

12 MR. PRESIDENT:

13 Thank you for this.

14 And the Chamber also reminds the parties that we are now
15 discussing the documents concerning the decision rendered by the
16 Chamber on the 16th of February 2012. And during this discussion,
17 parties shall only raise concerns about the general documents and
18 refrain from referring to any full names - real names of
19 witnesses involved. If needed, then only their pseudonyms may be
20 cited.

21 You may proceed, Counsel.

22 [10.46.29]

23 MR. IANUZZI:

24 Thank you, Your Honour. Thank you, Judge Lavergne, for the
25 clarification. Just to be clear, I did not intend to delve into

25

1 the contents of these statements, just to merely identify the
2 ones on my list that we take issue with.

3 And I'll certainly be able to finish before the lunch break.

4 So I would just like to read the titles of six documents from
5 this list. One, I've read already. I'll just quickly repeat it:
6 it's document number 19 – IS 19.111, that's the interview with
7 Meas Muth, former secretary of Central Committee for Division
8 164.

9 Second document is D210/2. That's a letter of reply from Steven
10 Heder, dated 11-08-2009, regarding Ouk Bunchhoeun and Sim Ka,
11 among others.

12 MR. PRESIDENT:

13 Counsel, could you slow down a little bit for interpreters and
14 good record.

15 And indeed, we missed your last message; you could repeat.

16 [10.47.42]

17 MR. IANUZZI:

18 I will indeed. I apologize.

19 Second document is D210/2. That's a letter of reply from Steven
20 Heder, dated 11 August 2009, regarding Ouk Bunchhoeun and Sim Ka,
21 among others.

22 The third document is D248/2.2. That's a transcription of an
23 interview between Ouk Bunchhoeun, conducted by Steve Heder.

24 The fourth document is D269/9/1.15. That's a handwritten English
25 translation of Ouk Bunchhoeun's interview with Ben Kiernan.

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1 The fifth document, D269/9/1.15.1; that is a handwritten English
2 translation of an interview with Ouk Bunchhoeun with Ben Kiernan,
3 and this one is indicated as a typed version.

4 And the final document is D313/1.2.406. And that is an interview
5 with Chea Sim, Heng Samrin, dated -- Phnom Penh, 2nd December
6 1991.

7 [10.49.12]

8 So, with respect to these six documents that I've identified,
9 documents relating to Meas Muth, former commander, suspect in
10 Case 003, Ouk Bunchhoeun, Sim Ka, CPP senators, two individuals
11 that we've requested to be called as witness, and Chea Sim, of
12 course the president of the Senate, and Heng Samrin, of course
13 the president of the National Assembly, all of these individuals
14 we have said should be here in Court to testify.

15 And getting back to the general point I made earlier - that is,
16 the point of what weight, if any, to give to the statements of
17 these individuals as to the acts and conduct of the Accused or as
18 to a pivotal issue in this case - in this case, for purposes of
19 today's hearing, that would be the communication and
20 administrative structures - but we would also say that these
21 individuals are relevant to the - has now been clarified -
22 un-closed historical context section of the trial.

23 So, with respect to these five individuals, these six documents,
24 we have two objections.

25 First, we object to the fact that the Chamber has not placed

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1 their names on the provisional witness list in Case 002. As I've
2 said, we've called for their testimony, but to date they have not
3 been scheduled to appear.

4 And, secondly, we object to the fact that the Chamber has not
5 taken any remedial action in response to the fact that four of
6 these individuals – four of those individuals that I've named
7 have previously ignored, at the urging of the government, I might
8 add, have previously ignored (unintelligible) issued summonses to
9 appear before this tribunal. So, with respect to those six
10 documents, those five individuals, those are our submissions.

11 [10.51.02]

12 And, finally, I'd like to inform the Chamber that we've decided
13 to take up a suggestion made by the Presidents on the 8th of
14 February: we've prepared a written application pursuant to Rule
15 35, with respect to the public comments made by Hun Sen recently
16 in Viet Nam. Of course, I am referring to his remarks that Nuon
17 Chea is "a deceitful killer and perpetrator of genocide". That
18 application will be filed--

19 [10.51.27]

20 MR. PRESIDENT:

21 The Chamber has already ruled on that matter. We are now
22 referring to the documents to be discussed before this Chamber.
23 Other irrelevant issues or the issues that have already been
24 ruled upon by the Chamber shall not be allowed to reiterate
25 again. The Chamber will in due course rule on the matters at a

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1 later hearing.

2 Could counsel, therefore, be advised that he should not step
3 further than what has already been asked to do?

4 MR. IANUZZI:

5 Thank you, Your Honour, for that clarification. Indeed, I will
6 not step any further. I just wanted to alert the Chamber that we
7 would be taking up your suggestion: that motion will be marked
8 urgent, and we hope you will deal with it in due course, as you
9 have just said.

10 And one last point. I understand that Dr. Kissinger will be
11 travelling in the region in the next few months, so perhaps the
12 Chamber would consider whether or not he could grace us with his
13 presence. I think his testimony would be quite relevant to the
14 un-closed historical segment of the trial, and we would certainly
15 support his appearance here.

16 Thank you very much. That's all.

17 [10.53.03]

18 MR. PRESIDENT:

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

20 MR. PICH ANG:

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

22 Counsel for Nuon Chea was talking about Mr. Kissinger. I would
23 like to enquire: Would Kissinger's name appear in one of the 95
24 documents being listed?

25 [10.53.55]

1 MR. IANUZZI:

2 I believe it does not appear in one of the 95 documents. I'm not
3 sure. He certainly appears on--

4 MR. PRESIDENT:

5 It should be stopped there.

6 And indeed the Chamber allows only matters relevant to the 95
7 documents being discussed. You may be seated.

8 Next, we would like to proceed to counsels for Ieng Sary.

9 MR. KARNAVAS:

10 Good morning, Mr. President. Good morning, Your Honours, again,
11 and good morning to everyone in and around the courtroom.

12 [10.54.35]

13 Because we are dealing with 95 documents and we have so little
14 time, rather than go through documents individually, I will do
15 them in groups and primarily raise our concerns or our

16 observations or objections to the documents as part of a group.

17 And I think that would facilitate the discussion and allow me to
18 finish perhaps within the next half hour. There are some

19 documents that I will definitely spend a little bit of time on.

20 So, starting off with, would be document D177/3.1. This is a 16

21 February document in the objection to the Closing Order material
22 related to the administration and the communications structures.

23 As we understand it, this is a timeline that was prepared by the

24 OCIJ, by a staff member, Richard Moore - M-O-O-R-E. We don't

25 believe he is still working with the OCIJ. This timeline

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1 purportedly shows when Mr. Ieng Sary was travelling and out of
2 the country and tries to somehow show when individuals working
3 for the MFA went to S-21. Presumably, this study -- or this
4 timeline was being prepared to show when individuals would have
5 gone to S-21 while Mr. Ieng Sary was in the country.

6 [10.56.23]

7 We object to this document on several grounds.

8 First and foremost, we do not know whether the OCIJ ever made any
9 real, substantive efforts to obtain documentation from China as
10 to when the - Mr. Ieng Sary would have been travelling abroad. I
11 mention China because, at the time, China was the only one that
12 had an aircraft and was servicing Cambodia. So we don't know
13 exactly what information he looked at, both inculpatory and
14 exculpatory.

15 In the event the Trial Chamber were to admit this document, we
16 certainly would request that Mr. Moore be called -- be summoned
17 to give additional information on this particular document and to
18 be cross-examined. In the event he is not called but the document
19 is admitted, we submit, unless there is additional information
20 that would validate the timeline, that little or no weight be
21 given to it.

22 [10.57.38]

23 Next, our group of documents which relate to telegrams in
24 Commerce Department documents. You will note that it is very easy
25 to spot them when you look at the headings on these documents.

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1 Our primary concern is that, unless we have witnesses that come
2 and at least give some indication as to how telegrams and these
3 documents were produced, that little or no weight be given to
4 them should they be admitted. Simply admitting documents,
5 admitting a telegram by itself without any further testimony as
6 to how it was generated, how it was - you know, the mechanics of
7 it, and of course, once it was received on one end, how it would
8 be distributed, not to the individual to whom it was actually
9 addressed, but also to those who might have been copied as
10 recipients of such telegrams-- And of course a Commerce
11 Department document-- It is our position that some testimony has
12 to be elicited as to why the documents are relevant.
13 We've already indicated in the past, I think, when we've had our
14 discussions concerning - our concerns as whether documents are
15 authentic and reliable; there's no need for me to go into that.
16 We take it that documents that seem to have been generated by the
17 CPK at that time will automatically come in. However, the Trial
18 Chamber has indicated that it would entertain objections to
19 individual documents should a party question the authenticity or
20 reliability of it. So, in other words, as I've indicated once
21 before, it is our understanding that there is a presumption of
22 admissibility in authenticity, but it is a rebuttable
23 presumption, and the burden is on the party who is actually
24 challenging the document.
25 [11.00.01]

1 The next block of documents are material which we call the Heder
2 material. As you all know, Heder first worked for the
3 Prosecution, assisted in drafting the Introductory Submission,
4 then switched over to the OCIJ, and then began -- supposedly, I
5 guess -- investigating to authenticate and to validate the
6 Introductory Submission which he had drafted, and over the course
7 of the years, he has conducted several interviews. We have raised
8 already, I believe - Mr. Ang Udom quite nicely pointed out that
9 there are - there may be some problems with the translation of
10 some of these documents, so we are looking into them.

11 We understand, from the Court's decision on that -- on that
12 request made by us, that it is up to us to go through them and
13 then point out specifically where we believe there are errors in
14 the translation.

15 [11.01.12]

16 Specifically, I am referring to documents D248/2.2. We understand
17 this one is not available in English. This is our understanding,
18 and, you know, we could be wrong. D210/2 is a letter from Steven
19 Heder to the OCIJ. Of course, we leave it up to you to decide how
20 much weight, if any, to give to that, should you find it
21 admissible. And frankly, it's our position that such -- these
22 sorts of communications are the sort of documents that you are
23 perfectly capable, as professional judges, of considering.

24 [11.02.07]

25 So we try to be measured in our objections. At least, we strive.

1 We don't always achieve it, but we strive for it.

2 And then, of course, there are interviews with Mr. Ieng Sary,
3 which are in the case file. They are: D29-Attachment 01; D29/I, I
4 believe, Attachment 33; and D366/7.1.562.

5 It is our understanding that the first two documents are
6 identical -- are identical -- that is 29 -- D29-Attachment 01 and
7 D21 -- 29/1-Attachment 33. The third is identical, except for
8 some handwritten notes, at the top of document, which say - quote
9 -- "for internal use only" - close quote -- and then "May 10
10 2000". And then another quote, a handwritten note: "censored
11 script by S.H.", and then "Phnom Penh". "S.H.", we believe, would
12 be Steven Heder. So, in any event, there may be some duplication.
13 The next batch of documents we refer to, Your Honours, are Duch
14 material. And here I would invite the Trial Chamber to a couple
15 of submission that we filed, so that our position is -- our
16 position is very clear.

17 The-- We initially made a filing, back on 24 February 2001, where
18 we indicated that, should Duch come and testify, he would have to
19 do so as a witness, and not give unsworn testimony and be subject
20 to cross-examination as a regular witness.

21 [11.04.37]

22 Your Honours, on 9 April 2011, did so indicate that would he --
23 if he were to come, then he would have to be sworn in as a
24 witness. And -- but then, in April, 26 April 2011, we filed
25 another motion, and it was a two-pronged motion.

1 One is where both, we understand, the Prosecution and the Trial
2 Chamber had found that Duch had been less than candid when he was
3 giving evidence in his own case. In other words, he was either
4 economical with the truth or he just outright provided false
5 testimony. And at that point, we indicate that, since both the
6 Trial Chamber and the prosecutor -- Prosecution had mentioned
7 this, that it would be exquisite, you know, for the Defence at
8 least, to know exactly what parts of his testimony -- of his
9 evidence is where it was believe to -- Duch had misled the Trial
10 Chamber. And we did not receive an answer from the Prosecution,
11 although they did indicate that it was not their intention to put
12 forward any -- or to try to elicit any evidence from - from Duch.
13 If he were called as a witness, they would not elicit any
14 testimony which they believe Duch had been untruthful in the
15 past.

16 [11.06.27]

17 We also had indicated that, in that particular motion which went
18 unanswered -- and I don't believe we have received an answer from
19 the Trial Chamber -- that none of his statements that he provided
20 -- and he provided numerous, numerous statements prior to coming
21 to Court in his trial -- that none of those statements should be
22 admitted without Duch being called as a witness, allowing the
23 parties the opportunity to cross-examine Duch.
24 And we say this because it is our firm conviction -- and we've
25 indicated this in the past -- that Duch -- the Duch trial was not

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1 really a trial, although it's considered a trial in the civil -
2 in the civil code system. It was more what we would call a change
3 of plea hearing, although it was a long one, where the Accused
4 admits to guilt, and then the Trial Chamber tried to establish
5 the facts in order to render an appropriate -- in order to accept
6 the plea of guilt -- although at the end there was some confusion
7 as to whether he was admitting guilt or not admitting guilt --
8 and of course for sentencing purposes.

9 [11.07.43]

10 Now, why is that important? It's important because we believe,
11 and we submit that, when Duch was providing this -- all these
12 statements to the OCIJ, and in light of the fact that both the
13 Prosecution and the Trial Chamber - you, yourselves, that is --
14 have already indicated that he was less than candid, that, of
15 course, Duch, in trying to get the best possible sentence, it is
16 -- would have been in a position to be economical with the truth
17 and to have misled the Trial Chamber, either by putting more
18 blame on others or minimizing his own - his own affairs. Be that
19 as it may, we firmly believe that he is such an important witness
20 that any statements of his should not come in unless the parties
21 have an opportunity to fully cross-examine him under oath.
22 And it's for those reasons why we file these motions well in
23 advance: first, to make sure that you would agree that, should he
24 come, he has to take an oath, and second, of course, that none of
25 his statements come in. And of course we did indicate that you

1 had acknowledged, on the record, that he had been less than
2 candid.

3 [11.09.07]

4 So, for those reasons, Your Honours, we object to any Duch
5 documents coming in without him appearing in Court.

6 So, now, the next set of documents deal with S-21 confessions.

7 This issue has been litigated in the past. There is one

8 confession on the list -- I believe it's IS 5.30--

9 We are very clear in our position and we are consistent, it is
10 our firm belief that confessions should not be used in this
11 Court. We understand the Prosecution's position that there are
12 portions of the confessions that can be used, and of course
13 confessions can be used to show that somebody actually was at
14 S-21, undergoing the process of giving a confession. We
15 understand that. But be that as it may, when it comes to the
16 substance of what's in the confession, we have maintained,
17 throughout our representation of Mr. Ieng Sary, that these
18 confessions should not be used.

19 And again, should they -- should a confession be used, the
20 Defence maintains -- for Mr. Ieng Sary -- that we should have the
21 opportunity to question Duch if it is relevant and necessary. And
22 of course we -- if you do admit such confessions, it would be our
23 position that you give appropriate weight only to that which is
24 not offensive and is consistent with international jurisprudence
25 concerning the use of confessions. And I think, on this, we're

1 pretty much on the same page, not only with the Prosecution, but
2 also with the Trial Chamber, from your earlier rulings.

3 [11.11.06]

4 The next are witness interviews not conducted by the OCIJ. And if
5 I may preface my remarks by first noting our position, even
6 interviews conducted by the OCIJ we find to have -- to be less
7 than credible, especially since what is actually produced and
8 used in Court is a mere summary, and not the entire - not the
9 entire interview-- And of course we have raised in the past the
10 methodology used by the OCIJ, and it's our firm belief that not
11 all investigators working for the OCIJ are qualified as one would
12 find in their national jurisdictions. But be that as it may, here
13 we're dealing with witness interviews not conducted by the OCIJ.
14 We take a firm position that none of these interviews be admitted
15 unless the individual who provided -- who gave the interview --
16 the witness, that is -- is actually called and is subjected to
17 cross-examination. So that's our position concerning that.

18 [11.12.32]

19 On the list, as well, there are some videos. We leave it to the
20 Trial Chamber's discretion. We understand that there are all
21 sorts of videos. We also understand that it is quite easy to
22 mislead in a video by choosing the subject matters, the
23 composition, editing, montage, and what have you, but we also
24 understand that, in these sorts of cases, a video footage can be
25 useful. And we also understand that you have a great deal of

1 discretion in this area, and so, when it comes to videos, we
2 leave it up to your wise discretion to determine which videos to
3 admit and how much weight to give to those – to those videos.
4 The next batch of documents is what we call the FBIS reports --
5 F-B-I-S reports. On this list, there is one, D262.3-- In the
6 past, I've -- there has been some debate -- spirited, might I add
7 -- concerning these sorts of reports. We maintain our position
8 that these sorts of reports, which are CIA-generated, may not
9 necessarily be the best of evidence. We're not trying to cast
10 aspersions on the CIA. Occasionally, they do good work, but also
11 they have been known to be engaged in the dark art of
12 confabulation and misinformation.

13 [11.14.28]

14 Now, should the Trial Chamber - should the Trial Chamber find it
15 necessary to accept and to admit FBIS reports, we certainly would
16 caution the Trial Chamber to give little or no weight to those
17 reports unless, of course, the content in the reports can somehow
18 be confirmed or triangulated by other evidence. In other words,
19 if I had to -- by way of analogy, if we treat this like hearsay
20 evidence, an out-of-court statement offered for its truth--
21 Hearsay evidence, in the civil law system which we find ourselves
22 in, is admitted with great gusto. In fact, little if any of it is
23 ever kept out. Be that as it may, the judges do not necessarily
24 accept it at face value unless it is independently established
25 through other evidence. And so we would say, take the same

1 approach in this.

2 And by the way, when I'm making comparisons, I am not casting
3 aspersions on the civil law system. I'm merely pointing out the
4 differences. And we do realize that we're dealing with
5 professional judges.

6 [11.15.52]

7 The next batch of documents -- and there's one of this nature --
8 is the "Revolutionary Flag". This is D243/2.1.19. Again, there
9 has been debate as to whether this is the authentic, the real
10 one, the colour of the flag, and what have you.

11 Our position, of course, is as follows. Naturally, we find as the
12 best evidence the original "Revolutionary Flag". That's our
13 starting point. That is the best evidence. So, if it is
14 available, obviously, it would be -- it may be useful to have
15 that and to present it to the witnesses if that is the case.

16 We also understand -- and we take a very pragmatic approach --
17 that these sorts of official documents are what they are, you
18 know, and we're not trying to make them, somehow, disappear or
19 come up with some creative story that, somehow, these are all
20 manufactured. We take the position, however, that, should they be
21 used and should they be admitted, that they be examined very
22 carefully and that you take a very measured approach in
23 determining how much weight, if any, to give to whatever is in
24 the "Revolutionary Flag".

25 [11.17.17]

40

1 And we also suggest that, again, you treat this very much like
2 hearsay evidence. So simply because you have someone saying
3 something in the "Revolutionary Flag" does not necessarily make
4 it so. In other words, triangulate it with other documentation,
5 other witness testimony. And, upon a showing that, you know,
6 something that is in the "Revolutionary Flag" can be
7 substantiated through independent evidence, then, of course, you
8 would provide more weight to that. But we take a very measured
9 approach in that. We understand that even copies -- it's our
10 position that even copies can be used, especially after we've had
11 this sort of monumental hearing on the admissibility of evidence.
12 So that's that.

13 Standing Committee meetings -- minutes of meetings; there's one,
14 it's D248/6.1.6.

15 Again, the same refrain as with the "Revolutionary Flag". We
16 understand your previous ruling that, unless we can show that a
17 particular document lacks authenticity, it is admitted. We do
18 however take the position that, even though these documents can
19 be admitted, you should not take at face value and at full weight
20 what is in -- what is contained in the minutes of these meetings
21 without some independent indicia of reliability. So, in other
22 words, simply because you see it doesn't necessarily make the
23 content of it so reliable that you need not do any further
24 search. We maintain, very much like hearsay evidence, you should
25 triangulate this.

1 [11.19.33]

2 But we do understand and we do take the position that these are
3 considered official documents, they've been pre-screened by the
4 OCIJ, and unless we are able to challenge -- or, in fact,
5 challenge any one of them, that they will be admitted. But of
6 course my comments go to the weight of the documents.

7 And I apologize if I'm repeating myself; I'm trying to make my
8 record on all of these documents without, well, testing your
9 patience as well. I understand that.

10 The next set of documents are documents that are not in an
11 official language of the Court. We believe that there are two.
12 I'm not a German speaker, but I understand that one of our Judges
13 is. D359/1/1.1.41 and D359/1/1.1.44; we believe that these are in
14 German. It's not an official language, so, if they are going to
15 be used, they should be translated, and then, perhaps, when
16 translated, we should be given an opportunity to raise any
17 further objections.

18 I understand that the onus, you could say, would be on the
19 parties to find a German speaker to go through these documents --
20 or whatever the language these documents would be. We-- to that,
21 we say we simply don't have the resources.

22 But, in any event, it is our understanding that they have not
23 been translated into English, French, and Khmer.

24 And of course, if, in the event, I misspeak at any point in time,
25 I hope that I will have your indulgence, and realize that it is a

1 simple mistake, and not an attempt to mislead the Trial Chamber.
2 [11.21.52]
3 The next document is a declaration by Mr. Ieng Sary. It's D219.1.
4 Of course, there are no objections to that document.
5 The next group of documents are what we call speeches. These
6 include a speech by Pol Pot on the 10th anniversary of the
7 Revolutionary Army of Kampuchea, and that is D108/28.168. We
8 leave it to your discretion, Your Honours, to admit it and to
9 give it whatever weight you deem necessary, again with the same
10 proviso that I've indicated in the past.
11 The next speech is D56-Doc. 103. It's a speech that's attributed
12 to Mr. Ieng Sary at a welcoming dinner of Daniel Burstein. I
13 believe we saw-- This gentleman's name was mentioned this week,
14 and there was a document that was produced. Apparently --
15 apparently -- and I have no independent indicia of reliability of
16 this, and I can't find any - apparently, based on the
17 documentations that were generated by this Daniel Burstein, he
18 was in-country, he was in Cambodia on or about April 1978, April
19 1978.
20 [11.24.00]
21 We would object to the admission of this purported speech, unless
22 some independent indicia of reliability can be established or in
23 the alternative Mr. Burstein is called as a witness. I googled
24 him; apparently, back then, he was what was known as a "fellow
25 traveller", a communist sympathiser. Today, he's a venture

1 capitalist and he can be found on -- through the web. So, should
2 he -- the Trial Chamber wish to have this speech admitted, we'd
3 ask that Mr. Burstein be called as a witness. Otherwise, we
4 object to that.

5 The next document is what we would refer to as NATO material; at
6 least, that's what we understand it to be. This is document
7 D100/26.2.174; it's titled "Recent Political Developments in
8 Cambodia". We believe it's a NATO document, French being the
9 original.

10 Again, we would object to the admission of this document, unless
11 there's some corroborating evidence as to its authenticity.

12 Should the Trial Chamber wish to admit it and does admit it, we'd
13 ask that little or no weight be given to it, unless the content
14 of what is it in the document can be corroborated through
15 independent indicia.

16 Then, we have the next batch, it's what we call DK government
17 statements, and they include D108/43/7. This is the DK government
18 statement to the Cambodia Army and peoples on aggression by SRV
19 armed forces against DK, read by State Presidium Chairman, Khieu
20 Samphan.

21 [11.26.47]

22 Then, there is document D108/43/9. This is a statement by the
23 Government of Democratic Kampuchea - quote: "Cambodia's Temporary
24 Severance of Relations with Vietnam", and it's dated 3 January
25 1978.

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1 And document D56-Doc. 236, "Circular Letter by the Assembly of
2 the People's Representatives of Kampuchea, the Government of
3 Democratic Kampuchea, and the Patriotic and Democratic Front of
4 the Great National Union of Kampuchea".

5 Same refrain, Your Honours, we understand that these are --
6 purportedly, are DK Government statements. We submit that, should
7 they be admitted by the Trial Chamber, that weight be limited,
8 unless independent indicia or testimony can be provided.

9 The next set of documents is what we call "media statements", and
10 these are: D56-Doc. 066, International Media Report, "9th
11 Anniversary of Founding of Revolutionary Army"; and then
12 D29-Attachment 86, "Nuon Chea Denies Role in Mass Murder during
13 the Democratic Kampuchea Regime", by Sralanh Khmer; it's
14 23-07-07.

15 Again, we would object to any media statements coming in. We
16 don't -- we submit that media statements tend to be unreliable.
17 Should you admit these statements, again, there should be some
18 independent indicia of reliability.

19 [11.29.16]

20 I'm almost through, Your Honours, so-- I know I'm testing your
21 patience here.

22 The next set of documents is what we call French MFA and embassy
23 material. It would appear that the French Foreign Ministry and
24 the embassy - and I believe it was in Thailand -- was monitoring
25 the situation -- may have, as many countries then, as today --

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1 were monitoring the radio transmissions, listening in, and, from
2 there, trying to divine what is happening. A good example in
3 today's world would be what is happening in North Korea, where
4 they sort of try to read the tea leaves as to -- whenever they
5 hear something, as to what it really means, how significant it --
6 that event may be.

7 There are several documents. I'm going to simply read out the
8 documents, so we have the list.

9 But our fundamental position is again, as with everything else,
10 we understand that these are documents that would have been
11 generated by the French Foreign Ministry not for dissemination
12 outside -- in other words, for the purposes of convincing others
13 -- but rather, it would appear, for their own purposes.

14 And, for that, normally, we would submit -- and we accept -- that
15 a government, under normal circumstances, does not try to mislead
16 itself. I say "normal circumstances", because, at least in the
17 United States, there was a lot of misinformation going on with
18 respect to the bombing of Cambodia, with Nixon denying that it
19 was ever happening, while there was Operation Menu going on. But
20 these documents, these French MFA documents seem to be documents
21 generated in good faith, attempting to try to figure out what is
22 happening. And for those reasons, we think that, while they may
23 have been generated in good faith, they may not necessarily be
24 reliable. And, unless independently -- unless there's independent
25 indicia, that little or no weight be given to them, though we do

1 realize that they come from a reliable source.

2 [11.31.52]

3 These documents are: D199/26.2.38 -- I'm not going to read the
4 titles, to save time, Your Honours, unless you - unless you would
5 like me to do that; D199/26.2.70; D199/26.2.68; D199/26.2.65,
6 D199/26.2.28, D199/26.2.154, D199/26.2.147, D199/26.2.143, and
7 D199/26.2.105. And of course I could make a copy of the list of
8 all of these documents -- the numbers, that is -- to facilitate
9 anyone who may not have had a chance to put them down.

10 The next list, or block of lists, is what we call books and
11 articles. And in this batch, we're particularly referring to
12 D288/6.5/2.29, titled "The Last Joint Plan" -- "The Last Joint
13 Plan". It appears in the Closing Order in two separate places:
14 footnote 2246, which cites page 10, and then footnote 3782,
15 citing page 313.

16 We wish to bring to the Trial Chamber's attention a couple of
17 matters.

18 First, we believe that this is an article that was generated by
19 Mr. Carney, in Cambodia, 1975 to '78. We're not quite sure, but
20 that's what we think it is. And perhaps the Office of the
21 Prosecution -- the Co-Prosecutors could shed some light on that.

22 [11.35.12]

23 We also see that there are two different documents under the same
24 - under the same number; they look differently. And so, for the
25 purposes of this hearing and for what is the next phase of this

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1 trial, we're dealing with what is in footnote 3782, but we invite
2 the Trial Chamber's attention that two documents in two different
3 formats with the same number have appeared. And we have them, and
4 we can share them with the Prosecution, should they wish to look
5 at it. One is an appendix to a book, and the other one is a
6 typewritten document with some handwriting on it and some
7 corrections. It looks like a rough draft of the document that was
8 ultimately printed, and if I look at it correctly -- and it also
9 has some Khmer writing to it, as well as some notations.

10 [11.36.23]

11 We would object to the admission of this particular document,
12 unless we know more about it, who generated it. And of course,
13 once we have that information, we might have -- we'd like to have
14 the opportunity to make further submissions. Of course, if the
15 Trial Chamber were to admit this document as it is, without any
16 further clarification as to who generated it, then we would
17 suggest that little or no weight be given to it.

18 [11.37.06]

19 I believe, Your Honours, that, with that, I have concluded my
20 presentation, unless there are any questions from the Trial
21 Chamber. I have nothing further on this matter. I hope my
22 presentation was sufficiently clear. Thank you.

23 MR. PRESIDENT:

24 Thank you, Counsel.

25 Next, we would like to proceed to counsels for Khieu Samphan.

1 MR. KONG SAM ONN:

2 Thank you, Mr. President. Your Honours, before I proceed to
3 present the documents, I would like to inform the Chamber that we
4 have the hard copies of the document I am going to present. If
5 parties wish to obtain the copies, they can approach our
6 assistant, and we are pleased to hand them over to you, indeed,
7 to facilitate our discussion.

8 MR. PRESIDENT:

9 Could counsel advise the Chamber what kind of document counsel is
10 wishing to put before the Chamber? Are they among the 95
11 documents indicated to be debated in this hearing?

12 [11.39.05]

13 MR. KONG SAM ONN:

14 Mr. President, the documents have been prepared pursuant to the
15 list of documents asked by the Chamber for party to prepare, and
16 they are in the realm of the 95 documents, as indicated.

17 MR. PRESIDENT:

18 If so, you may proceed.

19 MR. KONG SAM ONN:

20 Thank you, Mr. President. I would like now to present the general
21 rebuttal statements concerning the documents presented.

22 It is the task of the Chamber to examine each and every document
23 put before the Chamber. Parties are somehow supposed to fulfil
24 their mission to present the documents before the Chamber for the
25 consideration of the Bench. However, it is not advised to put a

1 great number of documents that lack grounds or relevance for the
2 purpose of the hearing. Any document put before the Chamber must
3 focus on the evidentiary value of each evidence. The counsel
4 would like to draw the attention of the Bench to documents in the
5 footnotes cited.

6 [11.41.13]

7 We would like the Chamber to only refer to the relevant substance
8 as cited from the footnotes because, on some occasions, reference
9 to the footnotes seem to be -- refer to several pages, but the
10 actual essence of the page is only in particular portion.

11 Now, I give you another example: the video clips that have been
12 referred to. The reference of the video have been put before the
13 Chamber, but with reference to the whole video. At some point,
14 they -- only one portion of seconds or minutes of the video could
15 be relevant. So we ask that parties have to stick to only that
16 relevant parts rather than referring to the whole reference.
17 Counsel would like to oppose the following -- and this is the
18 general presentation. I will resolve to present any particular
19 item if clarification is needed.

20 [11.43.07]

21 First, I am referring to documents that placed in the case file
22 -- Case File 001, documents that had already been rejected by the
23 Trial Chamber. Such documents shall not be the subject for debate
24 again.

25 Point number two, the records that -- taken from individuals

1 outside judicial process shall not be regarded as legitimate
2 documents before this Chamber because the mechanism or procedures
3 in obtaining such statements were not properly checked to see
4 whether they conform with the judicial proceedings.

5 Thirdly, with regard to the assertions or statements by
6 individuals regarding activities or the characters of Mr. Khieu
7 Samphan, I would like the Chamber allow Khieu Samphan the
8 opportunity to respond to such statements with -- relating to the
9 comments concerning Khieu Samphan's characters and activities.

10 [11.45.18]

11 Fourth, some documents whose original documents are in Khmer,
12 including the interviews of the senior leaders of the Democratic
13 Kampuchea. However, even though such interviews could have been
14 conducted in Khmer originally, but in the case file we find no
15 Khmer transcript or text of such interviews. For that reason, we
16 find it very difficult to verify whether the original documents
17 in Khmer could have been the same or consistent with the content
18 rendered in English.

19 The fifth point is relating to the maintenance, or to the storing
20 of documents, how documents are kept. As the Chamber is already
21 quite familiar, we are of the opinion the documents had not been
22 properly stored, and we failed to establish a good or proper
23 chain of custody of the documents. In light of that, we do not
24 have proper ground to believe that the documents are reliable.

25 [11.47.20]

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1 I next would like to present to you the first document in our --
2 in the list of the Chamber, document IS 18.21. This document
3 fails to shed light on the chain of custody of the document. We
4 only obtained the information that the document was transferred
5 -- was obtained from the National Archives of Cambodia, and then
6 stored at the DC-Cam. We somehow could not establish the other
7 sources of the information.

8 Document IS 19.111. This document is objected by counsel for
9 Khieu Samphan because it has been obtained outside the judicial
10 process. This document is not one of the records conducted or
11 kept by the Court. There is, further, no assurance concerning the
12 authenticity of the document, so it is impossible to verify its
13 content. The only way to verify the document is to have it put
14 before person who engaged in the interview, and then ask them to
15 clarify things. I am referring to document 19.111.

16 Now, document 19.210; this document is not different from the
17 previous one I mentioned. It is the account of an individual,
18 gathered aside of a formal judicial context. This document shows
19 biasness because it was created by the biased organization, the
20 Documentation Center of Kampuchea -- Cambodia, the organization
21 looking for inculpatory evidence against the accused persons.
22 There is no safeguards provided as to how the interview was
23 conducted, and it is impossible to verify the content.

24 [11.51.08]

25 On top of that, the Chamber has no plan to summon this person who

1 has made such statement to appear before the Chamber.

2 Consequently, Mr. Khieu Samphan is deprived of his opportunity to
3 contest the document or challenge the person who made the
4 document.

5 Document 20.19. This document was objected in Case File 001
6 already, and the reason for the rejection still valid, and this
7 decision can be referred to under document E43/4, "Decision on
8 Admissibility of Material on the Case File as Evidence",
9 paragraph 20.

10 If the Chamber wishes that this document be admissible, Khieu
11 Samphan would like to request that the person engaged in this
12 record appear before the Chamber so that questions can be posed
13 to him or her. According to the code name by TC -- by the Trial
14 Chamber, the person engaged here is bearing code name TCW-511.
15 There are also other reasons concerning this document because the
16 document is also objected by the Co-Prosecutors. And the Chamber
17 has no plan to summon this witness for any interview or
18 appearance before the Chamber, which makes it impossible for us
19 to challenge him or her.

20 [11.54.27]

21 Document IS 21.103. This document is classified in another batch
22 of documents, typed up telegrams. However, it is not a telegram,
23 it is a ledger entry. So there is also the discrepancy in the --
24 regarding the sources of the document. And there is deficient
25 chain of custody because the document has been obtained through

1 DC-Cam and the National Archives. Furthermore, we note that there
2 is handwriting annotation on the document. We don't know whose
3 annotation it belongs to. We, therefore, need to seek further
4 clarification with regard to who has made such written annotation
5 to ensure the reliability of the document. We feel that this
6 document can be verified if witness TCW-583 is called.

7 I would like to also share with you the following three documents
8 that have the same issue: documents IS 21.104, IS 21.110, IS
9 21.114. These documents have been classified as telegrams, but
10 I've indicated they are not telegrams, they are ledger entries.
11 So the ground for challenging these documents is the same as that
12 of document IS 21.103.

13 [11.57.53]

14 I would like to read some more documents. Although this document
15 has a presumed prefix IS, but I have not located the IS in the
16 actual document. That's why I would like to read only the real
17 number, which is now: 21.119, 21.120, 21.123, 21.28, 21.29,
18 21.131, 21.32, 21.135, 21.136, 21.137, 21.139, 21.140, 21.143,
19 21.144, 21.145, 21.149, 21.25, 21.27, 21.30, 21.34, 21.49, 21.72,
20 21.75, 21.82, 21.85, 21.88, 21.89, 21.90, 21.92, 21.93, 219 -
21 rather, 21.95, 21.97, 21.98, D161/1.30. The documents I indicated
22 are classified as telegrams, but they are not.

23 Mr. President, I note that it is already 12 o'clock. Should I
24 continue or it is appropriate time for lunch adjournment?

25 MR. PRESIDENT:

54

1 Thank you, Counsel. Indeed, it is appropriate time for lunch
2 adjournment.

3 The Chamber will adjourn until 1.30 p.m.

4 Security personnels are now instructed to bring Nuon Chea and
5 Khieu Samphan-

6 Counsel for Nuon Chea, you may proceed first.

7 [12.02.24]

8 MR. PESTMAN:

9 Thank you. If I may finish that sentence: to the holding cell for
10 this afternoon, and he would like to stay there.

11 I have the required waivers, which I can hand over to the court
12 officers.

13 MR. PRESIDENT:

14 Thank you. The Chamber notes the request made by Nuon Chea,
15 asking that he be excused from this courtroom and follow the
16 proceeding from the -- his holding cell, and he has waived his
17 right to participate in the proceeding in the courtroom.

18 The Chamber has granted the request but ask that counsel produce
19 the waiver with his signature or thumbprint.

20 AV officials are now instructed to ensure that the AV equipment
21 is linked to the holding cell so that Nuon Chea can observe the
22 proceeding from his holding cell, remotely, during this afternoon
23 session.

24 [12.03.34]

25 Security personnels are now instructed to bring the two Accused

1 to the holding cells and return Khieu Samphan only to the
2 courtroom before 9 – rather, 1.30.

3 The Court is adjourned.

4 (Court recesses from 1204H to 1331H)

5 MR. PRESIDENT:

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

7 We would like to now proceed to counsel for Khieu Samphan to
8 continue putting documents before the Chamber and their
9 objections to the documents, as indicated. Counsel, you may
10 proceed.

11 [13.32.22]

12 MR. KONG SAM ONN:

13 Thank you, Mr. President, Your Honours. I would like now to
14 proceed with the -- with our objections to the 95 documents.

15 Before lunch break, I was at last discussed some telegrams, and
16 the ground for our objection is that the documents are not
17 telegrams, although they been classified otherwise. And there are
18 some handwriting annotations on the documents that need
19 clarification, and also comments made by those who made such
20 notes.

21 In another document -- rather, the documents put before us have
22 not been classified as the telegrams, although, in the Closing
23 Order, such telegrams -- such documents were cited.

24 We, therefore, submit that the identification of the documents
25 has not been proper and that these documents should have not been

1 classified as telegrams.

2 Next, I would like to proceed to another document, IS 199.111. We
3 request that TCW-425 be summoned to appear before this Chamber so
4 that his or her testimony can be examined. It is really necessary
5 to bring this witness to appear before the Chamber so that the
6 document can be verified.

7 [13.35.46]

8 May I then draw your attention to another document, document
9 21.115? The ground for our objections with regard to this
10 document is not different. We note that the chain of custody of
11 this document is not significant or proper, and, secondly, the
12 annotations appear on the documents. The question remain as to
13 who has made such annotations. And also we need opportunity to
14 put questions to those who have made the annotations, or at least
15 we would like to pose questions to those who may have reasons to
16 know how the annotations could have been made in the first place,
17 or at least the person who has made notes on the document be
18 summoned and challenged by Mr. Khieu Samphan before this Chamber.

19 [13.37.24]

20 Next document is 21.123. It is the same kind of document, a
21 telegram on which annotations have appeared, and we would like to
22 also ask for more information concerning the annotation and the
23 authenticity of the document. And only when the person who has
24 made such annotation be brought before the Chamber that we can
25 verify the authenticity of this document.

1 Another document is 5.30. Counsel for Ieng Sary already talked
2 about this document and presented to the Chamber this morning,
3 and we fully support the ground for such objection. We,
4 therefore, should not talk more on this.

5 Document D108/28.168. This document has been translated, but it
6 is only available in English. This document could have been
7 available in the original language, in Khmer. However, it is not
8 possible for us to locate the original document in Khmer in the
9 case file. For this reason, it is impossible for the counsels to
10 verify the contents or its authenticity.

11 [13.40.05]

12 The following document is D108/43/7. This document is classified
13 under the FBIS document, or F-B-I-S. We have already objected
14 this document with reasonings in the previous hearings; we did so
15 on the 16th of January 2012. May we, therefore, ask that
16 transcript E1/27.1 be referred to?

17 The next document is document D108/43/9. This document is a
18 translated version; original version was not available. The
19 statement should have been made in Khmer, the original language.
20 However, the Khmer version is not located in the case file. We,
21 the defence counsels, find it difficult to verify the content or
22 the quality of the translation, whether it is consistent with the
23 original Khmer text or not.

24 Document D121/6.2. It is the written statement by Duch. This
25 document needs verification and that Duch shall be summoned

1 before the Chamber to verify it. The reason is that he made such
2 statement, but we do not understand under which condition he made
3 such statement. May we, therefore, ask the Chamber that this
4 person be called to confront the Accused so that the reliability
5 of the document can be, after all, established?

6 [13.44.02]

7 I am now moving to document D177/3.1. We support the grounds for
8 objections raised by counsel for Ieng Sary with regard to this
9 document.

10 Another document is D199/26.2.105. This document is a diplomatic
11 document that cannot be verified. The reason that it cannot be
12 verified forms the basis for our objection to its reliability.

13 Document D199/26.2.143: This document has been translated.

14 However, the original version in Khmer is not available. We,
15 therefore, are not able to verify the original document and its
16 reliability.

17 The same grounds for objections apply to document D199/26.2.147.

18 This document cannot be verified.

19 [13.46.40]

20 Document D199/26.2.153 is the telegram, but our observation is
21 that this document or these statements previously provided were
22 merely related to hearsay evidence or document. It is impossible
23 to verify the content, and there is no proper condition to allow
24 the Chamber to admit this document as the evidentiary document
25 before the Court. Due to its hearsay status, we find it difficult

1 to verify its content.

2 And we also note that Nuon Chea, during his appearance before the
3 Chamber, on one occasion, asked that TCW-447 be called to appear
4 before this Chamber. However, such request was rejected by the
5 Co-Prosecutors, and the Chamber has not scheduled a hearing for
6 this witness.

7 Another document, 210/8. This document is an interview conducted
8 outside judicial proceedings. And this document talks about the
9 activities and characters of the accused person, which requires
10 confrontation -- which requires that the person who gave such
11 interview be summoned to testify in the Chamber for further
12 verification of the document.

13 [13.49.59]

14 With regard to document D210/9, this document is not different
15 with the previous document. It is an interview taken outside
16 judicial setting, and the substance of the interview concerns the
17 activities or the conducts and characters of the accused person.
18 And at the same time, the Chamber has no plan to summon this
19 person, so counsel is of the opinion that this person shall be
20 summoned before the Chamber to verify the -- its content.

21 Document D223.9 is another piece of interview taken out of
22 judicial proceedings, and we are unable to verify its content as
23 it is part of the report obtained from unknown source and we do
24 not know under which conditions such interview was obtained.

25 [13.51.33]

60

1 Document D224.121 is an interview, again, taken outside the
2 courtroom setting. And what is noticeable is that the document
3 was created by a student. For further information, Chamber is
4 asked to refer to D224 document. The interview was conducted in
5 Khmer. However, the available document in the case file is the
6 translated version. It is available only in English. For that
7 reason, we are not able to verify its content. With regard to the
8 author of the document, we note that the Chamber has not planned
9 to summon the person to appear before the Chamber.

10 I am moving to another document, document D224.37. The grounds
11 for our objection is -- are the same to D224.121, and I would not
12 need to reiterate that objection.

13 With regard to D243/2.1.19, we oppose the chain of custody of how
14 this document has been maintained, because it lacks reliability.
15 This document is the CPK magazine entitled the "Revolutionary
16 Flag". We have already heard arguments or objections time and
17 again in the courtroom concerning this document.

18 [13.55.00]

19 Witness Chhang Youk testified in the courtroom that, if Om Nuon
20 would like to obtain the original documents of the "Revolutionary
21 Flag", he would be willing to send them to him. His statement can
22 be referred to under transcript E1/38.1. For that reason, may we
23 ask that the Chamber bring these original documents for debate in
24 the courtroom in the future trials?

25 Document D248/2.2. We register our objection against this

1 document because the interview was -- or has been obtained
2 outside the judicial setting, and it is impossible for counsels
3 to verify its content. Our request is that the author of the
4 interview appear before the Chamber. However, with objection from
5 the Co-Prosecution, the Chamber has finally decided not to summon
6 that person to appear before the Chamber.

7 [13.57.01]

8 With regard to document D260 - rather, D248/6.1.6, we support the
9 position by counsels for Ieng Sary and we would like to add that
10 there is inconsistencies in the translation of the text in French
11 and English as well, because the translation of the three
12 versions is not consistent.

13 Document D262.3. With regard to this document, we concur with
14 what already indicated by counsels for Nuon Chea and we would
15 like not to comment further on this.

16 Document D269/9/1.15. Our objection on this document is that the
17 interview was conducted outside judicial setting and was done by
18 a student. It was done -- the interview was conducted by a
19 witness -- or the TC witness TCE-38. This interview was -- is
20 available only in English, although the interview could have been
21 conducted in Khmer. The Khmer version of the document has not
22 been located in the case file, and we cannot verify its content.
23 On top of that, the characters and the conducts of the accused
24 person are discussed in the interview, so we would like to ask
25 that this person be summoned to appear before the Chamber for

1 confrontation with the Accused. However, the Chamber has not had
2 any plan to do so.

3 [14.00.26]

4 Document D269/9/1.15.1. Our ground for objection is the same as
5 the previous document, D269/9/1.15. I, therefore, would like not
6 to elaborate further on that.

7 Document D288/5.463. This document needs verification in which
8 the person who involved in the document be summoned to appear
9 before the Chamber so that he can be confronted. The reason we
10 asked this is to ensure its reliability.

11 Likewise, the ground for objection is that the persons who
12 conducted the interviews or made comments shall be summoned to
13 appear before the Chamber so that parties may put questions to
14 them; and these documents are as follows: document D288/6.159/10;
15 document D288/6.5 – rather, .52/4.24; document D288/6.52/4.42;
16 document D288/6.52/4.43. These documents I have just read out
17 require the Chamber to bring the persons who have produced the
18 document before this Chamber for confrontation.

19 [14.04.12]

20 For document D288/6.5/2.29, we submit our objection against the
21 placement of this document since the Chamber does not have any
22 plan to summon the author of this document to appear before the
23 Chamber for confrontation. Consequently, there is no opportunity
24 for us to verify the authenticity of such document.

25 Document D29/E in attachment 33. It is a document that was not

1 produced within the judicial setting. We, therefore, object
2 against the acceptance or admission of such document.

3 As for document D29-Attachment 01, these -- or 369/7.1.562--
4 For -- document D299.1.19R is the document that is also in the
5 footnote 4,188. It is the photographic documents which was also
6 incorporated into a video documentary at 8 minutes, 55 second. It
7 was not the whole documentary video, but it was mere photos
8 incorporated into this video.

9 [14.07.26]

10 Document D29-Attachment 86 is a translated document whose
11 original document was not available, only the English translation
12 was made available, so there is no basis for our verification
13 purpose. Therefore, we object against the acceptance of this
14 document.

15 Document D313/1.2.406. It is a document concerning the interview
16 which was conducted outside the judicial setting, and the
17 original language was in Khmer, and then it was translated into
18 English. I know that there has been request, so far, that the
19 witness was summoned -- TCW-92 and TCW-223 -- to appear before
20 the Chamber for cross-examination, but the Chamber has so far had
21 no plan to summon the two witnesses.

22 Furthermore, in these interviews, it describes the various
23 activities as well as the attitudes of the Accused at issue.

24 Therefore, it is vitally important that the Accused be given the
25 opportunity to cross-examine these two witnesses. So, once again,

1 we also object against the placement of this document.

2 [14.09.41]

3 As for -- document D5 -- or 359/1/1.1.41 and document
4 D359/1/1.1.44 are the translated documents whose original
5 document were not available. These two documents are of
6 diplomatic cable documents and they summarize from the media
7 reports in Cambodia, but the original language of the article was
8 not available for verification purpose. And, again, we support
9 the position and objection as raised by the defence counsel for
10 Ieng Sary, and these documents should not be placed for -- should
11 not carry any probative value.

12 As well, document D56-Doc. 066; this document is the one of the
13 document from Swedish collection. And we have so far made our
14 objection time and again on this particular document,
15 particularly in relation to its authenticity, that remains
16 questionable.

17 [14.12.08]

18 As for -- document D56-Doc. 103 is one of the translated
19 documents whose original language was not available. We,
20 therefore, cannot verify against the veracity of this document.

21 Therefore, we object against the placement of this document.

22 Document D56-Doc. 236. Again, this is a translated document whose
23 original version was not available, and we, therefore, cannot
24 verify against the content of the document. And we, again, object
25 against the placement of this document.

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1 Last but not least, document D90/I is similar to the previous
2 documents as well, concerning witness TCW-281 in Case 001 -- Mr.
3 Duch being the person. We cannot emphasize the importance of
4 having this particular witness for cross-examination before this
5 Chamber.

6 For all the documents for which I have indicated to the Chambers,
7 including document D288/6.5/2.29, we would like to object against
8 the placement of these documents until --unless the witnesses, or
9 those individuals concerned are summoned for cross-examination
10 before this Chamber, so that we can cross-examine those
11 witnesses, especially TCW-281, concerning the last document,
12 D90/I.

13 [14.16.09]

14 Lastly, I would like to earnestly request the Chamber to reject
15 the documents whose grounds was not well established. Thank you.

16 MR. PRESIDENT:

17 Thank you, Counsel, for demonstrating your position of objection
18 against the 95 documents which the Chamber has placed for debate
19 among parties.

20 Next, I hand over the floor to the representative of the
21 Prosecution, followed by the lawyers for the civil parties.

22 But before we give the floor to them, we would like to ask the
23 Prosecution and the Lead Co-Lawyers concerning the allocation of
24 times in response to the objections against the document in the
25 document list, because the Chamber has already informed the

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1 parties already concerning the time allocation for parties.
2 However, we have to be flexible since we have been a bit behind
3 the schedule. That's why we ask the representative from the
4 Prosecution as well as the Lead Co-Lawyers to indicate the time
5 for them to respond to the objections.

6 So we don't know whether or not you have consulted with one
7 another concerning the times you would need to respond to the
8 objections.

9 [14.18.06]

10 You may proceed.

11 MR. SENG BUNKHEANG:

12 Thank you, Mr. President. For Prosecution, we need approximately
13 one hour and 10 minutes.

14 MS. SIMONNEAU-FORT:

15 As far as we are concerned, we believe that 15 to 20 minutes
16 should be largely sufficient.

17 MR. PRESIDENT:

18 Thank you very much for your indication.

19 So we now hand over the floor to the representative of the
20 Prosecution to proceed with their respond to the 95 documents.

21 MR. SENG BUNKHEANG:

22 Thank you, Mr. President. On the 16 of January 2012, the Chamber
23 granted the opportunity for parties to raise objection against
24 the documents identified in the footnotes of the Closing Order
25 concerning the historical background of the Democratic Kampuchea.

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1 And again, here, we are also responding to the documents
2 identified in the footnotes concerning the administrative and
3 communication structure of the regime.

4 And this presentation is in accordance with the memorandum of the
5 TC dated the 9th of February 2012, or document E170. In this very
6 memorandum, it specifies that the documents that the Chamber
7 would not--

8 MR. PRESIDENT:

9 Can the Prosecution please hold on? Because there is an issue
10 concerning transcription.

11 (Technical problem)

12 [14.21.58]

13 Due to the technical problem with the Transcription Unit -- and
14 it is also suitable time to take a short break -- we will break
15 for 20 minutes, and the Chamber will resume at 14.45. And the
16 technicians, please make sure that the equipment is normalized.

17 (Court recesses from 1428H to 1445H)

18 MR. PRESIDENT:

19 Please be seated. The Court is now back in session.

20 Before we broke, the Chamber was already -- had already handed
21 over the floor to the prosecutor. However, due to the technical
22 problem concerning the transcription section, we could not
23 continue. And we believe that the transcription, perhaps, has
24 already been fixed. However, a great portion of the prosecutor's
25 statement had not been registered, so it is therefore advised --

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1 asked that the counsel -- Co-Prosecutor repeat what he stated
2 previously.

3 MR. SENG BUNKHEANG:

4 The Chamber informed parties concerning the issue relating to the
5 footnotes of the Closing Order, the portion that relevant to the
6 historical background of the Democratic Kampuchea, and parties
7 are advised to post their challenges or objection concerning the
8 communication and administrative structure of the DK.

9 [14.47.32]

10 Document which I refer to here is the E70, the memorandum of the
11 Trial Chamber. The Trial Chamber has indicated that documents
12 that shall not be considered at this moment are those that have
13 already been requested to be placed before the Chamber. In
14 particular: documents in Annexes 1 through 5, Co-Prosecutors'
15 documents proposed for this first segment of the Trial, this
16 document includes the statements of the accused person; number
17 two, the publications concerning the CPK; and, three, the minutes
18 of the meetings of the CPK; four, the communications of the CPK;
19 and, five, the media report and public statements by the CPK.

20 [14.48.40]

21 The Chamber will not consider the written statements which --
22 whose decisions are pending at the Trial Chamber. On top of this
23 memorandum, we have also received from the senior legal officer
24 of the Trial Chamber, on the 9 of February 2012, the two tables
25 concerning the list of documents to be debated during this

1 hearing.

2 The first table contains documents prepared by the Prosecution.

3 There are 15 documents, and table number 2 prepared by Trial

4 Chamber, which include 120 documents altogether, including the

5 footnotes as referred to by the memorandum.

6 Among these documents, some documents are relevant to the

7 historical context and cited from the footnotes of the Closing

8 Order. These documents are not subject to be debated in this

9 hearing. There are 13 documents of this kind which have already

10 been classified as the E3 document. These documents include the

11 written statements and, according to the memorandum of the Trial

12 Chamber, these documents are not subject for debate for this time

13 being. There are about 20 documents in this category.

14 [14.50.42]

15 And there are documents contained in Annexes 1 through 5, about

16 20 documents. So, I and my colleagues will be not addressing the

17 documents that are not subject for the debate.

18 However, I would like to begin with three reports, the analysis

19 reports.

20 First report was done by Craig Etcheson under the title "The

21 Perception Concerning the CPK Structure", document D2/15. This

22 document has been placed in the case file as evidence.

23 Mr. Craig Etcheson already provided testimonies before the

24 Chamber in Case File 001. He referred to this report along with

25 other resources - or sources of information.

1 MR. PRESIDENT:

2 Counsel for Ieng Sary, you may now proceed.

3 MR. KARNAVAS:

4 Thank you, Mr. President. And good afternoon, Your Honours, and
5 good afternoon to everyone in and around the courtroom.

6 [14.52.16]

7 Your Honours, I specifically did not address that document
8 because, as I understand, it's not part of the 95 documents.

9 Now, I don't see why the Prosecution is going into those
10 documents which were not on the list. Perhaps that could be done
11 at some other point, but I don't think it is a purpose for this
12 particular hearing.

13 And given that there's only about an hour and 10 minutes left
14 before we take a recess, until we hear the next witnesses, I
15 would strongly suggest that the Prosecution be directed to
16 address the 95 documents so that we can efficiently finish today.

17 Thank you.

18 MR. PRESIDENT:

19 Thank you, Counsel Karnavas, for your objection. The objection is
20 plausible.

21 And that Co-Prosecutor is now instructed to focus only on the 95
22 documents at issue.

23 [14.53.28]

24 The Chamber has already indicated clearly, before the floor was
25 handed over to the Prosecution, and that the prosecutor should

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1 make the most of the time given and be confined to the topics
2 discussed only.

3 MR. SENG BUNKHEANG:

4 Thank you, Mr. President. I would like to continue now.

5 Your Honours, may I ask for a few minutes for discussion with my
6 colleague first?

7 (Judges deliberate)

8 [14.54.50]

9 MR. PRESIDENT:

10 Since time is limit and that during the time when Co-Prosecutors
11 are discussing among themselves, we want to ask whether Lead
12 Co-Lawyers would like to take any opportunity first.

13 National Co-Prosecutor, you may now proceed.

14 MR. SENG BUNKHEANG:

15 Mr. President, I would like to continue my presentation of the
16 documents.

17 MR. PRESIDENT:

18 Since the Co-Prosecutor is now ready to proceed with the floor
19 given to him, civil party Co-Lawyers may not respond at this
20 time.

21 MR. SENG BUNKHEANG:

22 Thank you, Mr. President. We would like to present the movies --
23 or the films to be put before this Chamber, which include
24 document D299.1.19R. This video is entitled "Kampuchea -- Death
25 and Rebirth". DC-Cam has obtained the video from Germany.

1 [14.56.39]

2 Another video is D295/2/2.52R. This video is entitled "The Field
3 Trip of Chinese Delegation to Malaysia". It was produced by the
4 Democratic Kampuchea in 1976. This video shows the Chinese
5 delegation trip in which Mr. Khieu Samphan, Nuon Chea seen
6 leading the delegation. The video itself also shows Malaysian
7 delegation along with Khieu Samphan, Ieng Sary, and Ieng Thirith
8 receiving them. We have obtained this video from the audio-visual
9 centre, Bophana.

10 Another video is D295/2/2.65R. This video is entitled The Trip of
11 Laos-- "Laos President Visit to Cambodia, Mr. Souphanouvong".
12 This video is a documentary film produced by the Democratic
13 Kampuchea and it shows the trip of Laos President to the DK, and
14 also it shows the people who received the visiting guests,
15 including Khieu Samphan, Ieng Sary, and Ieng Thirith. This video
16 has been obtained from the Bophana audio-visual centre. These
17 documents have been collected through regulatory letters by the
18 Office of Co-Investigating Judges from 7 to 15 September 2009.

19 [14.59.28]

20 Another document is D232/110.1.1R. It is about Pol Pot in Peking.
21 This video shows the trip of Pol Pot to China when he was there
22 to pronounce the existence of the CPK. This document was obtained
23 through regulatory letter of the OCP and it is retrieved from
24 Bophana audio-visual centre.

25 With regard to this delegation, the trips of these people, there

1 are other documents, including the trip by Laos President to the
2 DK Government. His visit was captured in the world media as well.
3 Although the film was short, but it tells us about who received
4 the visiting guests. This is the purpose of putting the documents
5 or these videos before the Chamber.

6 Another video, D, as indicated, 295/2/2.52R, indicating how Mr.
7 Khieu Samphan has received visiting delegates.

8 [15.01.39]

9 And in another video, it shows that Ieng Sary did not appear in
10 the footage. Chamber has already indicated clearly that any
11 materials -- for example, the report journals or documentary
12 films that have been retrieved from the media -- and that are
13 relevant can be regarded as documents to be put before the
14 Chamber. The Chamber will rule on the evidentiary value of such
15 documents in the future.

16 I have already concluded the documents I wish to put before the
17 Chamber. My colleague would like to continue.

18 MR. PRESIDENT:

19 International Co-Prosecutor, you may proceed.

20 MS. DEBNATH:

21 Thank you, Mr. President. Your Honours, the purpose of this
22 document hearing is clear and it is circumscribed. The purpose of
23 this hearing is simply to address documents that are cited in the
24 footnotes of certain paragraphs in the Closing Order, as it
25 relates to communication and administrative structure. Those

1 documents have already been accorded to be relevant and reliable,
2 including authenticity. The purpose of this document hearing is
3 to provide counsel an opportunity to show why that presumption
4 ought not to be followed.

5 [15.03.38]

6 The objections that you have heard today fall into two
7 categories.

8 The first category seeks to expand the scope of the objections
9 that are possible and envisaged. They seek to add additional
10 items. They seek to call the person who interviewed -- who was
11 the interviewer. They seek further information with respect to a
12 document before deciding whether it is what it seems to be.

13 None of those things are supported by the jurisprudence, nor
14 indeed by this Chambers decision of January 31st, which states
15 simply: Look at these documents; they are reliable, they are
16 relevant; show us why they are not. Are they forgeries? Is there
17 anything on the document on its face that shows that this is not
18 reliable?

19 The second category of objections today have related to the
20 weight which should be given to these documents by the Trial
21 Chamber. The test between admissibility and weight given to
22 various pieces of evidence ought not to be conflated. The
23 comments related to weight should indeed be considered at an
24 appropriate time, later on.

25 [15.05.24]

1 Let's turn to the Commerce records.

2 Approximately 38 of the documents listed in the footnotes and on
3 this list are DK Commerce records. The footnotes are used to
4 support a part of paragraph 1144 of the Closing Order, which
5 states:

6 "Khieu Samphan received a large number of telegrams and
7 communications from the Commercial Committee and [...] Phnom Penh
8 Foreign Trade FORTRA Company, covering topics such as the import
9 and export of food and goods, the economic relations with
10 foreign countries and the fact that members of the Commercial
11 Committee travelled to the
12 Cambodian countryside to collect crops."

13 Witness TCW-583, who worked in the Overseas Commercial Bank of
14 Cambodia under the supervision of the Ministry of Commerce,
15 identified and discussed 14 Commerce documents during the course
16 of interviews conducted by the OCIJ.

17 [15.06.41]

18 Significantly, he identified the handwriting and signature of Van
19 Rith, who was the DK Secretary of Commerce. This signature
20 appears in many of the documents under the label DK Commerce
21 documents.

22 Examples of such documents include document IS 21.145. This
23 document bears the signature of Van Rith, as identified by
24 witness TCW-583. The document also bears the notation - quote --
25 "already sent to Brother Hem", Hem being the alias for Khieu

1 Samphan.

2 Another subset of these documents from the DK commerce records
3 contain ledger entries regarding the use of 140 million yuans
4 credit. These ledger entries are clearly identifiable as such.

5 They provide an entry of the value of the contract of goods with
6 China. They also provide entries for the cost of merchandise paid
7 by the DK Government using this credit. The documents contain the
8 signature of Van Rith and an annotation stating: "Already sent to
9 Brothers Hem and Vorn".

10 Witness TCW-583 also confirmed that China provided credit to the
11 DK Government to establish the Overseas Commercial Bank, and
12 explained that the bank was required to prepare regular reports,
13 recording goods that were exported and imported using the credit,
14 hence the ledger entries.

15 [15.08.50]

16 The ledger entries are also sometimes accompanied--

17 MR. PRESIDENT:

18 National Counsel for Khieu Samphan, you may proceed.

19 MR. KONG SAM ONN:

20 Thank you, Mr. President. I would like to object what

21 Co-Prosecutor is now addressing concerning the substance of the
22 documents.

23 According to the instruction or advice by Judge Lavergne this

24 morning, we are supposed to look at the documents, whether they

25 can be put for review. It is not to look at the substance of each

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1 document. However, I have observed that Co-Prosecutor is trying
2 to pinpoint to the detailed substance of each document.

3 MR. PRESIDENT:

4 International Co-Prosecutor, would you wish to respond to what
5 national counsel for Khieu Samphan is -- or has addressed? If you
6 would wish to do so, you have the floor.

7 [15.10.08]

8 MS. DEBNATH:

9 Thank you. Your Honour, I am looking at the documents to show you
10 why they are reliable. That requires me, to some extent, to
11 explore the structure of the document -- what they look like,
12 what sorts of information is contained in those documents.
13 Without going into such matters, I really cannot fully show why
14 these documents ought to be relied upon.

15 (Judges deliberate)

16 [15.11.00]

17 MR. PRESIDENT:

18 The objection by the defence counsel for Khieu Samphan is not
19 sustained.

20 The International Co-Prosecutor may proceed.

21 MS. DEBNATH:

22 The ledger entries are sometime accompanied by detailed list of
23 goods shipped and contracted for.

24 Examples of such documents can be found at IS 21.114 and IS
25 21.104. These Commerce documents also report on trade relations

1 with other countries.

2 Documents IS 18.21, for example, is a report on a meeting with -
3 quote -- "Korean comrades" at the Ministry of Commerce. This
4 report is also sent "to respected and beloved Brother Hem".

5 Document IS 21.129 shows the ledger entries related to the 140
6 million yuans. It also includes a balance sheet called "Kampuchea
7 commercial transactions with other Countries besides China and
8 Korea". It shows that certain amounts of rice was exported to
9 Madagascar and that there were imports from Yugoslavia.

10 [15.12.37]

11 Document D161/1.30 also related to Yugoslavia. It concerns
12 equipment offered for sale by Yugoslavia. This document contains
13 annotations by Van Rith, stating, one, "already sent to Brother
14 Vorn [and] Hem" and, two, Brother Hem advised that Brother Vorn
15 decided not to accept the offer; please find a way to respond to
16 Yugoslavs.

17 Let me address the origin of these documents. They were collected
18 by DC-Cam, in many cases from the National Archives. Many of
19 these documents bear cataloguing marks from those archives. As
20 Youk Chhang testified here during his testimony, the originals of
21 those documents can be viewed at the National Archives.

22 [15.13.45]

23 Let me turn to another category of documents, and these I will
24 call the French documents.

25 These documents were provided by the French Foreign Ministry in

1 response to a rogatory letter dated 13 March 2009. That's
2 document D199. These documents were added to the case file by the
3 OCIJ.

4 MR. PRESIDENT:

5 Chamber wishes to remind the prosecutor to slow down for the
6 record, particularly when it comes to the number of the document
7 or the ERN number.

8 MS. DEBNATH:

9 Thank you; I will.

10 Some of these documents contain reviews of significant events in
11 Cambodia.

12 The purpose why these documents were created can be found in an
13 accompanying note in document D199/26.2.105. The note states
14 that, "taking into consideration the absence of diplomatic
15 relations between France and Democratic Kampuchea as well as the
16 absence of information on the subject of Democratic Kampuchea,
17 the Asia-Oceania Division of the Ministry of Foreign Affairs
18 considers it useful to provide a review of the internal and
19 external relations of the new Cambodia".

20 [15.15.58]

21 These reports contain information on visits by foreign diplomats,
22 which leaders received these diplomats, as well as key events
23 that were taking place domestically. Many of the events are
24 corroborated by other accounts of the same visits, notably FBIS.
25 These documents have the same format. The top left-hand corner of

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1 the first page contains a stamp of the ministry. Underneath that
2 is the number of this particular review. On the top right-hand
3 corner of the first page, one can find a stamp of the Republic of
4 France and the date.

5 Another type of document also produced by the French Government
6 and also sent at the request of the OCIJ consists of telegrams
7 from the French Ministry of Foreign Affairs.

8 The format of these telegrams is quite consistent: "Foreign
9 Affairs" is usually typed on the top right-hand corner; the word
10 "déchiffrement" is typed diagonally across the top right-hand
11 corner.

12 An example can be found at document D199/26.2.29. This is the
13 telegram from Arnaud. The subject is "Visit to China by Prime
14 Minister of Cambodia". It discusses Pol Pot's visit to China.
15 Arnaud is the author of many of these telegrams. Indeed, he sends
16 another telegram related to this very same visit. That telegram
17 can be found at document D199/26.2.30. This visit by Pol Pot to
18 China was also reported elsewhere in the media, including in the
19 "New York Times".

20 [15.19.05]

21 Let's turn to document IS 5.30. This is an - this is an S-21
22 confession of Hu Nim, the minister of propaganda. The document is
23 contained in a footnote to the first line of paragraph 883 of the
24 Closing Order. That line states - quote: "The first Minister of
25 Information and Propaganda in the CPK regime was Hu Nim who was

1 arrested and sent to S-21 in April 1977."

2 In the Trial Chamber's ruling of January 31st 2012, at paragraph
3 9, the Trial Chamber reiterated that "evidence obtained through
4 torture has limited uses". The use to which this document is
5 being put is consistent with that ruling. It simply confirms that
6 Hu Nim was sent to S-21 and the date -- the month of his arrest.
7 The document contains annotations. Duch has confirmed that he
8 annotated the letter, which was written by Hu Nim, that
9 accompanies this confession. That letter is addressed to Pol Pot,
10 Nuon Chea, Ieng Sary, Vorn Vet, Son Sen, and Khieu Samphan.

11 [15.20.58]

12 Counsel for Ieng Sary has objected to a document called "The Last
13 Joint Plan". This document is cited in footnote 3782 and 3783 of
14 the Closing Order. The document number is D288/6.5/2.29. The
15 relevant portion of the Closing Order states -- quote: "In
16 addition to the above, Nuon Chea became de facto secretary of two
17 zones after the arrest of their secretaries. It appears that
18 following the arrest on 20 September 1976 of the Northeast Zone
19 Secretary Men San alias Ya, 3782 this role was filled by Om Neng
20 alias Vy alias Vong until mid-1978 and then by Nuon Chea for a
21 short period."

22 [15.22.13]

23 This document is an analysis of confessions at S-21. The analysis
24 was conducted by Pon, who was Duch's chief interrogator. This
25 analysis weaves the various confessions into a massive

1 interconnected plot.

2 The document was discussed in the trial of Case 001. During that
3 trial, Duch confirmed that this document was produced at S-21 and
4 was authored by Pon.

5 Let me now address some of the specific objections raised by
6 defence counsel.

7 Let's turn to document D177/3.1. This document is called
8 "Timeline Chart compiling Ieng Sary's Foreign Travel during the
9 period of Democratic Kampuchea [with] S-21 records of arrest and
10 execution of MFA staff". This document brings together into a
11 different coherent form, information that can all be found in
12 numerous documents already on the case file. The way to challenge
13 this document is to show why the timeline is incorrect, that at
14 this time, indeed, Ieng Sary was not there. That wasn't done.
15 [15.24.25]

16 An objection was also made to what was called Steven Heder
17 material. It was argued that Steven Heder had not only drafted
18 the Introductory Submission, he then proceeded to investigate it.
19 Steven Heder left OCP in December 2006. The Introductory
20 Submission was written during the second quarter of 2007 and
21 submitted in July 2007. Steven Heder did not write it.

22 Two documents related to Steven Heder were cited. One was
23 D29/I-Attachment 33, and D366/7.1.562. These documents are part
24 of Annex 1, and Annex 1 was argued in the first document hearing.
25 There was an objection that witness interviews not conducted by

1 OCIJ ought not to be admitted.

2 [15.26.11]

3 Again, in accordance with document E170, this document hearing
4 excludes written witness statements. I note however that counsel
5 for Nuon Chea objected to witness statements from Ouk Bunchhoeun,
6 Sim Ka, Chea Sim, and Heng Samrin. Witness statements from these
7 very same people were included in their recent filing of January
8 31st, 2012, in which they sought to put witness statements of
9 these very same people before the Chamber.

10 Other objections related to FBIS reports, to "Revolutionary
11 Flag", to Standing Committee minutes. All of those were covered
12 under Annex 1 to 5 in the first document hearing,
13 where many documents from one source were corroborated with
14 documents from various others, where their formats were discussed
15 at some extent and detail.

16 There was an objection to document D56-Doc. 103. This is an
17 Accused's statement. Counsel wanted Mr. Burstein to come and
18 provide testimony before this document could be admitted.

19 Accused's statements fall under Annex 1 and, as such, were
20 discussed during the first document hearing. But I also point out
21 that, when you have - when you read the Accused's statements, you
22 will see that the Accused say the same thing again and again.

23 Their statements are always consistent.

24 [15.28.55]

25 There were objections to international media reports. Objection

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1 was made to document D108/43/7. This is a FBIS report. I
2 discussed FBIS reports during the last hearing.
3 Another document objected to was D108/43/9. This document is a
4 summary of world broadcasts created by the BBC, also discussed
5 during the last document hearing.
6 Objection was made - objection was made to document D56/Doc. 066.
7 This is an international media report; it is called "Ninth
8 Anniversary of Founding of Revolutionary Army". This was from the
9 "Peking Review" of 28 January 1977. This document is corroborated
10 by two other documents.
11 The first one is document D313/1.2.317. This document is a
12 summary of world broadcasts. It reports on the celebration for
13 this anniversary and that Nuon Chea and Khieu Samphan attended.
14 The document is further corroborated by document D248/6.1.14.
15 This document is also a summary of world broadcasts, but this one
16 contains a fairly extensive - extensive excerpt from the speech
17 given by Nuon Chea as acting prime minister. This document is
18 dated January 20th, '77.
19 Your Honour, those are my submissions.
20 MR. PRESIDENT:
21 Thank you.
22 Counsel for Nuon Chea, you may now proceed.
23 [15.31.46]
24 MR. IANUZZI
25 Thank you, Your Honour. Could I have one minute to make a brief

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1 reply to the remarks of the Co-Prosecutor with respect to our
2 documents, documents from the Nuon Chea list?

3 MR. PRESIDENT:

4 Time allotted to counsel for Nuon Chea has already been used. It
5 is now the opportunity for the prosecutors and Lead Co-Lawyers
6 for the civil parties.

7 MR. IANUZZI:

8 I understand that, Your Honour; this was a request to make a
9 reply.

10 (Judges deliberate)

11 [15.32.48]

12 MR. PRESIDENT:

13 Civil party Lead Co-Lawyers, you may now proceed.

14 MS. SIMONNEAU-FORT:

15 Mr. President, Your Honours, distinguished colleagues. A few
16 brief comments following up on the general objections that were
17 raised today.

18 The first comment I would make -- and I am sure this will
19 surprise nobody -- is that today we are looking at 95 documents
20 that relate to footnotes from the Closing Order, and I would say
21 that it seems to me that these documents have been given very
22 attentive scrutiny by professional judges, and their
23 authenticity, their relevance have been considered to be
24 sufficiently serious for the Investigating Judges to use such
25 documents to substantiate their Closing Order, which, itself, was

1 open to appeal, and there indeed was one which led to a decision
2 by the Pre-Trial Chamber.

3 On that essential premise, I believe we should examine any
4 objections.

5 [15.34.24]

6 My second comment is as follows. I saw that the objections that
7 were being levelled today were, at least for the bulk of them,
8 ones that we had talked about in the previous hearing on
9 documents.

10 For example, the objection on the fact that originals should be
11 submitted, or objections about the fact that documents from
12 DC-Cam were not sufficiently reliable, or the objection which
13 consisted in saying that the author of a document should be heard
14 at any cost -- the author of a document, a book, an interview or
15 a newspaper article.

16 We've heard that objection before, in the first discussion on
17 documents, as well, and the one on the chain of custody of
18 documents coming from the National Archives, so we've talked
19 about all of this already, and our comments consequently would
20 tend to be the same. And I would suggest that people refer
21 themselves to what we have already said on the subject.

22 [15.35.39]

23 My third comment is as follows. I don't believe that it is
24 adequate to state that statements outside the judicial framework
25 are unreliable for it to de facto -- to be proven that they are

1 not reliable. If we want to talk about non-judicial framework
2 statements and challenge them, then you have to demonstrate in
3 what way the assumption of reliability can be called into
4 question. And I note that the Defence, once again, is not
5 providing us with that demonstration.

6 I wanted to make what is not really a response to objections, but
7 a comment focused on a special group of documents.

8 In the 95, there are 37 that are to do with the Co-Prosecutor's
9 Annex 7, and they concern documents coming from the Ministry of
10 Trade. It seems to us that, for proper administration of justice,
11 it might have been worthwhile to talk about the 37 documents
12 under the framework of Annex 7 because, as I understand it, that
13 annex will be talked about one day.

14 [15.37.13]

15 I move on to another point, on confessions. One confession has
16 been tabled, and I think we all agree on what position to have on
17 this, including, I believe, the Chamber. We are civil party
18 lawyers, but first and foremost we are lawyers and we believe
19 that there should be stringent application of Article 15 of the
20 Torture Convention. The Chamber reminded us of its position in
21 its memorandum of the 30th of January -- and that too was its
22 position in May 2009 -- and it was that the documents can be used
23 to demonstrate the torture had occurred, but not for their
24 content. And of course we support that position, and I believe
25 the same goes for the Co-Prosecutors.

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1 Those are the comments that I wanted to bring up, Mr. President.

2 I don't know if my colleague wishes to take the floor after me--

3 No, I believe that the civil parties do not wish to take the

4 floor any further on the document question. Thank you very much.

5 MR. PRESIDENT:

6 Thank you.

7 (Judges deliberate)

8 [15.39.35]

9 Since we still have some time left and we noted that counsel for

10 Nuon Chea was willing to reply to the statements made by the

11 Co-Prosecutor, the Chamber is considering giving the floor to

12 counsel.

13 But please advise us how much time would you need before we can

14 decide whether we should give time to you or not.

15 MR. IANUZZI:

16 Thank you, Your Honour. Truly, one minute would be fine.

17 MR. PRESIDENT:

18 Indeed, you are allowed to do so in one minute.

19 However, please be reminded that parties who wish to speak about

20 any potential witnesses -- or witnesses in the case file, they

21 are advised to refrain from revealing the full names of the

22 relevant witnesses, because it is also to respect their rights.

23 You may proceed.

24 [15.41.07]

25 MR. IANUZZI:

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1 Thank you, Your Honour. I just wanted to clarify -- and perhaps I
2 didn't make this point clear enough this morning -- our
3 objection--

4 First of all, indeed, those three documents that Co-Prosecutor
5 referred to, the statement of Ouk Bunchhoeun, CPP senator, the
6 statement of Chea Sim, the president of the Senate, and the
7 statement of Heng Samrin, president of the National Assembly,
8 those are indeed on our witness list.

9 The objection today was to their use to prove the acts and
10 conduct of the Accused or pivotal issues in the case without them
11 appearing for cross-examination. So I just want to make that very
12 clear. Those documents are indeed on our list. We've called for
13 these witnesses to come and testify.

14 We submitted the documents for different reasons -- and we've
15 provided those reasons in our cover submission -- but the
16 objection this morning is to their use to prove the acts and
17 conduct of the Accused or pivotal issues in the case without
18 their examination in Court.

19 So I hope that's clear. Thank you.

20 [15.42.14]

21 MR. PRESIDENT:

22 Thank you very much.

23 It is now an appropriate time for today adjournment. The Chamber,
24 therefore, decides to adjourn today's session by now.

25 The next session will be on the 12th of March 2012, at 9 a.m.,

1 indeed.

2 Security personnels are now instructed to bring all the accused
3 persons to the detention facility and have them returned to the
4 courtroom by the 12 of March, before 9 a.m.

5 The Court is adjourned.

6 (Court adjourns at 1543H)

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