



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
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CMS/CFO:.....

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

08 July 2013
Trial Day 206

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

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Victor KOPPE
KONG Sam Onn
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PICH Ang
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For the Office of the Co-Prosecutors:

SENG Bunkheang
Dale LYSAK

For Court Management Section:

UCH Arun
SOUR Sotheavy

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. KOPPE	English
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. SON ARUN	Khmer
MR. VERCKEN	French

1

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 During today's sessions, as scheduled, the Chamber is going to
6 conduct the hearings on the key documents presentation. The
7 Chamber is going to hear counsels for Mr. Nuon Chea presenting
8 their key documents and responses to the documents put before the
9 Chamber by the Co-Prosecutors and the Lead Co-Lawyers for the
10 civil parties on the 24th to 27th of June 2013.

11 Mr. Dav Ansan is now directed to report to the Chamber the
12 current status of the parties to the proceedings today.

13 THE GREFFIER:

14 Good morning, Mr. President and Your Honours. All parties to the
15 proceedings are present except Mr. Nuon Chea, who is present in
16 his holding cell, as ruled by the Trial Chamber, due to his
17 health concerns.

18 [09.05.28]

19 Lead Co-Lawyer for the civil parties on the national side, Mr.
20 Pich Ang, has informed the Chamber that he would be a bit late.
21 Thank you, Mr. President.

22 MR. PRESIDENT:

23 Thank you.

24 Next, before we hand over to counsels for Mr. Nuon Chea, the
25 Chamber would like to invite Mr. Arthur Vercken to rise, please.

2

1 On Thursday the 4th of July, after the President had announced
2 the close of proceedings for the day, Mr. Arthur Vercken,
3 international lawyer for Khieu Samphan, shouted angrily at the
4 President. He then remained seated as the President and other the
5 Trial Chamber Judges left the courtroom. This behaviour falls
6 well below the standards of professionalism expected of lawyers
7 appearing in this or any other court and is a poor example to
8 more junior lawyers. He was rude and disruptive in front of a
9 witness, his professional colleagues, and the public.

10 He is warned, pursuant to Internal Rule 37.1.

11 You may be seated.

12 [09.07.25]

13 MR. VERCKEN:

14 And if I wish to answer, Mr. President, is that possible, to say
15 that I feel that-

16 MR. PRESIDENT:

17 No. You may be seated.

18 MR. VERCKEN:

19 I will certainly find the time to express myself a bit more in
20 length; not now, but later.

21 MR. PRESIDENT:

22 Now the Chamber would like to hand over to counsels for Mr. Nuon
23 Chea to be able to present their documents or make any
24 observation regarding the key documents presented by Lead
25 Co-Lawyers and Co-Prosecutors previously.

1 Counsel – Mr. Co-Prosecutor, you may now proceed first.

2 [09.08.30]

3 MR. LYSAK:

4 Thank you, Mr. President. Good morning to you, and the Bench, and
5 counsel. I wanted to raise just a preliminary issue regarding a
6 list of documents that the Nuon Chea team circulated last night,
7 I believe, rather than raise this objection when – in the middle
8 of their proceedings.

9 A number of the documents listed were trial transcripts –
10 transcripts from the trial proceedings. It appears that the Nuon
11 Chea team, as part of its presentation, intends to do something
12 that none of us have done before, which is read testimony of
13 witnesses from the trial proceedings.

14 Now, I'm not certain of the use that they intend to make of trial
15 testimony from witnesses. If it is simply context or introduction
16 to a document they are presenting, we may not have any objection,
17 but if they intend to use this proceeding to present witness
18 testimony that they believe is relevant, I believe that goes
19 outside the scope of the intended purpose of these proceedings,
20 which is to discuss documentary evidence that the parties believe
21 are relevant.

22 So, I raise that issue now because there are a number of
23 documents on the list and I believe it's appropriate to raise
24 this objection now rather than in the middle of proceedings.

25 [09.09.55]

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1 MR. KOPPE:

2 Good morning, Mr. President. If I may briefly reply, there are
3 some trial transcripts in our documents – list of documents. It
4 is merely being used by me today to provide context, in a sense
5 of the probative value of the documents being presented. It's –
6 it gives a background to our argument, in which we are
7 challenging the probative value raised in those documents.
8 So it's certainly not the idea to present closing arguments, as
9 it were, just purely background context.

10 (Judges deliberate)

11 [09.11.07]

12 MR. PRESIDENT:

13 Counsels for Mr. Nuon Chea, you may now proceed.

14 MR. KOPPE:

15 Thank you, Mr. President, Your Honours. Good morning, Counsel.
16 Mr. President, today we will offer Nuon Chea's response to the
17 document presentations given by the Co-Prosecutors and the civil
18 parties, which we heard in this courtroom the week before last.
19 As the Chamber is aware, those presentations concerned two broad
20 topics: the five so-called criminal policies of the joint
21 criminal enterprise charged in the Closing Order and the role of
22 our client in Democratic Kampuchea.
23 We, my colleague Son Arun and myself, will respond to both parts
24 of that presentation today and tomorrow morning.
25 I will begin with a discussion of the five alleged criminal

1 policies and a brief, general discussion of Nuon Chea's role.

2 [09.12.25]

3 We anticipate, Mr. President, that part of our response will take
4 most of today's hearing. My Cambodian colleague, Son Arun, will
5 then speak about Nuon Chea's role in greater detail. And both he
6 and I have some general comments about the quality, reliability,
7 and authenticity of the evidence presented before the Chamber.

8 Finally, Nuon Chea himself will use the last hour of our
9 allocated time to make a statement. We anticipate that this will
10 happen during the second half of tomorrow morning's session.

11 Mr. President, I feel that it is necessary that I make some
12 opening comments about the scope of this trial.

13 Of course, the Chamber is familiar with our position about this.
14 We stated in objections during the Co-Prosecutors' and civil
15 parties' document presentations; we stated that. The Chamber may
16 also be aware that we have since filed an addendum to an
17 outstanding appeal with the Supreme Court Chamber.

18 [09.13.42]

19 Our submissions before both Chambers, your Chamber and the
20 Supreme Court Chamber, are based on the fundamental separation
21 which the Chamber established at the beginning of this trial.
22 That separation is between evidence of the existence of the
23 alleged criminal policies of Democratic Kampuchea, which is
24 admissible, and their implementation, which is, in our view,
25 inadmissible.

6

1 I think it is clear that both the Co-Prosecutors and the civil
2 parties have strayed frequently into questions of implementation,
3 and therefore into areas beyond the scope of this trial. And,
4 indeed, the Prosecution's position was not that they weren't
5 doing that; their position was that they were allowed to do that,
6 and they were very explicit in that regard.

7 And I will refer you, Mr. President, Your Honours, to the
8 transcript of June 26, 2013, at pages 40 to 42, where the
9 Prosecution made that very same argument. And needless to say we
10 disagree strongly with their view. We think it is essential to
11 Nuon Chea's right to a fair trial that this Chamber assign zero
12 weight and zero probative value to any of this documentary
13 evidence.

14 [09.15.12]

15 During the hearing on June 26, the Chamber rejected our
16 objections to the presentation of these documents. You held that
17 we would have an opportunity to make submissions on relevance and
18 probative value in our response.

19 With respect, Mr. President, that ruling is not a response to our
20 objection. There are two reasons for that.

21 First, this Chamber has already held that we are not entitled to
22 make objections concerning admissibility at these hearings.

23 Relevance is a question of admissibility, and we fear that,
24 notwithstanding the Chamber's most recent ruling that we are
25 allowed to contest relevance in our response, we will ultimately

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1 be told, as the Chamber has told us many times, that document
2 presentation hearings are only for probative value. And these
3 documents will end up within the pool of evidence that the
4 Chamber relies on.

5 [09.16.11]

6 There needs to be a clear and bright line exclusion of these
7 documents, which means that, in our view, they should not have
8 been presented to begin with.

9 Second, Mr. President, relevance is not the issue. The evidence
10 presented by the Prosecution is not inadmissible because it's
11 irrelevant; it's inadmissible because this Chamber has excluded
12 it in the Severance Order. Those are two very different things.
13 Last week, the Co-Prosecutors argued that evidence "on the
14 ground, lower down the line" is relevant to show that the policy
15 existed. That is a logical enough proposition, and we don't
16 disagree with it. In fact, as we will show later, the facts on
17 the ground as to the supposed execution of Lon Nol soldiers
18 support Nuon Chea's position that no such policy existed. But the
19 Chamber has clearly and repeatedly excluded implementation
20 evidence outside the scope of Case 002/01 from live testimony. It
21 has called no witnesses, it has prohibited parties from
22 questioning witnesses, except for experts or where relevant to
23 structure.

24 [09.17.37]

25 In our submission, the Chamber may not apply one strict standard

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1 to the admission of live evidence and a second much looser
2 standard in admitting documentary evidence. And in considering
3 whether documentary evidence may be considered by the Chamber in
4 this case, Case 002/01, it must therefore ask the following
5 question: Would a question about this documentary evidence -
6 excuse me. Would the question about this evidence be permitted
7 during live testimony? If the answer is no, the document must be
8 accorded zero weight by the Chamber. And we will, of course, over
9 the course of our response, identify for the Chamber evidence
10 presented by the Co-Prosecutors and civil parties which ought to
11 be disregarded for this very reason.

12 Mr. President, this is our legal objection to the evidence of
13 implementation. These are the legal reasons why that documentary
14 evidence is inadmissible. But, of course, underneath the legal
15 question is one rooted in the facts of this case, and it is a
16 question that is fundamental to the allegations against our
17 client; it is fundamental to Nuon Chea's defence against those
18 allegations; and it is fundamental to the way this Tribunal
19 thinks about the nature of Nuon Chea's responsibility for what
20 happened in Democratic Kampuchea.

21 [09.19.26]

22 Mr. President, Your Honours, as the Chamber is aware, Nuon Chea
23 does not deny the seniority of his role in Democratic Kampuchea.
24 He does not deny that he was involved in formulating the policies
25 of Democratic Kampuchea, but he does deny that those policies

1 were intended to cause the commission of crimes. Now, it is
2 exactly Nuon Chea's claim that if lower level cadres committed
3 crimes, they committed those crimes in defiance of the orders of
4 the Party Centre. And we submit that the evidence amply supports
5 Nuon Chea's position.

6 The evidence is overwhelming that criminal acts in Democratic
7 Kampuchea were committed by local cadres acting on their own,
8 without instruction. The evidence is overwhelming that criminal
9 conduct varied widely across Cambodia and depended on the whims
10 of local leaders. That is why we are so insistent that, where
11 policies outside the scope of Case 002/01 are at issue, the
12 Chamber consider no evidence of implementation. The Chamber
13 cannot seriously conclude that we have had an adequate
14 opportunity to show that the facts on the ground in cooperatives
15 and security centres deviated from the CPK's centrally directed
16 policies.

17 [09.21.07]

18 For that reason, Mr. President, we ask that in evaluating the
19 evidence placed before you - the documentary evidence - you pay
20 the closest attention to what was said by the Party Centre - was
21 said. If you focus carefully on what was said, you will find that
22 the Communist Party of Kampuchea had no intention to commit
23 criminal acts. The Communist Party of Kampuchea intended to
24 implement a socialist revolution in Cambodia - full stop.
25 I would like to quote something the Co-Prosecutors recently said

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1 in a filing to the Supreme Court Chamber. That was in document
2 E284/4/3. It was in fact the Co-Prosecutors' response to our
3 appeal against this Chamber's decision to renew severance of the
4 Closing Order. And the Co-Prosecutors said the following – and I
5 quote: "The Co-Prosecutors submit that this is not a political
6 trial in which the Accused are being prosecuted because they were
7 communists, socialists or revolutionaries." End of quote.
8 Mr. President, we would submit that the Co-Prosecutors'
9 presentation demonstrates that this claim is demonstrably false.
10 Every document in their presentation which truly concerned CPK
11 policy was about the general political goals of the revolution.
12 None of those documents instruct, assume or intend the commission
13 of criminal acts – not one.

14 [09.22.51]

15 Now, Mr. President, with that in mind, allow us to proceed to
16 discuss each of the alleged policies, one at a time. And with
17 respect to all five policies, we will show that the Prosecution's
18 key documents systematically fail to show any criminal intent on
19 the part of the Party Centre. We will ask the Chamber to recall
20 that the Prosecution's presentation reflects their selection of
21 the very best documents they could find after years of
22 investigation. And we will submit that this fact shows
23 convincingly that the Party Centre had no criminal intent. With
24 respect to the two policies which are within the scope of this
25 trial, we will make a preliminary showing that the evidence on

11

1 the ground corroborates Nuon Chea's position that if crimes were
2 indeed committed, they were sporadic, inconsistent, and driven by
3 local cadres.

4 I will now go, Mr. President, to the documentary evidence as
5 presented by the Prosecution and civil parties.

6 [09.24.08]

7 Permit me to make some general comments about the key documents
8 presented by the Prosecution.

9 I would like to comment especially on the Prosecution's use of
10 secondary sources. These are, for instance, books written by
11 people like Ben Kiernan and Philip Short. These books were
12 written by researchers who collected their evidence after the end
13 of the regime. They reviewed documents and interviewed witnesses,
14 and in Philip Short's case, he began his research 20 years after
15 the regime ended. And Mr. Short doesn't speak or read a word of
16 Khmer.

17 Now, if you allow me, speaking as a lawyer, and not even on
18 behalf of our client Nuon Chea, but just professionally, I find
19 this practice objectionable. This is not the way, in my view, you
20 run a trial. This is not the way you show that a person is guilty
21 of a crime.

22 I would like to remind this Chamber that the Prosecution's
23 presentation was supposed to be a presentation of key documents,
24 the heart of the case that our client and Khieu Samphan are
25 criminally liable.

1 [09.25.36]

2 Now, I don't mean to suggest that expert analysis is never
3 useful. It's useful for some purposes. For instance, the Chamber
4 has before it an expert report from Dr. Ewa Tabeau concerning the
5 demographics of Cambodia in the 1970s and the number of people
6 who supposedly died between 1975 and 1979. Now, we certainly have
7 serious methodological problems with that report, but at least
8 it's a proper expert report. It gives an expert opinion about
9 something outside the competency of the Chamber.

10 But the excerpts from the Short and Kiernan book used by the
11 Prosecution go to simple claims of fact - of facts about things
12 that supposedly happened in Democratic Kampuchea. Some of them
13 even go directly to the acts and conduct of the Accused. Pursuant
14 to this Chamber's ruling, evidence of the acts and conduct of the
15 Accused in a witness statement is inadmissible - that's in a
16 sworn witness statement. And, instead, what we have here is an
17 unsworn, unauthenticated claim from an author who was not present
18 in Cambodia that he has somehow found something out about Nuon
19 Chea or Khieu Samphan. Now, that's the kind of thing you use to
20 write a paper in a political science class in first year
21 university; it's not the kind of thing you use to prove guilt
22 beyond a reasonable doubt in a court of law.

23 [09.27.28]

24 The dangers of relying on secondary research, especially without
25 the appearance of even the author, was brought, in our view, into

1 sharp focus with the testimony - the recent testimony of Nou Mouk
2 on June 20. Nou Mouk was summonsed by the Chamber mainly because
3 Ben Kiernan claimed in one of his books that Mouk had told him
4 that Khieu Samphan approved of the evacuation of Phnom Penh. But
5 only once Mouk testified in Court did he explain that he was a
6 commune chief with almost no first hand interaction with any
7 senior leader of the CPK.

8 The Prosecution also relies, Mr. President, heavily on Thet
9 Sambath's book discussed extensively. Obviously, we concede, Thet
10 Sambath's book is different from Philip Short's or Ben Kiernan's.
11 Sambath claims to be describing things he was told by Nuon Chea.
12 But it too should be given no little - no too little weight by
13 this Chamber.

14 Thet Sambath says that his book was based on a mix of interviews
15 with our client, a manuscript given to Thet Sambath by Nuon Chea,
16 and Thet Sambath's own conclusions. But in most excerpts quoted
17 by the Prosecution, it is impossible to determine which of these
18 sources constitute the basis for Sambath's statements. None of
19 the original interviews are before the Chamber. And the
20 manuscript Nuon Chea gave to Thet Sambath is not on the case
21 file. Instead, the Chamber is being asked by the Prosecution to
22 rely on a summary woven together by some "Wall Street Journal"
23 reporter and Thet Sambath and packaged for commercial sale. That
24 book, therefore, is inherently unreliable.

25 [09.29.44]

14

1 And if the Chamber believed that Thet Sambath was in possession
2 of important evidence, it could have summonsed him to appear. The
3 Nuon Chea defence asked the Chamber to summons him, the
4 Co-Prosecutors asked the Chamber to summons him, at least twice,
5 and the Chamber decided that his testimony was not important
6 enough to hear live at trial. And it should not now conclude that
7 his unauthenticated book contains reliable and self-incriminating
8 statements from Nuon Chea.

9 Mr. President, Your Honours, I will now turn to the
10 Co-Prosecutors' claim that the CPK had a policy to - and I quote
11 the Prosecution - "eliminate, through the use of violence, all
12 perceived enemies of the CPK" - unquote. I will discuss the
13 Co-Prosecutors' documents one at a time. We won't discuss all of
14 them, but we will discuss most of them.

15 And our discussion, Mr. President, Your Honours, will show that
16 those documents are consistent with our client's long-held
17 convictions about his role in Democratic Kampuchea. We will show
18 that those documents reflect no plan or intent to commit criminal
19 acts. We will show that the language the Prosecution seeks to
20 rely on are not literal instructions to attack people, but
21 political arguments against oppressive systems and forces. We
22 will show that those documents are only about the CPK's most
23 general of political goals. And we will show that those goals are
24 legitimate, that on one level they reflect the politics of every
25 state in the world.

1 [09.31.50]

2 The first two documents the Co-Prosecutors presented were
3 excerpts from books by Philip Short and Thet Sambath – I've just
4 mentioned them. Those are document numbers E3/9 and E52.2 (sic),
5 respectively. Now, these are maybe not the most important
6 documents in the Prosecution's presentation, but the use to which
7 the Prosecution seeks to put them demands comment.

8 The Prosecution cites these books for the description that each
9 offers of the literature that the future leaders of the CPK read
10 as young men and women in the late 1940s. The Prosecution is
11 seeking to lay a foundation for what happened between 1975 and
12 1979 by identifying the books that students were reading 30 years
13 earlier, books that millions of people read every year, books on
14 which millions more have founded their political ideologies. And
15 this evidence, Mr. President, is part of the Prosecution's effort
16 to tell a simple and convenient story about a small group of
17 people who became obsessed with some ideas and used them to
18 destroy a country. But, of course, the story is much more
19 complicated. So, this evidence of Short and Sambath is of zero
20 relevance and of zero probative value to the facts under
21 consideration in this trial.

22 [09.33.37]

23 The evidence is also objectionable because of the claims that the
24 authors, and especially Mr. Short, make in connection with them.
25 While Philip Short is good enough to concede that the student's

1 readings cannot - quote - "of itself be blamed for what would
2 happen later", he does claim that they were a - quote -
3 "formative influence". He claims that learning of Stalin's
4 precepts - quote - "marked indelibly the thinking of the future
5 revolutionaries". Now, these claims, made almost 60 years after
6 the fact by a person with no grounding in Cambodian politics or
7 culture, about what these specific people were thinking at a
8 specific time, are, with all respect, outrageous. They are
9 entitled to zero probative value. They are also a reflection of
10 the way in which Mr. Short formulates his conclusions, which the
11 Chamber ought to consider in assessing his evidence more
12 generally.

13 The next document the Prosecution presented was a September 1977
14 issue of "Revolutionary Flag". This document number is E3/11. And
15 I would like to make a general comment about this first document
16 because this is going to come up over and over as we look at
17 these documents here today.

18 [09.35.22]

19 I have to say, Mr. President, that when we went back and looked
20 at the Prosecution's analysis of these documents and compared
21 them to the documents themselves, we were - and I have to say
22 that - quite appalled. We were appalled by the way in which the
23 Prosecution manipulated - and I use that word carefully, but I -
24 the way in which the Prosecution manipulated these documents.
25 They quoted selectively, they skipped portions that were

1 inconsistent with their narrow and prejudicial view of the
2 Accused, and they did not endeavour to give this Chamber anything
3 resembling a truthful or accurate interpretation of these
4 documents.

5 Now, this is a civil law system, Mr. President, where there ought
6 to be some kind of obligation on the part of the Prosecution to
7 see themselves as more than a mere party seeking to win a case.
8 They are supposed to be officers of the Court. But, especially
9 with these "Revolutionary Flags", what they did was pick and
10 choose the quotes they wanted this Chamber to hear, in such a way
11 as to actively distort the meaning of these documents. And we
12 think, Mr. President, Your Honours, that's very unfortunate.

13 [09.36.44]

14 Let us look at this first document carefully, because the
15 Prosecution quoted from it extensively.

16 The first quote the Prosecution used was at ERN: English,
17 00486227; Khmer, 00063138; and French, 00492814. And the language
18 was - and I quote: "The mission of national revolution meant
19 attacking and driving out imperialism to liberate the country."
20 End of quote.

21 We agree 100 per cent and suppose, or at least hope, that the
22 Prosecution is not trying to find anything unlawful in it.
23 Indeed, in this regard the CPK should be applauded for their
24 general - for their genuine desire to liberate Cambodia.
25 Then the Prosecution quoted language about the classes in

1 Cambodia and the contradictions between them. That was at ERN:
2 English, 00486228; Khmer, 00063138; and French, 00492815. At page
3 37 into 38 of the draft transcript – I won't repeat the whole
4 quote; you can see it. But the gist of it was that there are many
5 different contradictions between the – between the classes.
6 I'll quote one sentence, which was – and I quote: "The
7 contradictions were complex and much entangled." End of quote.
8 [09.38.29]
9 Now, by itself, that language would make you think that the CPK
10 saw Cambodian society as complex, that they were not trying to
11 blindly set one class against the other. And to try to dispel
12 that impression, the Prosecution quoted two other statements
13 further down in the same page.
14 The first was – and I quote: "It was from the landowners that the
15 peasants suffered the worst, the most varied, and most direct
16 oppression. Thus, 85 per cent of the population – the peasants –
17 were in contradiction with the exploiting class that exploited
18 them directly; the landowners." End of quote.
19 And the second quote was – and I quote again:
20 "This contradiction was a life and death contradiction. This was
21 a profound contradiction in Kampuchean society, one which
22 impacted 85 per cent of the population. It was for this reason
23 that the First Party Congress defined this contradiction as an
24 antagonistic contradiction. This being the case, how could this
25 contradiction be resolved? The peasants had to be whipped up to

1 struggle and fight against the exploiting classes, the feudalist
2 landowners." End of quote.

3 [09.40.03]

4 So the Prosecution is inviting this Chamber to conclude that the
5 CPK saw the 85 per cent as being in a life and death
6 contradiction with the rest of the population.

7 However, from from the very next sentence, the document states as
8 follows - and I quote again:

9 "That had to be the general solution. But to win, the peasants
10 had to gather up one another to be on their side. Our concrete
11 experience had clearly shown that once we succeeded in mobilizing
12 85 per cent of the people, the rest would follow, except for a
13 small minority who would not go along. This is what we set as the
14 mission of democratic revolution. By 'democratic revolution', we
15 mean the liberation of the people. Concretely, it is the
16 liberation of the 85 per cent majority of the people who are the
17 peasant class. To liberate the peasants, who make up 85 per cent
18 of the population, is to liberate all the people at one blow.
19 Among the 15 per cent remaining, the great majority would follow
20 the masses of the peasantry who form a powerful revolutionary
21 force." End of quote.

22 [09.41.29]

23 So what this language that the Prosecution deliberately and
24 consciously omitted clarifies: that in making revolution the
25 peasant and worker classes are not expected to be in conflict

20

1 with the rest of society; instead, they are expected to join
2 forces with the vast majority of the population against a tiny
3 group of truly ruling class landowner elites.

4 Next, Mr. President, the Prosecution quoted an excerpt from ERN:
5 English, 00486230; Khmer, 00063141; and French, 00392816. In that
6 excerpt the document states - quote: "Spiritual leaders of the
7 exploiting classes disseminated information to bury these
8 contradictions. The belief that bad and good deeds from another
9 life resulted in present conditions served to deceive the
10 peasants and prevent them from seeing the contradictions" End
11 quote.

12 Now, that, of course, is straightforward and very orthodox
13 Communist ideology. Religion is the opiate of the masses. And you
14 could probably find 10,000 critical studies professors in western
15 universities, still today, who say exactly the same thing about
16 their own societies.

17 Next-

18 [09.43.14]

19 MR. PRESIDENT:

20 Counsel, could you please hold on?

21 Mr. Co-Prosecutor, you may now proceed.

22 MR. LYSAK:

23 Thank you, Mr. President. I do have an objection to part of what
24 counsel is doing in his presentation.

25 I have no problem - he wants to suggest that - that we omitted

21

1 information. That is the purpose of this presentation. If he
2 believes there are relevant passages from these documents that we
3 did not present, fine. This is his opportunity to do that.
4 Where I do object is him – characterization of our presentation,
5 but also his attempt to provide commentary, as if he is an expert
6 himself on Communist ideology, to provide purported explanations
7 of these documents based on other literature which he is not
8 presenting.

9 I think that counsel is certainly entitled to read the portions
10 of these documents that he believes are relevant, but this
11 constant commentary, submissions, and attempts to provide
12 testimony himself about the meaning of these documents, I
13 believe, is improper.

14 [09.44.39]

15 MR. KOPPE:

16 Honestly, Mr. President, I have no idea how to react to this.
17 This is what we do as defence lawyers, we comment on the
18 probative value; we make arguments – an argument while we're
19 doing it. Of course, the Prosecution might not agree, but that's
20 – that's how it is.

21 So, I don't see, really, how I should do things differently.

22 (Judges deliberate)

23 [09.48.21]

24 MR. PRESIDENT:

25 I hand over to Judge Silvia Cartwright. You may proceed, Judge.

1 JUDGE CARTWRIGHT:

2 Yes. Thank you, President.

3 The Trial Chamber is not treating this as an objection and it
4 does not wish to interfere with the manner in which defence
5 counsel wishes to present its documents or its comment on
6 documents, but just to remind defence counsel that any comments
7 that are made that are not based on evidence before us or
8 documents before us, of course, have very little weight, very
9 little if any weight, Mr. Koppe. And I know that you understand
10 that.

11 Thank you.

12 MR. KOPPE:

13 Thank you, Judge Cartwright, for that guidance.

14 Mr. President, I have been told by my colleague that I'm going a
15 little fast for the translation, so I will slow it down a little
16 bit.

17 [09.49.32]

18 I was still speaking about this "Revolutionary Flag", Mr.

19 President, before the objection was made.

20 The Co-Prosecutors continued to quote, in their presentation,
21 from the same "Revolutionary Flag", document number E3/11, and

22 they used the following excerpt - at ERN: English, 00486233;

23 Khmer, 00063145; and French, 00492820; and I quote:

24 "Once we made the analysis of the contradictions within

25 Kampuchean society, how did we determine who were the enemies of

1 the revolution and who were the revolutionary forces? There were
2 two enemies who had to be fought: the first was imperialism,
3 particularly American imperialism; and the second was the feudal
4 class, the landowners, the reactionary compradors." End of quote.

5 [09.50.51]

6 And, indeed, Mr. President, the Prosecution ended their quote at
7 a convenient location, because, beginning with the very next
8 sentence in this document, it reads as follows - and I quote
9 again:

10 "The forces of revolution were the workers, the peasants, the
11 petty bourgeoisie, the national level capitalists, and the
12 prominent patriots and progressives. We had to gather up whatever
13 forces there were in the national society, gather them all. If we
14 only gathered up a few, we would not succeed in the struggle. If
15 we mobilized only some of them, we would only have succeeded to
16 some extent. If we mobilized all of these forces, we would win
17 completely. If we managed to gather up a large, powerful force,
18 we would win a tremendous victory. This was the factor
19 determining whether we would win or lose. Therefore, we had to
20 know how to gather up the forces of the workers, peasants, petty
21 bourgeoisie, national-level capitalists, and the patriotic
22 personalities."

23 [09.52.16]

24 "Therefore, how could we mobilize the workers, the peasants, the
25 petty bourgeoisie, the national bourgeoisie, and the prominent

1 patriots? We proceeded according to the line of looking for any
2 major contradictions to be attacked. The major contradictions
3 were with imperialism and the feudal landlord system, which we
4 had to combat. As for the minor contradictions, they had to be
5 resolved by reciprocal concessions in a way that allowed the
6 unity of all the forces against imperialism, especially American
7 imperialism, and the system of the feudalists, landlords, and
8 reactionary compradors." End of quote.

9 Now, Mr. President, the document continues along these lines for
10 the rest of the paragraph, describing the dialogue between these
11 classes and their effort to come to a mutually beneficial
12 position. But further down that same page, it then makes the
13 following remarkable statement - and I quote again:

14 [09.53.26]

15 "The petty bourgeoisie, the pupils, students, and intellectuals
16 of every kind, are allies of the workers and peasants. It was the
17 same in the past and it is still the same today, in the status of
18 their original class."

19 Now, in the next paragraph, even the so-called national level
20 capitalists are described as friends of the revolution. They were
21 not - quote - "a fundamental force", but they did provide - quote
22 -"strategic assistance".

23 And in the next paragraph after that, even certain elements of
24 feudal aristocracy, the comprador capitalist class and the
25 landowner class - the core of the group which was seen to oppress

1 the peasantry - acted as - and I quote - "tactical forces" in
2 support of the revolution.

3 [09.54.29]

4 And finally - at ERN: English, 00486233; Khmer, 00063145; French,
5 00492820 - this discussion ends with the following, which, to
6 their credit, the Prosecution did indeed cite - and I quote:

7 "We divided our enemies into three groups:

8 "First, to win over those enemies who could be won over in some
9 circumstances.

10 "Second, to neutralize those who could be neutralized, so that
11 they could not carry out actions against us.

12 "Third, to isolate the most vicious, in order to attack them."

13 So, Mr. President, Your Honours, if we read all of this together,
14 the Revolutionary Movement is described as an alliance of a broad
15 cross-section of the Cambodian society against a tiny group of
16 large landowners which persist in oppressing the peasantry. And
17 even those enemies are - quote - "won over" or - quote -

18 "neutralized" where possible. Now, this is a dramatically
19 different story from the one the Prosecution told you, which we
20 get by doing something fairly simple: actually reading the whole
21 document.

22 [09.56.04]

23 The Co-Prosecution - Co-Prosecutors, excuse me, then continued to
24 cite from this same document. From the middle of page 40, on the
25 draft transcript, until the top of page 43, they quoted a series

1 of excerpts about the use of political and military violence in
2 the course of the revolution between 1968 and 1975. And those are
3 from ERN: English, 00486251 to 54; Khmer, 00063148 to 49; and
4 French, 00492824. This is still document E3/11.

5 Now, with respect to these excerpts, we aren't even sure we know
6 what the Prosecution's point is. Surely the Prosecution
7 recognizes that armed violence may be used in a civil war, and
8 surely they recognize that a rebel force has the right to make
9 revolution, especially against foreign invaders and colonialists,
10 which the Lon Nol regime was in every functional respect. So, Mr.
11 President, Your Honours, we submit that none of this is relevant
12 at all to any so-called CPK policy.

13 Before leaving this document, I just want to quote the last
14 excerpt the Prosecution quoted, because I think that quote
15 strongly supports our client's position. And the Prosecution's
16 decision to quote it - to quote it as if it were unlawful
17 reflects a failure to think about what any of this actually
18 means.

19 [09.57.56]

20 The quote was from ERN: English, 00486248; Khmer, 00063163; and
21 French, 0049837 (sic); and it states:

22 "The line of our Party defined in 1960 state:

23 "1. To make a national revolution by eradicating the

24 imperialists, especially the American imperialists; and

25 "2. To make democratic revolution by abolishing the reactionary

1 regime of the feudalists and comprador capitalists from Kampuchea
2 society.

3 "We completely realized those two tasks on 17 April 1975." End of
4 quote.

5 Now, Mr. President, it should be obvious to anyone who reads this
6 with any kind of context that it is not referring to individual
7 American human beings; it's not referring to people who were
8 feudalists and capitalists; it is referring to systems of
9 imperialism, feudalism, and capitalism. It is those systems which
10 were the target of the CPK. And we submit this is obvious from
11 the language.

12 [09.59.21]

13 But any ambiguity is resolved by the last sentence, which states:

14 "We completely realized these two tasks on 17 April 1975."

15 Obviously, the CPK hadn't murdered every American, capitalist,
16 and feudalist by 17 April 1975. What they had done was - and I
17 quote - "eradicate" the political system which held those people
18 in power. That was the objective of the CPK, and that is the
19 meaning of this document.

20 And to tie this to a point I made earlier, it is in a sense - it
21 is in this sense that the Prosecution's case is fundamentally a
22 political one, because while they pretend to be prosecuting the
23 CPK for causing harm to people, they actually accuse them of
24 having waged war against a system.

25 Mr. President, the next two documents are irrelevant for much of

1 these same reasons. The documents – the document numbers are
2 E3/2072 and E3/147. They include excerpts from one speech by Pol
3 Pot and another by Nuon Chea, each describing the use of – quote
4 – "revolutionary violence" – end quote – in the period before
5 1975. For the same reasons I've already given, that is not
6 relevant to anything. You'll also note that those speeches
7 continued to describe the effort to defeat – and I quote –
8 "imperialism and feudalism", and in both respects, Pol Pot and
9 Nuon Chea are obviously speaking of social forces.

10 [10.01.25]

11 The Co-Prosecutors then presented a series of four issues of
12 "Revolutionary Flag" intended to show that – I quote – "this
13 policy continued over the course of the DK regime" – end of
14 quote.

15 The first issue of this "Revolutionary Flag" was from June 1976.
16 It is document number E3/760. The Prosecution gave us a very
17 short excerpt from this issue, and the reason would seem that, if
18 you read this document as a whole, the language is very benign.

19 The excerpt the Prosecution gave us is from ERN: English,
20 00509614; Khmer, 00062849; and French, 00487759. It is at pages
21 45-46 of the transcript – draft transcript, and it reads as
22 follows:

23 "What will the enemy do next? Are they strong or are they
24 weakening?

25 "We may respond by saying that the enemy will carry out

1 activities against us and against our revolution in various
2 forms. This is a continual struggle between revolution and
3 counter-revolution; it will not stop. Arm yourselves with the
4 stance that the enemy exists - will exist for ten, twenty, thirty
5 more years. National peoples' struggle is like class struggle: in
6 short, the struggle between revolution and counter-revolution
7 will continue.

8 "Are they strong or not? This issue does not depend on them; it
9 depends on us. If we take absolute and repeated measures the
10 enemy will weaken. They will scatter into bits." End of quote.

11 [10.03.32]

12 Even this excerpt which the Prosecution specifically chose to
13 present is, in our view, innocent. It only warns - warns of the
14 danger of possible enemies and challenges the people to struggle
15 against it. A little later today-

16 Let me move on. We want to - we want to stress that if you read
17 the document as a whole, it becomes even more apparent just how
18 innocent it is. So we will continue to quote from this document,
19 beginning at the very first sentence after the end of the
20 Prosecution's excerpt - and I quote again; sometimes long quotes,
21 Mr. President, I apologize:

22 "When we are weak, they are strong. By us being strong, what I
23 want to say is that we have correct views and take correct
24 political and military measures. In a zone, in a sector, in a
25 district, in a village, or in a cooperative, it is the same. When

1 a cooperative is strong, the enemy cannot enter. But when a
2 cooperative is not strong, the enemy stirs up constant turmoil.
3 Not being strong comes from the cooperative leadership committee
4 not being strong and from the people not being strong. When the
5 leadership committee is strong, the people clearly are strong.
6 [The] issue depends on whether or not the people understand when
7 educated, whether or not the livelihood of the people can be
8 sorted out. So then, this depends on us, the Party, and on the
9 revolution; it does not depend on the enemy." End of quote.

10 [10.05.24]

11 But on the next page, Mr. President, Your Honours, this document
12 explains what it means to say that the Party can "grasp the
13 people" - and I quote again:

14 "The important thing is to take measures, in particular to grasp
15 the cooperatives. The Party must grasp the cooperatives. How can
16 the Party grasp the [cooperatives] in the framework of countering
17 the enemy? Grasp them tightly in terms of politics; make them
18 understand the important political lines of the Party. Grasp them
19 ideologically; make them crystal clear. Each mission of the
20 Party, each plan of the Party, must be explained [to them] so
21 that they understand and are crystal clear. Paddy dikes, feeder
22 canals, three tons, building the country and defending the
23 country ... must be explained to them to make them crystal clear.
24 When their understanding is crystal clear, they are pleased; they
25 fight on their own; they have their children and grandchildren

1 join the army, join the mobile units, put up paddy dikes, and
2 feeder canals.

3 "Furthermore, grasp them organizationally; grasp them
4 collectively; and grasp their biographies in turn. Use the forces
5 of the masses in the cooperatives to counter the enemy. The Party
6 Organization or four to ten cores cannot counter them. When our
7 cooperatives are solid, the enemy cannot enter."

8 [10.07.08]

9 That is, Mr. President, the end of that quote. And, again, we
10 apologize for the length of this excerpt. Sometimes, we
11 understand, it might get hard to follow, but it is exactly our
12 point that these documents can't be understood with the sound
13 bites which the Prosecution spent three days feeding the Chamber.
14 The documents are very nuanced. And we submit to you that when
15 you read this full excerpt as a whole, the essential point is
16 that if the cooperatives do the work of the Revolution well, if
17 they are strong and grasp the people, then - quote - "the enemy
18 cannot enter". So, this is not an effort to encourage a witch
19 hunt; it is a call to abide the political goals of the
20 Revolution.

21 After this, the Prosecution presented three more "Revolutionary
22 Flag" magazines. Those were dated April 1977, June 1977, and May
23 1978. The document numbers are E3/742, E3/135, and E3/727.

24 [10.08.24]

25 Mr. President, we are going to have to make a difficult decision

1 at this point not to go into these specific documents in greater
2 detail. There are a few reasons for that: one is our limited time
3 and resources, both here today and in preparation; and the second
4 is that these documents are not very relevant to this trial -
5 this trial segment. That's because they're all either at the very
6 end of the temporal jurisdiction or possibly outside of it
7 altogether. Also this policy is not within the scope of this
8 trial in Case 002/01. So we'll deal with these documents in our
9 closing submissions.

10 Let me just make one comment about them, which is that it seems
11 clear that the language in these documents gets harsher in or
12 around the middle of 1977. And we think that is not surprising.
13 That was a time at which the armed conflict with the Vietnamese
14 was escalating into bouts of full-scale war. That's what happens
15 in wartime in countries. Politicians start saying some vicious
16 things. That doesn't mean they're war criminals. So I'll point
17 that out in part as a very preliminary effort to place those
18 documents in a context, but also to point out that there's a
19 reason why the June 1976 "Revolutionary Flag" sounds different
20 from the May 1978 "Revolutionary Flag". And the Chamber should,
21 in our submission, find that the latter is of no probative value
22 in terms of policies in existence in 1975 and 1976.

23 [10.10.35]

24 Next, Mr. President, the Co-Prosecutors presented five documents
25 from the Central or Standing Committee.

1 The first is E3/1173, and it's dated February 1976, and it
2 concerns this explosion in Siem Reap, with which the Chamber is
3 familiar. And all it says is that there is a need to - quote -
4 "re-educate internally". We don't think there is anything illegal
5 or criminal about that, so we don't think this shows anything
6 about a so-called criminal policy concerning enemies.

7 The second is E3/232, and it's the minutes of the March 1976
8 Standing Committee meeting. It is true that some lower-level
9 cadres report to the Committee about some security concerns, but
10 there's no indication of anything unlawful - just that some
11 suspects have been arrested or interrogated. We don't find it too
12 surprising that there was some general reporting back to the
13 Standing Committee as a whole about this general subject matter.
14 So we're not sure what the relevance of this particular document
15 is.

16 [10.12.11]

17 The next document, E3/12, purports to be a "decision of the
18 Central Committee regarding a number of matters" - end of quote.

19 The first one is "the right to smash, inside and outside the
20 ranks". Mr. President, I'll make two brief comments about this.
21 One is that this document says nothing about enemies. There's no
22 instruction in relation to any person or any group. There's no
23 evidence of any harm being done to anybody.

24 Second, as we see in many of these documents, the word "smash" is
25 used in a variety of contexts. We're going to discuss that a bit

1 more in just a few moments, because one of the documents the
2 prosecutor cited shows that very clearly, but for now I'll just
3 say that the word "smash" is a general one. Certainly, it does
4 not simply mean "kill".

5 The next document, E3/763, is a June 1978 document from the
6 Central Committee. We're going to skip over this document for now
7 for the same reason we didn't directly address those
8 "Revolutionary Flags" dated after the middle of 1977.

9 [10.13.46]

10 The fifth and final document in this set, E3/99, is a Party
11 document from September 1975. And we think if the Chamber reviews
12 this document, you will find nothing - even remotely - criminal
13 about it. The excerpt cited by the Prosecution describes the
14 decline of pagodas.

15 The Prosecution said that the "key language" is in the portion of
16 the document which states that when the monkhood is in decline -
17 quote - "this special layer of the society will no longer cause
18 any worry" - end of quote. We don't think it's any secret that
19 the CPK preferred that monks would participate in society as
20 regular workers and citizens, and there's no hint, here, of any
21 discriminatory conduct against monks of any kind, nor are monks
22 described as enemies. Therefore, this document is irrelevant.

23 Now, Mr. President, from this stage onwards, the Prosecution's
24 presentation was almost entirely about what this Chamber has
25 called questions of implementation. The prosecutors talked about

1 implementations - implementation at ministries, in the military,
2 and at security centres, and as you know, we find the
3 presentations of these documents, after 20 months of trial during
4 which everyone accepted that all of this was outside the scope,
5 to be just quite incredible.

6 [10.05.31]

7 I suppose we cannot fault the Prosecution for trying. We are,
8 however, I have to say, confused about why the Chamber let them
9 get away with it. All we can say is that you must now, Mr.
10 President, Your Honours, decide not to consider a single one of
11 these documents during any part of your deliberations. Any other
12 choice would be a flagrant violation of client's right to
13 confrontation.

14 Now, there were two documents mixed in here which were within the
15 narrow scope of the existence of the JCE policy. We will talk
16 about those documents. The Chamber can infer that, in terms of
17 any document we do not talk about, our position is that those
18 documents are outside the scope of this trial. We won't waste
19 time by listing every single one of them.

20 One of those documents is, for instance, a speech given by Pol
21 Pot in April 1976. The document number is E3/818. As usual, the
22 excerpt cited by the Co-Prosecutors is misleading. The
23 Co-Prosecutors first quoted the following - from ERN: English,
24 00143463; Khmer, 00072756; and French, 00548896; and I quote:
25 "No matter how well we do things, if the imperialists are alive,

1 if their CIA is alive, if their reactionary groups are not yet
2 eliminated from the face of the world, they will continue
3 opposing the revolution, opposing us, opposing anything
4 progressive, both overtly and clandestinely."

5 Pol Pot continues-

6 [10.17.36]

7 Even on its own terms, this excerpt is obviously just general
8 political rhetoric.

9 No, I'm sorry, it's not his quote; I'm reading from my own-

10 So, end of quote of Pol Pot.

11 But even on its own terms, Mr. President, this excerpt from this
12 Pol Pot speech is obviously just general political rhetoric. But
13 the context of the statement makes it even clearer what this
14 language means and how irrelevant it is, because the context of
15 the discussion is the opposition of other world government to the
16 CPK regime.

17 The title of the section of the document is "The Individual

18 Identities and Reactions around the World toward the

19 Establishment of Our New Government of Democratic Kampuchea".

20 That's on the previous page from the last excerpt. And the

21 document explains how, in the early days of the Soviet and

22 Chinese revolutions, the world "cursed" them too. "It was only

23 after ten years, 15 years," and I quote, "after liberation before

24 a number of countries made contacts with China."

25 The forces "opposing" the CPK revolution are not the internal

1 cadres who must be smashed; they are world public opinion and
2 diplomacy.

3 [10.19.02]

4 And the Co-Prosecutors also chose to omit the final brief
5 sentence immediately following this paragraph: "This is normal."
6 End of quote.

7 In the second excerpt from this document, Pol Pot is quoted as
8 saying - at ERN: English, 00143467; Khmer, 00072761; and French,
9 00548899; and I quote:

10 "Defend the revolutionary state authority, the fruits of the
11 revolution; defend the Party, the people, the Army, independence,
12 sovereignty [against] every form of enemy activity, both overt
13 and covert. We must always be in high revolutionary [diligence],
14 always be in mastery." End of quote.

15 Again, Mr. President, this perfectly innocent call to ensure that
16 the national defence of the country is protected - can anyone
17 imagine how badly a state would fail if it did not seek to defend
18 its independence and sovereignty against overt and covert
19 threats? - but this perfectly innocent call is made even more
20 innocuous by including the portions deliberately and consciously
21 omitted by the Prosecution, because the sentence which
22 immediately follows is this - and I quote:

23 "We can be in mastery only when we train [or] educate the masses
24 in every ministry and office and in the Army, in the
25 cooperatives, the unions, etc. Therefore, do not think about

1 committees. Only when the entire masses absorb, only when we use
2 the masses as our eyes and as our noses will we be able to
3 defend, to be in mastery."

4 [10.21.05]

5 Thus, Mr. President, Your Honours, as with the June 1976
6 "Revolutionary Flag" which we discussed earlier, defence comes
7 about through education. And, once again, this has nothing at all
8 to do with violence.

9 The next document is a speech given by Pol Pot to the
10 Revolutionary Army of Kampuchea in July 1975. The document is -
11 number is E3/5. And, once again, it's nothing more than an
12 instruction that, even though the CPK won the war, they must
13 continue to be vigilant about opponents of the revolution.
14 Now, what in this speech does the Prosecution complain about,
15 exactly? Was it untrue that "the mission of the army is to defend
16 the country"? Was it untrue that imperialism and colonialism was
17 a continuing threat to Cambodia and to Communism in April 1975?
18 Was it untrue that capitalists and feudalists should be expected
19 to "resist" a Communist revolution and seize back state power?
20 Was it untrue that they were likely to "use every tactic"? Is it
21 criminal to be "vigilant" in defending a state against both
22 internal threats and foreign states? Could the Prosecution name a
23 country that is not "vigilant" in defending itself?

24 [10.22.45]

25 Neither is the instruction to "smash" espionage groups and

1 saboteurs an order to kill anyone. And how do we know that, Mr.
2 President? Because in the very same document, on the very same
3 page - in fact, in the very next sentence, immediately following
4 one of the excerpts read out by the Co-Prosecution -
5 Co-Prosecutors in Court - Pol Pot is quoted as describing the
6 objective of the feudalists and the capitalists as follows: "To
7 destroy the revolution, to smash the revolution, and to seize
8 state power back from us."

9 Now, unless the meaning of the word "smash" changed from one
10 sentence to the next, there is no question at all that it was
11 intended metaphorically.

12 I'm mindful of the time, Mr. President. I'm going to a last set
13 of documents. I could pause here or I could continue. It's up, of
14 course, to you. Continue?

15 MR. PRESIDENT:

16 You may continue for about five more minutes.

17 [10.24.12]

18 MR. KOPPE:

19 The last set of documents, Mr. President, Your Honours, I'm going
20 to make reference to is a long sequence of telegrams. This was a
21 fairly substantial part of the discussion, and it runs from pages
22 79 through 95 of the English language June 25 draft transcript.
23 Now, most of these documents concern implementation and are
24 outside the scope of this trial. The only reason I refer to them
25 is because some of them purport to copy either our client, Nuon

1 Chea, or an entity such as Committee 870 or Angkar.
2 To the extent that the Chamber concludes that some of these
3 telegrams were intended for Nuon Chea, among others, they might
4 be considered relevant to the question of his role. That subject
5 was covered in more detail the following day, on June 27th. And,
6 in fact, I think some of these telegrams were presented again on
7 June 27. And all this will be addressed later by my colleague Son
8 Arun. But since many of these documents were presented during
9 this segment, I just want to make two brief points; and, again,
10 my colleague will make some similar arguments.

11 [10.25.40]

12 We count 12 telegrams and reports that were presented in this
13 segment. The earliest document is from March 1976. The document
14 number is E3/871. I think, if the Chamber has a look at that
15 particular document, you'll see it doesn't say much of any
16 interest. The next document, which does not copy Nuon Chea, is
17 dated August 1976. And the next document after that is from March
18 1977.

19 So, basically, the Co-Prosecutors were able to find zero
20 documents showing our client's role in relation to enemies,
21 within the temporal jurisdiction of this specific segment of the
22 trial. Their earliest document is almost two full years after
23 Tuol Po Chrey, which is the only allegation at issue in this
24 segment of the trial which concerns an identifiable enemy.
25 The second point I would like to to make is that none of these

1 documents show that Nuon Chea took any action of any kind. They
2 just purport to show him receiving some documents. And needless
3 to say, I am not suggesting that any of this is actually
4 relevant. I am merely making these two very specific
5 observations.

6 [10.27.06]

7 Now, Mr. President, that concludes my one-by-one discussion of
8 the Prosecution's documents in relation to the JCE policy on
9 enemies.

10 But to complete our response, these documents must be placed in a
11 greater context, and this greater context, with your leave, I
12 would like to describe after the break.

13 MR. PRESIDENT:

14 Thank you, Counsel.

15 It is now appropriate moment already for the adjournment. The
16 Chamber will adjourn for 20 minutes. The next session will be
17 resumed by 10 to 11.00.

18 (Court recesses from 1028H to 1051H)

19 MR. PRESIDENT:

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

21 I hand over the floor to the defence team for Mr. Nuon Chea to
22 resume your comments or observations on the key documents
23 presented by the Co-Prosecutors and Lead Co-Lawyers for civil
24 parties. You may proceed.

25 MR. KOPPE:

1 Thank you, Mr. President.

2 I've been told that I'm going much too fast for the translators
3 to keep up, so I suppose I do have to slow down. And if I go too
4 fast, I hopefully will be hearing that.

5 Mr. President, Your Honours, before the break I concluded my
6 one-by-one discussion of the Prosecution's documents in relation
7 to the JCE policy on enemies. But to complete our response, these
8 documents, of course, must be placed in a greater context. The
9 statements about so-called enemies made by or on behalf of the
10 CPK leaders are no different from the rhetoric routinely used by
11 world leaders everywhere.

12 [10.54.02]

13 The idea that the CPK had a policy of killing enemies is
14 something like saying that every state which has an army has a
15 policy of war. Protecting its government and its citizens against
16 internal and external enemies is part of the core function of
17 what states do.

18 If you allow me – and I'll be very brief, Mr. President on this,
19 but if you allow me, let us look at some examples.

20 In a speech broadcast proudly to the world in September 2011,
21 President George Bush of the United States described his
22 determination to find and kill the enemies of the United States:
23 "We will find those who did it. We will smoke them out-"

24 MR. PRESIDENT:

25 Counsel, could you please hold on?

1 And, Mr. Co-Prosecutor, you may now proceed.

2 [10.55.10]

3 MR. LYSAK:

4 Thank you, Mr. President.

5 Counsel has already been told to limit himself to the documents
6 in this case. Now he's attempting to present evidence about
7 speeches by other world leaders. This is not evidence that is
8 part of this trial. I don't want to interfere in his
9 presentation, but I think he is well exceeding the proper scope,
10 permissible basis of responding to the documents that were
11 presented by the Co-Prosecutors.

12 MR. KOPPE:

13 Mr. President, if I may reply, I'm not presenting evidence; I'm
14 trying to picture a general - a more general context. I'm quoting
15 four lines of a speech that everybody in this courtroom,
16 everybody in the world knows about. It's not evidence; it's a
17 matter of general knowledge.

18 I'll be doing - I'll be giving some other quotes - two or three
19 more - just to picture the broader context. It's not presenting
20 any evidence.

21 (Judges deliberate)

22 [10.57.05]

23 MR. PRESIDENT:

24 The objection by the Co-Prosecutor regarding the way the
25 presentation is made is appropriate.

1 Counsel is advised to present his position regarding how he would
2 like to respond to the key documents on the facts presented in
3 the case file, other than going beyond the scope, as indicated.

4 MR. KOPPE:

5 I was - I was merely trying, Mr. President - and I will - I will
6 not quote - I had some nice quotes for you, actually. I will not
7 quote, but I - my intent was merely to put it in a broader
8 context. The policy of speaking, by the CPK, of internal and
9 external enemies is exactly what the United States has been doing
10 recently and in the Second World War, when it, for instance, came
11 to the internment of Japanese people in the U.S. It's a pity.

12 Well, I will move on to the actual targeting of Lon Nol
13 officials, Mr. President, Your Honours, and that is the alleged
14 CPK policy to execute former soldiers and officials of the Lon
15 Nol regime.

16 [10.58.40]

17 As the Chamber knows, we vigorously dispute the existence of this
18 supposed policy. And the more this Chamber hears of the
19 Prosecution's offer of proof, the more obvious it becomes that no
20 real evidence exists and that there was no policy.

21 Now, we will spend quite a bit of time on this - this topic, so
22 allow me, Mr. President, to give you a short roadmap of how our
23 presentation will progress. It will have three parts.

24 First, we are going to offer the Chamber some general
25 observations about the limitations of the documentary evidence

1 before the Chamber. This is, as you will, a general summary of
2 the kinds of weaknesses we are seeing in these documents.

3 Second, we will go through the documents that the Prosecution
4 presented. We will do this fairly thoroughly and try to show the
5 Chamber how these general weaknesses apply across all of the
6 evidence.

7 And thirdly, we will talk a little bit about our own analysis of
8 the witness statements on the case file – witness statements
9 quoted earlier by the Prosecution. We will show that these
10 statements are chronically unreliable, that they say nothing of
11 substance, and indeed, that in many ways they affirmatively
12 disprove the Co-Prosecutors' claim that the CPK set out to target
13 soldiers and officials of the Khmer Republic.

14 [11.00.42]

15 Mr. President, permit me to begin with some general comments in
16 respect of these documents.

17 Sometimes the most important thing about the evidence in a case
18 is what it does not include. What does the evidence not include
19 in this case?

20 The first thing it does not include – and I have – we haven't
21 heard in the – in the presentation – is a single piece of
22 physical evidence that a single soldier was executed anywhere in
23 Cambodia. There are no exhumed mass graves and no dead bodies,
24 there is no forensic analysis. Now, this is not standard practice
25 in a murder investigation; it is not standard practice at

1 international courts. In Yugoslavia, investigators went out to
2 the field, they dug up graves, they found bodies all together in
3 one place, and they were able to determine when those people were
4 killed and how. Now, that is proof; that is evidence.

5 [11.01.55]

6 The other thing the documentary evidence doesn't include is a
7 single witness to a single execution of a single soldier. Now, we
8 are going to talk about this in much greater detail - greater
9 detail later, when we go through the evidence, the documentary
10 evidence, and talk about those witness statements. But for now,
11 Mr. President, let me give this - let me give the Chamber this
12 one takeaway conclusion: Not a single one of those witnesses
13 witnessed a single killing. Even in an ordinary, domestic murder
14 investigation, the fact that there was no body - no body - no
15 evidence of the time, or place, or method of death, and no
16 eyewitness account would make a conviction nearly impossible. Our
17 client is being accused of mass murder. The charges are serious,
18 and the documentary evidence should logically be more plentiful,
19 and not less, and the standards that we apply in this courtroom
20 should be at least as high.

21 As defence lawyers, we have only one anxiety about the evidence
22 that has been presented about the supposed policy to execute Lon
23 Nol soldiers and officials. It is not that the evidence is
24 strong; it is that the evidence is so weak, so weak that we have
25 become accustomed to it in this courtroom. We fear that, to use

1 an English expression, the Prosecution is "moving the goalposts".
2 In other words, they are changing the standards by which these
3 kinds of charges are usually judged.

4 [11.03.52]

5 And we would urge the Chamber to guard against that. We would
6 urge this Chamber to ensure that the documentary evidence is held
7 to the high standard which the law requires.

8 Now, I don't mean to say that a murder case can't be
9 circumstantial. It can be if the evidence, of course, is strong
10 enough. But the fact that there is literally no direct evidence
11 of any kind is meaningful. It should make this Chamber insist
12 that the circumstantial evidence on offer is especially
13 compelling.

14 With that in mind, I would like to call your attention, Mr.
15 President, to a systematic flaw in that documentary evidence. It
16 is in both the witness statements and the document itself. The
17 flaw is that almost none of those documents presented by the
18 Prosecution say anything about killing. They talk about the
19 alleged victims being - I quote - "separated", "taken away",
20 "arrested", "sent to Angkar". But without any evidence that any
21 of those people were killed - and there is none - those documents
22 show nothing of relevance to this trial. The Chamber - this
23 Chamber is being urged to conclude that because people were
24 targeted they must necessarily have been killed. But that
25 inference, Mr. President, is far too aggressive. It is not

1 supported by the evidence. And on appeal, the aggression of that
2 inference, obviously, will not stand.

3 [11.05.52]

4 There are numerous ways in which we can show the Chamber the
5 danger of inferring – inferring murder merely from evidence of
6 targeting. Now, if you will allow me, let us look at three brief
7 examples.

8 One example is from a witness who testified recently before the
9 Chamber. His name was Nou Mouk. He testified on June 20. During
10 the Co-Prosecutors' examination, Nou Mouk described an instance–

11 MR. PRESIDENT:

12 Mr. Co-Prosecutor, you may now proceed.

13 MR. LYSAK:

14 I'm sorry to have to get on my feet again, Your Honours, but this
15 is a point that I raised at the start, and counsel is, I believe,
16 veering far from the purpose of this proceedings.

17 [11.06.49]

18 We are going to have final arguments. Counsel is entitled, in
19 final arguments, to address issues about burden of proof, to talk
20 about the witness testimony. This is not the time to be making
21 final closing arguments, and counsel's now attempting to read
22 from part of the testimony of a witness and make overall comments
23 about the burden of proof, which we strenuously disagree with,
24 but more to the point, is not part of the purpose of the current
25 proceedings.

1 So, we would object to the use - to counsel, at this point,
2 reading testimony - trial testimony - and making comments about
3 that.

4 MR. KOPPE:

5 Mr. President, my intention was to paraphrase one or two
6 sentences from this trial transcript, and not making any closing
7 arguments. I'm just trying to establish the probative value of
8 documents in relation to what a - one specific witness - because
9 I only use one witness - has actually testified. So, it's all
10 about the context in respect to the probative value, and not
11 making an argument or closing argument about the value of Nou
12 Mouk. I'm just using him as a frame of reference in respect of
13 the probative value of these particular documents. That's what
14 I'm doing; nothing more.

15 (Judges deliberate)

16 [11.10.11]

17 MR. PRESIDENT:

18 The objection by the Co-Prosecutor regarding the presentation by
19 Counsel Koppe is appropriate.

20 Counsel is now instructed to make sure that the observation is
21 made relevant to the key documents presented by the other
22 counsels, rather than presenting the confession.

23 MR. KOPPE:

24 Very well, Mr. President. I intended to give you four examples,
25 actually - not three, but for examples showing the danger of

1 inferring murder merely from evidence of targeting. I will now
2 use only three examples. I will not speak about Nou Mouk.

3 My other example - my second example is the following, and that
4 is an example from a telegram the Prosecution presented to this
5 Chamber. The document number is E3/807.

6 [11.11.32]

7 We will address the claim which the Prosecution makes about this
8 document soon, but for now, I would like to point the Chamber to
9 one sentence in this specific document. The document states - and
10 I quote - 'the children of soldiers, sub district chiefs, and
11 police were purged and sent to do production in one place'.

12 Now, what we are interested in is the word "purge". Many
13 documents, as you know, use the word "purge". And typically the
14 Prosecution asks the Chamber to interpret that word to mean
15 "execute". But obviously, in this particular document, it
16 doesn't. Obviously it just means "separate", because you can't be
17 killed and then sent to do production.

18 A third example - or now a second example - is from Philip
19 Short's book, document E3/9. I'll quote from English ERN
20 00396488. There is no Khmer translation, and my apologies that we
21 don't have the French ERN. According to Short, during the
22 evacuation of Phnom Penh, factory workers - factory workers were
23 separated from the general population. Short comments: "When
24 nothing further was heard from them, many deportees concluded
25 that they had been killed. In fact," so says Short, "most had

1 been taken to Phnom Penh to help restore production in the
2 factories where they had worked previously."

3 [11.13.18]

4 Another example, Mr. President, is that – one that we had already
5 seen: even the word "smash" does not always mean "kill". And we
6 showed that further up in our discussion of document number E3/5.
7 The limitations in the – in this evidence are such that even if
8 no contrary evidence existed, the Chamber would be incapable of
9 making the remarkable conclusion that a countrywide policy to
10 execute all Khmer Republic soldiers and officials existed. But
11 contrary, evidence does exist. The Prosecution's evidence is not
12 just insufficient on its face; there are countless statements
13 which show clearly that the Party Centre explicitly instructed
14 their troops and cadres not to execute soldiers. We're going to
15 read some of those statements for you later in – this morning, or
16 probably this afternoon.

17 [11.14.22]

18 There are statements from people who worked directly with Nuon
19 Chea, Pol Pot, and others within the core of the Party Centre,
20 and these are people who were relied on repeatedly by the
21 Investigating Judges in the Closing Order. They were relied on by
22 the experts summonsed by this Chamber as key insider witnesses.
23 And they say: No, Nuon Chea and Pol Pot did not order the
24 execution of the soldiers of the last regime. There are other
25 statements from soldiers in the field who state their

1 instructions were not to kill soldiers captured in battle. Unlike
2 the Prosecution's systematically flawed documentary evidence, all
3 of these statements contain first-hand evidence. All of them are
4 from witnesses who were in the position to know the facts they
5 are telling us.

6 These were some general observations, Mr. President. Let me now
7 begin to discuss the specific documents presented by the
8 Co-Prosecutors.

9 And let me begin that discussing - that discussion by quoting
10 some of the first words of that presentation. The Co-Prosecutors
11 said the following - and this is at page 98 of the draft
12 transcript for June 26; they said, and I quote:

13 "Let me now turn to the documents that answer a question that
14 Nuon Chea's counsel has asked a number of times, which is: Where
15 are the documents that show the policy targeting Lon Nol
16 officials and soldiers?" End of quote.

17 [11.16.14]

18 Now, Mr. President, Your Honours, I have to admit that when I
19 heard that, I got excited. I remember I was sitting here in this
20 chair, and I think I even sat forward a little bit, and I suppose
21 I was excited for a couple of reasons.

22 One is just that it was good to find that the Prosecution has
23 been listening to the Nuon Chea defence team. We weren't sure of
24 that before. But then they chose to spend a substantial part of
25 their presentation on the documents about this alleged policy of

1 targeting Lon Nol officials. And I realized, Mr. President, that
2 we are actually on the same page; we're both concerned about
3 whether any actual evidence of this policy exists.
4 And the second reason I was excited is that I felt like we were
5 about to hear something really interesting. Here was the
6 Prosecution telling us at long last, "Here are the documents
7 you've been waiting for." And it will not be a surprise, Mr.
8 President, that - if I admit that I was a bit - it was a bit of a
9 let-down, because then the Co-Prosecutors actually presented
10 their documents. And as they came up on the screen, those
11 documents failed completely and totally to give this Court even a
12 glimmer of evidence that anybody in the Party Centre ever
13 formulated a policy of any kind to execute former soldiers and
14 officials of the Khmer Republic. Indeed, even the excerpts of the
15 documents which the Co-Prosecutors quoted in Court sometimes tend
16 to establish that the Party Centre did not intend to execute
17 former officials of the Khmer Republic.
18 [11.18.18]
19 To show that, Mr. President, I will now go through those
20 documents in some detail and I will follow the order of the
21 Prosecution's presentation.
22 First, the Prosecution presented two documents intended to show
23 the ideological foundations of the supposed policy to execute Lon
24 Nol officials. The first document was a 1974 issue of
25 "Revolutionary Youth". The document number was E3/146. The second

1 was an October 1976 issue of "Revolutionary Flag", and that
2 document number was E3/10.

3 Let me first repeat, Mr. President, the observations I made
4 earlier concerning with the Prosecution's use of similar
5 documents in connection with the so-called "enemies policy".

6 It is apparent that these documents are manifestly inadequate to
7 establish the existence of a concrete policy to execute specific
8 people. They offer only the most general prescriptions about
9 class divisions. The Chamber should take heed of the
10 Prosecution's use of these documents as an indication of how weak
11 the overall body of documentary evidence must truly be.

12 [11.20.07]

13 But even if we did accept this evidence on the Prosecution's own
14 terms, we would find that they have seriously misrepresented to
15 the Chamber what it says. They have selectively quoted from it to
16 badly distort its meaning. And we can only assume that the
17 Prosecution understands well how disproportionate the resources
18 are on each side of this aisle and are hoping that the defence
19 teams have no time to verify these documents.

20 The Prosecution uses the first document, E3/146, for definitions
21 of two types of classes: the feudalist aristocratic class and the
22 intellectual second capitalist class. As the Co-Prosecutors
23 rightly say - at ERN: English, 00538746; Khmer, 00283409; and
24 French, 00611810 - the document defines the
25 feudalist-aristocratic class to include the "king and high-rank

1 officials such as minister, provincial governor, and district
2 governor, down to the Commune chief and 'chumtub' [clerk]".
3 [11.21.38]

4 The Co-Prosecutors then skipped the next page. That's not
5 surprising, since it says the following – and I quote:

6 "Our attitude toward these groups is that we have to persuade
7 them to join the Front and then to eliminate their political
8 stance and their old ideology by educating them continuously. But
9 it is important that we redistribute land to them and have them
10 do labour work to produce food to support themselves." End of
11 quote.

12 Further down in that same page, the document describes a
13 different kind of feudalist class, which it calls the
14 feudalist-landowner class, and these include – and I quote –
15 "persons who own land and have their power to control land" – end
16 of quote.

17 And then, just one paragraph further down, it states – and I
18 quote again:

19 "We should not – we should not – attack them constantly. We must
20 know how to persuade them to join in the front rank, but we
21 always have to be cautious with them. We should struggle with
22 them to diminish their influence by reducing their rice paddy to
23 as little as what the other peasants have." End of quote.

24 [11.23.18]

25 Having skipped, Mr. President, Your Honours, this rather

1 interesting page, the Co-Prosecutors then misrepresented the
2 document even more egregiously by citing the definition of the
3 "intellectual second capitalist class" - the second -
4 "intellectual second capitalist", at English ERN 00538746; Khmer,
5 00283409; and French, 00611810. The Co-Prosecutors rightly say
6 that this - this class includes - quote - "students and civil
7 servants who mainly use their intelligence for living" - end of
8 quote - but they leave out the paragraph immediately before and
9 the sentence immediately after.

10 A fuller quote reads as follows:

11 "The second capitalist class.

12 "To speak conclusively, this is called the mediocre middle class.
13 They do not oppress anyone, but they are not oppressed by anyone
14 either. Their economic interest is mediocre, and so is their
15 political interest. They live peacefully."

16 [11.24.40]

17 Then it continues:

18 "There are 2 types of second capitalists:

19 "1. Intellectual second capitalists: These include students and
20 civil servants who mainly use their intelligence for living.

21 Their important point is that they are patriotic; they love
22 revolution and want to do the revolution because they, to some
23 extent, are oppressed by the enemy. Another strong point is that
24 they can understand and see the idea and theory quickly.

25 "But their weak points are: They are afraid of hardship; they

1 want to stay peacefully alone; and they absorb the revolutionary
2 line slowly. This is because they rarely received any hardship
3 and were not badly oppressed by the enemy." End of quote.

4 The Prosecution's treatment of the second document, E3/10, Mr.
5 President, was less dishonest. Not surprisingly, it is also - it
6 also proves nothing pernicious. Indeed, it explicitly recognizes
7 that capitalists and feudalists can reform - they can reform. It
8 also explains that government officials, policemen, soldiers and
9 students were not themselves the instigators, but that when the
10 capitalists and feudalists held power, they paid - I quote - they
11 "paid government agents to show their faces" - end of quote. And
12 the implication is, now that they do not hold power, they, and
13 not their agents, are the targets.

14 [11.26.40]

15 Next, the Prosecution presented an excerpt from an interview
16 given by Ieng Sary in April 1978. The document number is E3/707.
17 In the excerpt quoted by the Prosecution, Ieng Sary - and I quote
18 - "described the different forces within the Kampuchea ruling
19 class at that time, indicating three broad groupings. On the far
20 right, there were those like Lon Nol, who were completely
21 reactionary and nothing but lackeys of foreign imperialism. In
22 the centre stood Sihanouk, the Head of State, and some others
23 like him, who, while opposing communism, also supported a policy
24 of genuine political independence for the country. And on the
25 left were progressive people like Khieu Samphan, today's

1 President of the State Presidium, who at that time was a
2 well-known intellectual and politician" - end of quote.

3 Your Honours, I could probably spend my whole day just talking
4 about how little this one quote has to do with any allegation in
5 this trial.

6 Firstly, it is apparent that Ieng Sary is speaking here of the
7 very highest ranking members of the Cambodian political class. He
8 himself - he himself calls them the "ruling class". It says
9 nothing about military officers, let alone ordinary soldiers.

10 [11.28.42]

11 Second, it is once again once a vague political analysis. It
12 doesn't so much as hint that anybody, even Lon Nol himself, ought
13 to be executed.

14 Third, it is almost as if the Prosecution forgets that Ieng Sary
15 is describing a moment in time during which he was one of the
16 leaders of a rebel movement fighting - fighting a civil war
17 against Lon Nol. Does the Prosecution expect Ieng Sary to
18 compliment Lon Nol's leadership skills? Under the circumstances,
19 his language could be only described as mild.

20 But fourth and maybe most important, is there anyone in this
21 courtroom that seriously doubts this analysis of Ieng Sary? Of
22 course Lon Nol was a client of the United States, of course he
23 was bound to the United States; he was also exceptionally
24 corrupt.

25 Most of the evidence before this Court shows that the wealthy

1 merchant class in Phnom Penh, whom the Prosecution would seek to
2 place first on the list of enemies of the CPK, also hated Lon
3 Nol. Ieng Sary's opposition to Lon Nol shows exactly nothing
4 about the CPK attitude toward any segment of the population.

5 [11.30.23]

6 There is only one interesting thing about this quote, which is
7 that according to Ieng Sary, Sihanouk is not a right-wing
8 reactionary, but a middle-ground supporter of Cambodia's
9 political independence. By 1975, Sihanouk represented an
10 infinitely larger segment of the population than Lon Nol; Lon
11 Nol, Mr. President, didn't represent any segment of the
12 population at all.

13 Now, the Prosecution quoted from one more section of this
14 document, which I will reiterate as well for the Chamber – and I
15 quote: "We mobilized both the middle and left sections of the
16 ruling class," says Sary, "and built a united front with them
17 against foreign domination. We isolated the real traitors, like
18 Lon Nol." End quote.

19 Now, our last comments apply equally to this excerpt. It is
20 hardly surprising or interesting that Ieng Sary described the
21 leader of the government he was seeking to overthrow as a
22 traitor. Lon Nol was giving his tacit permission to the United
23 States to obliterate the Cambodian countryside, using B-52 bombs.
24 How many people in Cambodia in April 1975 did not see Lon Nol as
25 a traitor? How many people did not believe that Lon Nol had

1 forsaken Cambodia to the Americans? Did every person who thought
2 Lon Nol was a traitor want to execute ordinary soldiers? The
3 document, Mr. President, is absurd on its face.

4 [11.32.28]

5 Next, the Prosecution cited a series of documents describing
6 messages sent by the Khmer Rouge in the last days of the war. I
7 will list those documents quickly for the benefit of the Chamber.
8 They are: E3/783, /117, 334, 120, and E3/118. Now, most of the
9 excerpts cited by the Co-Prosecutors repeat the call for the
10 execution of the so-called seven "super traitors". Others
11 describe other happenings during the final days before 17 April
12 1975.

13 Firstly, Mr. President, let us deal once and for all with this
14 question of the so-called seven "super traitors". The
15 Co-Prosecutors insist on returning to this issue time and again,
16 yet the alleged crime itself is not within the scope of the
17 trial, and the message which surrounded it was precisely that
18 everyone other than the "super traitors" would be spared. So,
19 even if those communications cited by the Prosecution do reflect
20 an intent to kill those exact seven people, they also show the
21 opposite as to everyone else, including the alleged victims
22 crimes who actually are at issue in this trial.

23 Other-

24 MR. PRESIDENT:

25 Mr. Co-Prosecutor, you may now proceed.

1 [11.34.26]

2 MR. LYSAK:

3 Thank you, Mr. President. I will make an objection here.

4 I let a lot go; this is counsel's opportunity. But he continues
5 to make rather serious misstatements, in this proceeding, about
6 the scope of this trial. He's made many such misstatements
7 already, but this one is important not to let go.

8 There is no question, if he would read the Closing Order, that
9 the executions of the two seven (sic) "super traitors" who
10 remained in Phnom Penh is part of the scope of this trial; it is
11 directly referenced and included in the charges relating to the
12 first forced movement. And for counsel to stand up and make this
13 representation is incorrect. This is his opportunity to address
14 documents, but it is not an opportunity to mislead about the
15 scope of the trial.

16 [11.35.27]

17 MR. KOPPE:

18 Mr. President, I think we have all read the Closing Order, and
19 it's our position that the killing of these "super traitors" is
20 not specifically part of the Closing Order. That's why we are
21 making the argument.

22 Of course, primarily, we are making the argument that from the
23 documents in respect of the killing of the seven "super
24 traitors", no probative value can be deducted when it comes to
25 the targeting and killing of, let's say, normal Lon Nol officials

1 or soldiers.

2 That is our position, and if the Prosecution disagrees, that's -
3 that's fine. But it is our position.

4 (Judges deliberate)

5 [11.38.10]

6 MR. PRESIDENT:

7 Counsel for Mr. Nuon Chea, you may resume.

8 MR. KOPPE:

9 Thank you, Mr. President.

10 My other point in respect of the seven "super traitors" is that
11 other sections of the quoted documents only reinforce our
12 impression.

13 Co-Prosecutors quote, from document number E3/118, a statement on
14 FUNK radio by Khieu Samphan. Describing the Lon Nol Government
15 Leadership Community on April 13, Khieu Samphan says - and I
16 quote:

17 "This Supreme Committee does not represent anyone but a few
18 traitors. The creation of this organization is an anti-national
19 and anti-popular act designed to continue the treachery of the
20 last bunch of traitors. For this reason," Khieu Samphan says,
21 "all brother countrymen in Phnom Penh and the few provincial
22 capitals still under temporary enemy control should unite their
23 strength and overturn this treacherous organization." End of
24 quote.

25 [11.39.42]

1 We believe that Khieu Samphan's message is very clear: all
2 Cambodians should act together against the tiny group of leaders
3 at the very highest level of the government. Most striking in
4 this quote is Khieu Samphan's reference to – and I quote – "all
5 brother countrymen in Phnom Penh", which definitively refutes the
6 Prosecution's claim that city-dwellers were treated as enemies in
7 April 1975. Those "brother countrymen" included any officials of
8 the former regime outside of the Supreme Committee.

9 Mr. President, the next group of documents continue on this
10 general theme. They too all concern this very small group of
11 individuals at the very top of the Lon Nol regime in Phnom Penh.
12 The document numbers are: E3/2694, E3/2700, E3/2702, D365/1.1.39,
13 and E3/604.

14 The first three documents are communications from Jean Dyrac, the
15 ranking diplomat in the French Embassy, and the final two
16 documents are articles from the "Washington Post" and the
17 "Bangkok Post", respectively.

18 [11.41.41]

19 All five documents combined purport to describe only three
20 executions: two of the seven "super traitors", and Lon Non, Lon
21 Nol's brother. Jean Dyrac's telegrams say that 100 people were
22 expected to surrender as prisoners to the Khmer Rouge the
23 following day – as prisoners. There's no evidence of who those
24 people were and there is no evidence from this document of what
25 happened to those people.

1 The next document, Mr. President, Your Honours, we readily admit,
2 is arguably the best piece of evidence the Prosecution came up
3 with. It is an execution order from Comrade Pin, and it is
4 document number is E3/832. It is, at least, nominally relevant,
5 which by itself sets it apart from the rest of the documents
6 presented by the prosecutors, and if it were the 15th or 20th
7 piece of evidence, it might even be compelling.

8 [11.43.08]

9 But all this document shows is that an order was delivered by
10 Comrade Pin to somebody to execute 17 specific people. It does
11 not show who the order came from or to whom it was delivered. The
12 fact that the order ostensibly came from – quote – "the Party"
13 proves, of course, nothing. The Chamber has heard testimony that
14 cadres at all levels used the label "Angkar" opportunistically to
15 exercise their own petty authority. Pin's use of the phrase –
16 quote – "the Party" does not mean anything literal, including
17 that he was implementing an order from a superior.

18 The document also clearly shows that whoever did decide to
19 execute these 17 people, if indeed someone did, it was not
20 because of their military position. The document specifically
21 states, the alleged victims were – and I quote – "examined" –
22 unquote – before a decision to execute them was made. Now, if a
23 policy to execute all soldiers or all officers existed, there
24 would be no need to "examine" any of them.

25 Next, in the document, to certain names, there are additional

1 indications that each person's loyalty was assessed.

2 [11.45.10]

3 Next to number 14, for instance, Eam Say, the document states the
4 following - and I quote:

5 "He is a former teacher who was a traitor when he was a teacher.

6 In his biography, he criticizes us very strongly, using

7 psychological warfare. His responses show absolute support for

8 the Republic regime and opposition to the Revolution."

9 I'm referring, Mr. President, to ERN: English, 00068919; and

10 Khmer, 00068916.

11 And there the order also lists two other senior military officers

12 and a sub-district chief, noting - and I quote: "Please keep for

13 examination the following named persons..." End of quote.

14 Now, that alone proves that even senior military officers were

15 not executed as a matter of policy.

16 Next, the Prosecution presented a 21 May 1976 news report from

17 "Agence France Presse" that 54 former generals were executed

18 shortly after 17 April 1975.

19 [11.46.35]

20 In general, Mr. President, the Prosecution's continued reliance

21 on news sources should again be an indicator to the Chamber of

22 the overall weakness of its documentary evidence, but this

23 document is especially unreliable, and has no probative value

24 whatsoever, and should be disregarded completely. Neither the

25 journalist nor the unnamed - quote unquote - "resistance

1 spokesman" who acts as the sole source is known. Even the
2 description of the source as a "resistance spokesman" is
3 confusing; resistance to whom? A resistance faction against Pol
4 Pot? If so, isn't the claim transparent anti-Khmer Rouge
5 propaganda, is the question.

6 And the article, Mr. President, Your Honours, is even more
7 unreliable because on the substance it makes no sense. It claims
8 that the list of generals was - and I quote - "sent to several
9 western governments" - unquote. Now, why - why would the CPK
10 execute 54 people and then announce to the world - to the world
11 that they had done it? And if they did want to announce it to the
12 world, why would they quietly send the message to western
13 governments and not bluster about it in the "Revolutionary Flag",
14 as they did with the seven "super traitors"?

15 [11.48.33]

16 If it was disclosed to several governments, why isn't there any
17 evidence from any other source, aside from this single news
18 report from a single journalist? Why did the CPK suddenly decide
19 to reveal the executions 13 months after they happened? Why did
20 they "draw up a list" in December 1975, seven months after it
21 happened? And how did they contact Western governments without
22 any direct diplomatic relations? None of this, Mr. President,
23 Your Honours, makes any sense.

24 Next, the Co-Prosecutors discussed two biographies prepared by
25 cadres of the Ministry of Foreign Affairs. Those document numbers

1 are E3/3569 and E3/128. To us, it is apparent that these
2 documents mean absolutely nothing, so I will spend no time on
3 them. I will only say now, today, that they make no mention of
4 any execution or even ill treatment of anyone.

5 [11.50.12]

6 Next, Mr. President, the Co-Prosecutors supplied three different
7 S-21 prisoner lists.

8 Now, before we look at these specific documents, allow me to make
9 an obvious point: many different kinds of people are alleged to
10 have gone to S-21. According to the Closing Order, the total
11 number of Lon Nol soldiers allegedly killed at S-21 is 328. Now,
12 if our math is correct, that makes 2.5 per cent of the total of
13 12,000 prisoners. Is that a lot? Was the Lon Nol army more or
14 less than 2.5 per cent of the population? The Prosecution does
15 not say. So we just know these people were apparently Lon Nol
16 soldiers. But from this document, there is no evidence that any
17 of them were sent to S-21 because - because - they were Lon Nol
18 soldiers. There is no evidence that any one person went to S-21
19 because they were in the Lon Nol army.

20 Let us now look at the specific documents the Co-Prosecutors
21 presented. If we look at these documents carefully, we will see
22 that the first document proves the opposite of what the
23 Co-Prosecutors say it proves. It shows that no policy of
24 executing Lon Nol officials existed. And the other two documents
25 prove nothing at all; they have no probative value whatsoever.

1 [11.52.22]

2 The first document, Mr. President, is number E3/1539. It claims
3 that in one month, in March 1976, 162 Lon Nol officials and
4 soldiers were killed at S-21. If in fact 162 Lon Nol soldiers
5 were killed in March 1976, that only means they were not killed
6 for almost a whole year. If there had been a policy to execute
7 all Lon Nol soldiers, they would have been killed, most likely,
8 11 months earlier.

9 Also, the fact that from this document it seems to appear that
10 many soldiers were sent to S-21 all at once strongly suggests
11 that they were executed not because they were Lon Nol soldiers,
12 but for some other more specific reason. Obviously, something
13 happened in March 1976, but we don't know what that is. But it
14 isn't that the CPK suddenly decided to kill all Lon Nol soldiers.
15 The second document is E3/2189. The Co-Prosecutors say that this
16 document shows an effort to target Lon Nol officials because the
17 title of the document is - and I quote - "Prisoners who were
18 Government Officials" - end of quote. According to OCP - and I am
19 quoting them now - "the very title that was given by S-21 to this
20 list reflects the targeting of government officials or civil
21 servants".

22 [11.54.40]

23 The Prosecution, however, did not show this document on the
24 screen. We think we know why: because it contains a total of six
25 names. We do not know why this document carries the title that it

1 does, but it is obvious it says nothing about any alleged policy.

2 And if it does, then it would be a very limited policy.

3 The third document was E3/3597. Some of the people on this list

4 are alleged to have been former soldiers and officials, and some

5 are not, but the Prosecution does not tell us how many of each,

6 nor is there any reason to believe that any of these people were

7 sent to S-21 because of their former position in the government.

8 It is also irrelevant.

9 The Co-Prosecutors then presented the minutes of a Standing

10 Committee meeting concerning the royal family. That is document

11 number E3/197. Again, it says nothing of any executions or any

12 kind of executions about the Lon Nol government or about the Lon

13 Nol government as such, and therefore it is completely irrelevant

14 and misses any probative value.

15 [11.56.25]

16 Then the Co-Prosecutors presented three military communications.

17 All three documents are, once again, irrelevant. The document

18 numbers are E3/1162, E3/183 (sic), and E3/807. All these

19 documents show is that in these particular units, soldiers were

20 monitored to see if they had any connection or loyalty to the

21 last regime, which is reasonable enough and certainly not out the

22 ordinary in a new revolutionary state.

23 I wanted to quote you something about every person of Japanese

24 ethnicity who was held for four years in internment camps in U.S.

25 during World War II, but I was not allowed to do so.

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1 But here you see the direct relatives of people who actively
2 fought against the CPK treated a little bit differently from the
3 rest of the population.

4 Your Honours, what is the Prosecution's point when it comes to
5 these documents? We, at least, have no idea.

6 [11.57.47]

7 The next two sets of documents presented by the Co-Prosecutors
8 were a group of records from the Tram Kak cooperatives and then
9 three witness statements. We acknowledge that the Prosecution
10 described those witness statements as a sample of what they claim
11 to be a larger group. Mr. President, as we indicated earlier this
12 morning, we plan to present our own discussion of the witness
13 statements, and the three statements the Co-Prosecutors presented
14 are part of that discussion, and the Tram Kak records also relate
15 to those statements. But I'll - if it pleases the Chamber, I'll
16 put those documents aside for now and move on to the
17 Co-Prosecutors' last few documents.

18 And I would say that it would be an appropriate moment, Mr.
19 President, to have the lunch break. Thank you.

20 MR. PRESIDENT:

21 Thank you, Counsel.

22 It is appropriate moment for lunch adjournment. The Chamber will
23 adjourn until 1.30 p.m.

24 Security personnel are now directed to bring Mr. Khieu Samphan to
25 his holding cell and have him returned to the courtroom by 1.30

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1 p.m.

2 The Court is adjourned.

3 (Court recesses from 1159H to 1332H)

4 MR. PRESIDENT:

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

6 We would like to hand over to counsel for Mr. Nuon Chea to
7 continue his presentation and observation regarding the key
8 documents put by the Co-Prosecutors and the Lead Co-Lawyers for
9 the civil parties. You may now proceed.

10 MR. KOPPE:

11 Thank you, Mr. President. Good afternoon, Your Honours. Good
12 afternoon, Counsel.

13 I will continue with my comments on the probative value of the
14 documents presented in respect of the targeting of the Lon Nol
15 officials and military.

16 And I had arrived, before the lunch break, at the "Revolutionary
17 Flag" from August 1977, document number is E3/193. The
18 Prosecution claimed during it's presentation that this document
19 contains an instruction to execute Lon Nol soldiers in positions
20 of authority in cooperatives.

21 [13.34.33]

22 First, Mr. President, we would like to ask the Chamber to notice
23 that this particular document is dated two and a half years after
24 the events at Tuol Po Chrey. So, in our view, it is entirely
25 irrelevant to state policy as it existed in April 1975.

1 The substance of the document, in any case, contains only vague
2 ideology. It has no instruction or order to cause harm to anyone.
3 The Co-Prosecutors may have succeeded in giving the Chamber a
4 different impression during their presentations, but they did
5 that only through duplicity: by, as it were, stringing together
6 into one coherent paragraph three unrelated excerpts from three
7 different pages. They took one in passing reference to Lon Nol
8 soldiers out of context, they placed it next to a second out of
9 context instruction four pages later to – quote – "smash the
10 enemy", and then they invited the Chamber to conclude that cadres
11 were being instructed to smash Lon Nol soldiers. A closer review
12 of the document shows something much more benign.

13 [13.36.17]

14 At ERN English 00399234 to 35; Khmer, 00062963 to 4; and French,
15 00611839 to 40, the reference to Lon Nol soldiers is merely an
16 example of the non-peasant class in positions of authority in
17 certain cooperatives. To them, the reference is made. The
18 instruction to smash on page 17 was not an instruction to kill
19 people, but to eliminate ideology, and a fuller quote from that
20 section of the document reveals that. And I quote again – and
21 this is a longer citation:

22 "Who holds the power in each cooperative? Generally speaking, in
23 the entire West Zone, in a large part we already control the
24 cooperatives and state power, meaning it is already in the hands
25 of the Party's worker-peasants. [...] It is still in the hands of

1 various other classes. And if it is in the hands of other
2 classes, have those classes come over to the side of the
3 revolution? No. They oppose the revolution. It is only a matter
4 of whether they oppose the revolution a little or a lot, whether
5 they antagonistically oppose or do not yet antagonistically
6 oppose. After we make this assessment, we have to prepare to lead
7 the cooperatives. Prepare what forces? Prepare the poor peasants
8 and the lower-middle class peasants to control the cooperatives,
9 to attack and smash the state power of other classes who stole
10 control from of our cooperatives and give it back to the poor
11 peasants and the lower-middle class peasants down below. Now we
12 have been able to screen and fight in the zone, able to fight in
13 the sectors, able to fight in the districts; but we have not yet
14 been able to fight in the cooperatives. It is imperative to
15 prepare forces to attack, attack and smash the enemy and the
16 no-good elements embedded inside and controlling the
17 cooperatives." End of quote.

18 [13.39.16]

19 We would like to ask the Chamber to recognize two things about
20 this larger quote: one is that the so-called other classes in
21 control of the cooperatives do not necessarily - I quote -
22 "antagonistically oppose" the revolution; and the second is the
23 instruction to - quote - "smash the state power of other classes"
24 and then give that power - quote - "back to the poor peasants and
25 the lower-middle class peasants down below". Now, no policy to

1 execute former soldiers could possibly be inferred from this
2 document.

3 Mr. President, the final four documents in the presentation of
4 the Prosecution all purport to be military communications from
5 either the North or Northwest Zone and addressed to, either,
6 Committee 870, Angkar, or Brother Pol. The four documents are
7 similar: they all report that enemies have been recently
8 identified and state that some of them are former Lon Nol
9 soldiers.

10 [13.40.54]

11 One document states that they were arrested, and two do not say
12 what action, if any, was taken.

13 The last telegram states that the soldiers were purged. As we
14 have seen, that term can have different meanings. So, these final
15 four documents are literally the only four documents - only four
16 key documents presented by the Co-Prosecutors which suggest that
17 anyone in the Party Centre was even aware that any action of any
18 kind was taken against any former Khmer Republic officials,
19 beyond - beyond the seven "super traitors". None of these
20 documents say that the soldiers were killed. None of the
21 documents describe any action taken by the Party Centre. All of
22 the documents are dated long after the events at Tuol Po Chrey
23 took place. So they are not in any way probative of a policy to
24 execute all Khmer Republic soldiers and officials as of April
25 1975.

1 Mr. President, Your Honours, that concludes our discussion of the
2 Prosecution's statements – the Prosecution's documents. We will
3 now turn to the final segment of our response with regard to this
4 alleged policy. We will present certain witness statements
5 tendered into evidence by the Co-Prosecutors.

6 [13.42.58]

7 Those statements will establish two things: first, the witnesses
8 who are best placed to know about both the intentions of the
9 Party Centre and the conduct of troops and cadres on the ground
10 consistently state – testify that Lon Nol soldiers and officials
11 were unharmed; second, the evidence which the Prosecution
12 contends establishes a pattern of executions is systematically
13 unreliable, especially in the light of the direct evidence which
14 contradicts it.

15 Mr. President, with your leave, the first document we would like
16 to present is an excerpt from a video. The video is "One Day at
17 Po Chrey". You have seen portions from that video earlier. The
18 document number is E186.1R. The relevant passage in that video is
19 from, the timer, at 21 minutes up until 22 minutes and three
20 seconds. And in it, Nuon Chea states his own position about
21 whether a policy to execute former Lon Nol soldiers existed.
22 So, with you leave, Mr. President, I would like to show the
23 Chamber this minute from the Tuol Po Chrey movie.

24 [13.44.55]

25 MR. PRESIDENT:

1 Mr. Co-Prosecutor, you may now proceed.

2 MR. LYSAK:

3 Thank you, Mr. President.

4 This – notwithstanding that this video is not on the list of
5 presentation documents that we were provided with, we have no
6 objection to it. I assume, however, that counsel will be playing
7 the full excerpt. Given his repeated ad hominem attacks on the
8 Prosecution today, I would hope that he is playing the full
9 excerpt of what Nuon Chea said on this tape, including the part
10 where he admits to the execution of the top officials of the Lon
11 Nol regime. But, assuming that counsel's playing the full excerpt
12 of this video, we have no objection, notwithstanding it not
13 having been listed.

14 MR. KOPPE:

15 We were – I was intending to particularly show the passage in
16 which he says that there was no such policy. I do agree with the
17 Prosecution that the video goes a little further, and I have no
18 problem in showing that as well.

19 So, that would be, then, Mr. President, an instruction to the AV
20 Unit to show, I think, 20 or 30 seconds more than now to you –
21 anticipated.

22 (Judges deliberate)

23 [13.47.09]

24 MR. PRESIDENT:

25 Indeed, Counsel, you may proceed as requested, to have this

1 portion of the video footage be put up on the screen.

2 And as the Co-Prosecutor already requested, that – the showing of
3 the video should be longer than what has been requested. With
4 that, the Chamber also agrees that this extra portion should also
5 be put up on display. This means the video length would be now 30
6 or 40 seconds longer.

7 Now AV booth is advised to put up this document on the screen.

8 [13.49.23]

9 (Presentation of audio-visual document, no interpretation)

10 [13.51.13]

11 MR. KOPPE:

12 Mr. President, I would like to remind the Chamber that the
13 Prosecution seems to think that Nuon Chea was fairly honest in
14 this-

15 Is something-

16 (Judges deliberate)

17 [13.52.16]

18 MR. PRESIDENT:

19 AV booth is now instructed to play this video tape again and to
20 include this additional portion of the episode, perhaps 30 to 40
21 extra seconds.

22 [13.52.46]

23 (Presentation of audio-visual document, no interpretation)

24 [13.53.56]

25 MR. KOPPE:

1 Mr. President, Your Honours, I was saying that I would like to
2 remind the Chamber that the Prosecution seems to think that Nuon
3 Chea was fairly honest in this video. Prosecution have -
4 prosecutors have introduced a series of his statements which they
5 are - which they say are incriminating. And in this clip, with
6 respect to this particular policy, Nuon Chea denies that the
7 policy existed, and he said that, in the view of the Prosecution,
8 to someone he trusted, and he never thought this statement was
9 going to be public. So we think that his statement in which he is
10 denying such a policy existed is trustworthy, and it is also
11 corroborated by the statements of other witnesses, as we will see
12 in a moment.

13 The next document we intend to present, Mr. President, is number
14 E3/1593 - that is, at English, 00678523; and at Khmer, 00637444
15 until 45; there's no French version of it. It's Ben Kiernan's
16 book, "The Pol Pot Regime: Race, Power, and Genocide in Cambodia
17 under the Khmer Rouge".

18 [13.55.26]

19 And at that page, in that book, Kiernan describes a meeting which
20 allegedly took place on 20 May 1975. The passage in that book
21 reads as follows:

22 "Heng Samrin, then studying military affairs under Son Sen, was
23 also at the meeting. He recalls the use of another term: 'They
24 did not say 'kill', they said 'scatter the people of the old
25 government'. Scatter (komchat) them away; don't allow them to

1 remain in the framework. It does not mean 'smash' (komtech) ...
2 Smash means 'kill', but they use a general word, 'scatter'. Nuon
3 Chea used this phrase.'" End of quote from this book of Ben
4 Kiernan.

5 And I would just like to point out that this seems to be a more
6 reliable excerpt than the one in Kiernan's book about Nou Mouk,
7 which I tried to say earlier - but I was objected to - was
8 unreliable, because in the Nou Mouk excerpt, Kiernan actually
9 draws a conclusion on the basis of what his source told him. And
10 here, with respect to this particular passage, he's merely
11 relaying something told to him by somebody else.

12 [13.57.05]

13 Mr. President, the next document I would like to present is
14 actually a motion that we, the Nuon Chea defence, filed in
15 February of this year. The document is E236/5/1, and the language
16 I would like to quote is at paragraph 3 and it states:

17 "Nuon Chea's relationship with TCW-223 dates to before the Geneva
18 Conference, some 60 years ago-"

19 MR. PRESIDENT:

20 Mr. Co-Prosecutor, you may now proceed.

21 MR. LYSAK:

22 Mr. President, this is another document I didn't see on the list.
23 And if I just heard right, it sounded to the Prosecution like
24 counsel is reading from one of his own filings.
25 Again, reading from your own filings is not presenting

1 documentary evidence, so we would object to counsel's doing that,
2 if indeed I understood correctly as to what this document is.

3 [13.58.22]

4 MR. KOPPE:

5 Of course, Mr. President, we - we try to figure out the exact
6 parameters of these proceedings. We are allowed to present our
7 own key documents. I'm not quite sure where the limits are
8 between possible evidence or quoting from your own work, so to
9 speak.

10 So, unless of course there's a ruling from your side that we are
11 not allowed to quote from motions, then, we would like to cite
12 from this document and consider it to be a key document.

13 (Judges deliberate)

14 [13.59.55]

15 MR. PRESIDENT:

16 Objection by the defence - by the Co-Prosecutor against the
17 exercise of rights by the defence team on observing on the
18 document presentation is appropriate.

19 Therefore, the defence team is directed not to quote a portion of
20 your documents to present.

21 The Chamber has already - advised you already that you are here
22 to respond to the various key documents presented by
23 Co-Prosecutors and Lead Co-Lawyers for the civil parties,
24 presented from the 24th to the 27th of June. And the defence team
25 has also made it clear to the Chamber that you do not have any

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1 proposed key documents to present but you want to reserve your
2 right to respond to the various key documents submitted by other
3 parties, and you may also raise an objection against those
4 documents.

5 [14.01.15]

6 MR. KOPPE:

7 Thank you, Mr. President. We will move on.

8 The next document I would like to present – and I'm not quite
9 sure if I'm now prohibited from presenting other documents. It is
10 not from our own work. This is always nice to be quoting, but–

11 MR. PRESIDENT:

12 You may make additional observations on the key documents
13 presented by other parties but you are not allowed to extract any
14 portion of your documents to make a presentation now, because you
15 are supposed to comment or make any observation on the key
16 documents presented by Co-Prosecutors and Lead Co-Lawyers for the
17 civil parties from the 24th to the 27th of June 2013.

18 MR. KOPPE:

19 I understand, Mr. President. We have understood it in such a way
20 that, although we initially didn't say that we would, we would be
21 allowed to present our own key documents. It sort of came about
22 these last two days.

23 [14.02.35]

24 So, if you do not want me to quote from some documents which we
25 consider key documents, that is – that is fine. Then let me just

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1 have a quick look if the rest of the things that I would have
2 wanted to say in respect of the policy is-

3 (Judges deliberate)

4 [14.03.31]

5 MR. PRESIDENT:

6 Judge Silvia Cartwright, you may proceed.

7 JUDGE CARTWRIGHT:

8 Thank you, President.

9 I'm sure you do understand, Mr. Koppe, the President's ruling and
10 the Chamber's ruling is that you may not quote as key documents
11 your own submissions, your own applications, but of course, the
12 Chamber welcomes your comment on any documents that have been put
13 before the Chamber and are, of course, on the case file. And that
14 is the purpose of this segment of your address before the Court
15 today.

16 So, you can continue with key documents in the classic sense of
17 that term, documents that have been put before the Chamber and
18 are, of course, on the case file. Thank you.

19 [14.04.21]

20 MR. KOPPE:

21 Thank you, Judge Cartwright.

22 Then, allow me, Mr. President, to continue with a document which
23 I would like to present. That is a document - it's from an OCIJ
24 statement of a witness who has appeared before this Chamber. That
25 witness is Rochoem Ton, alias Phy Phuon. The document number is

1 E3/24. The excerpt is at ERN: English, 00223582; and the Khmer
2 version, 00204069. I apologize, Judge Lavergne, because I don't
3 see why I don't have a French ERN number. I will provide it
4 later. And the question put to the witness, Mr. President, is
5 whether there were orders to seek out Lon Nol soldiers, and the
6 answer of Phy Phuon is as follows:

7 "No, because they had raised white flags already. There were
8 clear instructions not to touch them. During war, on the
9 battlefield, that was different. Now they had surrendered to us,
10 and we need not touch them, just welcome them and greet them, and
11 respond to the questions which they asked us. He said that [they
12 were] 'Cambodians, like us'. Don't touch them at all. Those were
13 the words of Pol Pot."

14 [14.06.06]

15 And if you'll allow me just a quick additional comment about this
16 witness's testimony, as well, the Chamber will remember that when
17 Philip Short testified before the Chamber, he testified that the
18 existence of a policy of executing Lon Nol soldiers was - I quote
19 - a "fact". And after we have examined him extensively, he was
20 able to identify only one source who had ever told him first hand
21 that he was personally aware of the execution of Lon Nol
22 soldiers. And who was that one source? Phy Phuon.
23 There are several other witnesses, Mr. President, I could quote,
24 but I will settle on just one more, and I'm quoting this one
25 witness just to give the Chamber one example of soldiers who were

1 fighting on the ground and who say similar things about the
2 orders they received.

3 It is a transcript - I hope you will allow me - transcript dated
4 25 October 2012-

5 I see already the Prosecution standing; I will move on, Mr.
6 President.

7 [14.07.42]

8 What I would like to do now, Mr. President, Your Honours, is talk
9 about some of the statements that the Co-Prosecutors presented.

10 The Co-Prosecutors read from three statements in Court. When they
11 finished, they said - and I quote: "There are many witness
12 statements I could read from. Those have been identified in our
13 filing of relevant witness statements to this policy." End of
14 quote.

15 I point that out to the Chamber because it has been - it's been
16 clear to us for a while that this is the essence of the
17 Prosecution's case. The direct evidence of a policy is
18 non-existent, so it seems that they're trying to drown the
19 Chamber in statements suggesting that executions happened, in
20 order to manufacture an impression that this practice was so
21 widespread that it must have happened pursuant to a policy. And
22 I'll also remind the Bench that when Philip Short testified, that
23 was essentially his argument. He was positive that a policy
24 existed. He called it a fact. But when he was pressed on it, his
25 only real evidence was that it happened everywhere.

1 [14.09.02]

2 I'm bringing that up right now to explain the remarks I'm about
3 to give. In order to properly respond to what the Co-Prosecutors
4 have said during their presentation of key documents, I need to
5 make some general submissions about the witness statements which
6 are on the record, because the position of the Prosecution is
7 fundamentally that – and I quote again – "there are many witness
8 statements" showing this policy.

9 Now, we have done our own analysis of the statements allegedly
10 relevant to this policy and we've looked at statements cited in
11 two places. First we looked at statements cited by the OCIJs in
12 connection with certain propositions in the Closing Order. Then
13 we've looked through the Co-Prosecutors' and the civil parties'
14 lists of statements and complaints tendered for admission. And
15 we've identified a little over 100 statements that the OCIJs,
16 Co-Prosecutors, and Lead Co-Lawyers, all together, say are
17 relevant to the existence of a policy of targeting soldiers and
18 officials of the Khmer Republic.

19 [14.10.25]

20 Now, Mr. President, I know that sounds like a lot – a hundred.
21 And to be honest, I can understand why the Prosecution takes –
22 took the position as they did in their key document presentation.
23 But this is, of course, why we have a trial: to test that
24 evidence. And when you look at the statements carefully, soberly,
25 objectively, what you find is systematic and serious flaws in all

1 of these 100 statements.

2 As I said, we've read and catalogued those statements in detail.

3 Obviously, it is impossible today to present these 100 statements

4 here systematically; we simply do not – simply do not have the

5 time for that. But I can tell the Chamber that in not a single

6 one of those 100 witness statements – not one – does a witness

7 claim to have personally seen a single execution. We would submit

8 that in light of the prosecutors' claim – that a centre-driven

9 policy required the execution of all Lon Nol soldiers and

10 officials across the country – that is an extraordinary fact. And

11 by itself, it makes the Prosecution's claim during its

12 presentation of key documents extremely unlikely.

13 [14.12.00]

14 If these witnesses, in their 100 statements, did not actually see

15 executions, what is it that their statements say? They say a

16 variety of things. Some witnesses say that they saw soldiers or

17 officials from the Khmer Republic separated from larger groups

18 but do not know what later happened to those people. We have

19 already said today why we think that kind of evidence is

20 unreliable, does not have any probative value.

21 Other witnesses say that they saw dead bodies of soldiers on the

22 side of the road, in or around Phnom Penh, shortly after 17 April

23 1975. Now, because the soldiers of that army had just been

24 defeated in a war, the fact that dead bodies were on the ground

25 is probative of literally nothing. Also, that evidence should be

1 disregarded.

2 [14.13.10]

3 Numerous statements of these 100 statements, including the
4 majority of the victim complaints, merely state the bare fact
5 that friends or relatives who were part of the Lon Nol regime
6 were killed. In most cases there is no reason at all to believe
7 that those people were killed because - because - they were Lon
8 Nol soldiers.

9 The three statements described by the Co-Prosecutors in their
10 presentation are all vulnerable to these criticisms.

11 The first, D25/28, concerned the Krang Ta Chan prison connected
12 to the Tram Kak cooperatives. The witness, in that statement,
13 claims to know - and I quote: "When they arrived there, they had
14 them make biographies, and anyone whose biography said they had
15 been a soldier would disappear."

16 But the statement, however, shows at English ERN 00223475 that
17 the witness had no role at Krang Ta Chan prison. He went there
18 once to inspect a - quote - "disturbance" because someone had
19 allegedly been raped. He could not have had any personal
20 knowledge about what happened at the prison.

21 [14.14.43]

22 The witness in the second statement, D232/44, told the
23 Investigating Judges only that: "As far as I know, evacuees were
24 taken for execution." He then said that those who indicated that
25 they were Lon Nol soldiers when they first arrived - quote -

1 "later on ... disappeared". He also suggested that many other
2 people were killed, but he offered no first-hand knowledge of
3 what happened to any of them after they - quote unquote -
4 "disappeared".

5 And the witness in the third statement, D125/91, stated that he -
6 and I quote - "saw them walking hundreds of people to be killed"
7 - unquote. He does not claim, however, to have seen them get
8 killed. There is no indication in the statement about how he
9 knows they were killed, and it seems that the investigators did
10 not bother to ask him.

11 [14.15.53]

12 I'll ask, Mr. President, the Chamber to recall that these are the
13 three statements the Prosecution chose to best exemplify their
14 evidence that former soldiers and officials of the Khmer Republic
15 were systematically executed. And that kind of evidence has
16 consistently fallen apart during cross-examination. As we have
17 seen last week during the examinations of Pech Chim and Lev Lam.
18 I will not discuss the evidence given by those two witnesses -
19 you were all there, present, so you remember, I'm sure - but it
20 is obvious that, once cross-examined, no witness stands at the
21 end of the cross-examination.

22 MR. PRESIDENT:

23 Counsel, please hold on.

24 Mr. Co-Prosecutor, you may proceed.

25 MR. LYSAK:

1 Thank you, Mr. President. I wanted to give counsel a chance to do
2 this presentation, and we certainly have no objection to him
3 making comments about the value of the three statements.

4 [14.17.13]

5 I do object to his attempt right now to make submissions and
6 arguments about the credibility of witnesses who have testified
7 in this trial.

8 And I would also object to his prior attempt to testify himself
9 about the content of the other statements. His assertion that
10 none of these statements evidence executions of Lon Nol soldiers
11 is simply incorrect. It is not time for closing arguments.

12 Counsel is not a witness. He certainly can present the witness
13 statements that he wants to present, he's entitled to comment on
14 the statements we presented, but he's not here to provide his own
15 summary of the evidence or his own arguments about the evidence.

16 And I would object to his characterization or attempts to make
17 arguments about the testimony of the witnesses that he's
18 referring to right now.

19 [14.18.17]

20 MR. KOPPE:

21 Mr. President, I will move on. I have one or two more things to
22 say about the policy of targeting former Lon Nol officials and
23 soldiers, and then I will be finishing my submissions, or my
24 reactions, to the key documents.

25 My last remark is the following, Mr. President, Your Honours. It

1 would seem that from a statement that you, Mr. President, made in
2 passing during the Trial Management Meeting on June 13, that the
3 Chamber is likely on the verge of admitting every one of these
4 statements that I just mentioned. If that is true, our position
5 remains that that decision would be based on a serious misreading
6 of the applicable law. It would also be a violation of Nuon
7 Chea's right to a fair trial.

8 But if the statements are to be admitted, it is essential that
9 the Chamber bear in mind its decision of 20 June 2012. That
10 decision is at E96/7. And in it, the Chamber held that if
11 statements are admitted without cross-examination, they would be
12 afforded little or no probative value. For all of the reasons
13 I've just discussed today, these statements we've been discussing
14 are especially unreliable and have no probative value whatsoever.
15 And so that holding needs to be taken seriously, Mr. President.

16 [14.20.00]

17 Even if we were to disregard all of the problems with the
18 reliability, the probative value of these statements and accept
19 them all at face value, they would still fail to establish that
20 the CPK established a policy of executing former soldiers and
21 officials of the Khmer Republic. That is because almost all of
22 that evidence in those statements, of any kind, concerns events
23 in either the Northwest or the Southwest Zone. If a CPK policy
24 existed, the evidence would show executions across the country.
25 Yet the witness statements, the evidence, the documents of

1 executions in five of the seven zones of Democratic Kampuchea is
2 virtually non-existent.

3 Obviously, Mr. President, Your Honours, unfortunately, we cannot
4 make this showing systematically here today, but we invite the
5 Chamber to observe that all three witnesses the Co-Prosecutors
6 sought at the June 13 Trial Management Meeting were from either
7 the Southwest or Northwest Zone. All three witness statements the
8 Co-Prosecutors presented on June 26 were from the Southwest or
9 Northwest Zone. And the Closing Order itself concedes, at
10 paragraph 209, that officials were targeted - quote - "in
11 particular in the Northwest and Southwest Zone".

12 [14.21.35]

13 And our analysis - and this is my last words, Mr. President -
14 shows that this bias permeates all of the evidence. And we'll
15 make that showing with greater specificity in our closing briefs.
16 That is rounding up, Mr. President, my submissions, my - our
17 reactions to the presentation of key documents in respect of the
18 enemy policy, the enemy targeting policy.

19 Now I would like to turn to our response to the presentation of
20 the Prosecution and the civil parties on forced marriage.

21 To begin, I would like to refer the Chamber to the Closing Order.
22 As the Chamber is aware, the title of this policy in the Closing
23 Order is "The Regulation of Marriage". But the underlying facts
24 it alleges are much more precise.

25 Paragraph 216 states - 216 of the Closing Order: "The CPK forced

1 couples to marry, as they took control progressively over parts
2 of Cambodian territory before 1975, and continued to do so until
3 at least 6 January 1979."

4 Paragraph 218 states – and I quote: "There is evidence that the
5 CPK forced people to marry as early as 1974." End of quote.

6 And other allegations in the Closing Order are similar.

7 [14.23.34]

8 The question, Mr. President, in this document presentation
9 hearing is therefore whether the Communist Party of Kampuchea
10 adopted a policy of forcing people to marry each other. And like
11 the Closing Order, the Prosecution's presentation alleges that
12 couples were forced to marry because that policy furthered the
13 goals of the revolution.

14 Now, we would like to the Chamber to ask itself a simple
15 question: If forced marriage was a core tenet of the revolution
16 adopted for the purpose of furthering objectives that the
17 revolution deemed important, would we not expect to see that
18 policy advertised largely by the Party? The question is, was the
19 Communist Party of Kampuchea shy about the goals it thought were
20 important? Did it not explicitly say, for instance, that people
21 should leave the city and live in the cooperatives in the
22 countryside?

23 Yet there is only one consistency in the documents presented by
24 the Co-Prosecutors. They don't say the first thing about forced
25 marriage. And many of these documents which were presented say

1 nothing about marriage at all.

2 [14.25.17]

3 The Prosecution is asking this Chamber to join in on a journey of
4 convoluted logic. The Prosecution wants the Chamber to decide:

5 one, the CPK had objectives like increasing population -
6 increasing population that might vaguely be related to a policy
7 of forced marriages; and, two, forced marriages allegedly
8 happened. Therefore, the Prosecution wants this Chamber to hold
9 forced marriage must have been a policy of CPK.

10 Now, obviously, that would be inadequate even if forced marriage
11 were within the scope of this trial, but it is not within the
12 scope of this trial, which means that all the supposed evidence
13 that forced marriages took place is at this stage inadmissible.
14 It also means that what the Co-Prosecutors are left with is vague
15 political theory.

16 What we would like to do, Your Honours, is to go to the documents
17 that were presented in relation to this alleged policy and to
18 show the Chamber that our characterization of the key documents
19 as evidence is accurate.

20 [14.26.52]

21 The Prosecution began its presentation on forced marriage with a
22 set of documents that they believe concern one of the ultimate
23 objectives of the regime: population growth. These reports and
24 interviews including an issue of "Revolutionary Flag", document
25 E3/25, a speech by Ieng Sary, document E3/1586, and an interview

1 with Nuon Chea, document E3/686 - these documents are believed to
2 describe the CPK's plan to increase the Cambodian population to
3 15 or 20 million people in the years following the liberation. If
4 we understand correctly, in the Prosecution's mind, in order to
5 achieve this population growth, the CPK insisted in forced
6 marriages of Cambodian citizens.

7 Now, even assuming for argument's sake, that a plan to increase
8 population existed, when you read those documents, there is no
9 mention of forced marriage in any of these documents. Indeed, the
10 documents propose an entirely different - and, frankly, much more
11 logical - way of increasing the population, mainly raising the
12 living standard and health of ordinary Cambodians across the
13 country.

14 Take, for instance, document E3/25; that is an issue of
15 "Revolutionary Flag" from December 1976 until January 1977. The
16 Prosecution quoted from that document the following passage that
17 was at ERN: 00491435:

18 "We need from 15 to 20 million people to meet the needs of our
19 land. For our population to constantly increase, the livelihood
20 of the people must rise and they must be in good health. So,
21 then, this means quickly increasing production." End of quote.

22 [14.29.17]

23 Document number E3/1586, the speech by Ieng Sary which the
24 Prosecution claims is particularly relevant, says - at ERN:
25 00079815 - something similar: "We are endeavouring very rapidly

1 to improve the living conditions and health of our people because
2 we need a population of 15 and 20 million in 10 years' time." End
3 of quote.

4 So, these documents have no probative value whatsoever. They are
5 all irrelevant. They suggest only the existence of a general
6 political goal. There is no logical or empirical reason why that
7 goal would be served by forcing people to marry each other. And
8 the documents themselves explicitly give a different and much
9 more comprehensible method of achieving that goal. So, these
10 documents presented by the Prosecution should all be disregarded.

11 [14.30.38]

12 The Prosecution then moved on to documents that purportedly
13 detail the CPK concept of marriage and family. The Prosecution
14 submitted during the documents hearing that the regime believed
15 that a traditional concept of family was superseded by the
16 revolutionary family and that caring for an individual's family
17 above the Socialist Movement was a betrayal. Once again, the
18 Prosecution is trying to turn water into wine - in other words,
19 to find in the vaguest political theory a specific policy to
20 force people to enter into marriages.

21 One issue of "Revolutionary Youth" from October 1976 is typical
22 of the documents presented by the Prosecution. The document
23 number is E3/10, and the quote is from ERN 00450539.

24 Mr. President, I apologize; you must have observed that I'm only
25 quoting the English ERN numbers. We will present them to you at a

1 later stage.

2 But the document number: E3/10. In it, it states as follows – and

3 I quote:

4 "Private property:

5 "Other manifestations: Private ownership in organization,
6 organizing by one's personal sentiments, by one's family, by
7 one's clique, and not standing the political ideology, and
8 organizational line of the Party is wrong.

9 "For example, anyone who thinks a lot about family interest
10 always deceives the revolution and lives separately, seeking
11 family happiness, not seeking happiness inside the Party." End of
12 quote.

13 [14.33.00]

14 Another document presented by the Prosecution, E3/750, is also an
15 issue of "Revolutionary Youth" from November 1975. And at ERN
16 00522461, the article states as follows – and I quote:

17 "In our revolutionary rank, our revolutionary male and female
18 combatants and cadres sacrifice the private possessions such as
19 housing, paddy farm, garden, family, parents, relatives,
20 children, and other properties in order to serve the Party,
21 revolution, and the people."

22 As we hope is surely apparent, Mr. President, there's no mention
23 of forced marriage in any of these documents. So it is our
24 submission that these documents have no probative value and are
25 irrelevant.

1 Another document cited by the Prosecution is, again, an issue of
2 "Revolutionary Youth", document E3/766. And, again, I will quote,
3 this time from ERN 00524181. The magazine relays - the magazine
4 relays a parabole - a parabole; I'm not quite sure how to
5 pronounce it - about a 15-year-old boy, and it states - and I
6 quote:

7 "I have no parents or siblings! I am the child of the Communist
8 Party of Kampuchea. My parents and my siblings were killed and
9 smashed by the Yuon enemy during [the] invasion of 1976. The
10 villagers, my house, my rice paddies, were destroyed and
11 plundered by the Yuon enemy and taken back to their country. Now
12 I am living in a new family, [...] my parents are none other than
13 the Communist Party of Kampuchea [and I will now strive to do my
14 best]." End of quote.

15 [14.35.27]

16 First of all, Mr. President, yet again, this document says
17 nothing about forced marriage. In fact, it says nothing of
18 marriage at all. So we submit it can be disregarded for that
19 reason alone: it has no probative value. But we will add that
20 even the message that the Prosecution wants to draw from it - is
21 it for interpretation of the document itself, we suppose that the
22 Prosecution thinks this document shows that the CPK was
23 encouraging people to think of the Party as their only family.
24 But we submit that the only reasonable inference to make from
25 this story is that it represents the CPK telling its citizens

1 that it will protect them in their time of need.
2 Now, if it were intended as propaganda in favour of the
3 eradication of the family, it would exalt the fact that the boy
4 has no parents. The boy wouldn't want to have parents; he would
5 want to be with Angkar. But here, in this story, the boy is alone
6 only because parents were killed by the Vietnamese - allegedly
7 the CPK arch-nemesis. We submit that if the Party were trying to
8 convey that the eradication of the family were a good thing, then
9 the very last story that would tell - that they would tell is of
10 a family destroyed by the Vietnamese.

11 [14.37.12]

12 Mr. President, I'm mindful of the time. I'm moving on to another
13 document. Maybe, with your leave, this would be a good moment to
14 break.

15 MR. PRESIDENT:

16 Thank you, Counsel.

17 Yes, indeed, it is now appropriate moment for adjournment. The
18 Chamber will adjourn until 3 o'clock.

19 (Court recesses from 1437H to 1502H)

20 MR. PRESIDENT:

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

22 We would like to now hand over to counsel for Mr. Nuon Chea to
23 continue presenting their documents.

24 [15.02.53]

25 MR. KOPPE:

1 Thank you, Mr. President.

2 It's been a long day; we are almost finished. I anticipate to
3 speak for, I think, another 35, 40 minutes. And maybe, on a
4 completely unrelated and more - lighter note, let me start by
5 saying that yesterday was a special day because yesterday was the
6 birthday of our client. He turned 87. So I would like to
7 congratulate our client with the reaching of this old age, and
8 hopefully he will have more years to come.

9 Having said that on this completely unrelated note, Mr.

10 President, let me now turn to one of our final points in respect
11 to the documents being presented by the Prosecution in relation
12 to forced marriage.

13 [15.03.55]

14 Let me start now by going to what the Prosecution called the most
15 important contemporaneous document concerning the CPK's concept
16 of family and the regulation of marriage, and that is a Party
17 publication dating from February 1974, entitled "Revolutionary
18 and Non-Revolutionary World Views Regarding the Matter of Family
19 Building", and this document number is E3/775. And again, Mr.
20 President, Your Honours, nothing in this document advocates for
21 forced marriage, and the policies detailed are not criminal.

22 At ERN 00417944, the document states - and I quote:

23 "Back in the old society, before liberation, many youths have
24 absorbed the world views of the oppressor class. They searched
25 out spouses to build families and out of personal material greed;

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1 that is, they seek out family interest or happiness by completely
2 breaking from the interests and the fate of the entire nation and
3 the people. But family matters," it continues, "are inseparable
4 from matters of the nation and people. If the nation is invaded
5 and the people become slaves, our family too becomes slaves."

6 [15.05.48]

7 And the document continues at ERN 00417943 – and I quote:

8 "[In this new era], do not go helter-skelter in a rush; do not
9 hot to follow whatever [our] heart sees...

10 "We do not just choose someone who is good-looking and [...] knows
11 how to dress and make themselves up playfully in the modern
12 imperialist style, or who is the child of a wealthy person, or
13 who has a high old society cultural abilities, or who is capable
14 of oratory, or who is a pistol-toting comrade...

15 "...they must be clean and living morals and clean politically,
16 without involvements with any enemy strings or bad elements." End
17 of quote.

18 The first thing, again, to recognize about these statements is,
19 once more, that they say nothing about forced marriage.

20 [15.07.03]

21 And the second is that these statements presume – presume –
22 choice. Why would the Party encourage people not to "go
23 helter-skelter in a rush", "follow whatever our heart sees", or
24 "choose someone who is good-looking" if all of the decisions were
25 predetermined by the Party? Indeed, the title of this discussion

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1 in the document itself is - I quote - "How Should we, the
2 Revolutionary Youth, Choose a Spouse?" To be sure, Mr. President,
3 document E3/775 implies that the Party was concerned with who
4 married whom. But, Your Honours, so was my mother, but it doesn't
5 mean I had an arranger marriage.

6 Now, in the same - the same publication, the Prosecution cites
7 the following passages - passage, at ERN 00417943 - and I quote:
8 "When marrying, it is imperative to honestly make proposals to
9 the Organization, to the collective, to have them sort things
10 out. In the matter of building a family, no matter the outcome of
11 the Organization's and the collective's assessment and decisions,
12 they must be absolutely respected." End of quote.

13 And, again, that is still document E3/775.

14 [15.08.44]

15 And, again, this passage says nothing about - quote unquote -
16 "forced marriage". It instructs people to make proposals to the
17 organization. Now, are those proposals about who to marry? Are
18 they proposals about when to get married? Are they proposals
19 about the marriage ceremony? And anyone of these would be the
20 opposite of forced marriage; you can't be forced to do something
21 you proposed.

22 And the very worst interpretation of this document might be that
23 the collective had some degree of control over who people could
24 not marry. And needless to say, we don't agree that is what the
25 documents means. But a policy of matching two people together and

1 ordering them on pain of violence to get married - not even
2 close, Mr. President.

3 Other documents reflect the most general desire for a society
4 free of vice and exploitation.

5 Document E3/773, and interview with Nuon Chea, at ERN 00711561,
6 speaks of a wish to "create a society without debauchery,
7 alcoholism, gambling, and materialism".

8 [15.10.23]

9 Document E3/169, a "Revolutionary Youth" article that was quoted
10 by the Prosecution states at ERN 00815131 that - and I quote:

11 "We have arrived in a new age in which all are equal."

12 And - and I quote: "Now there is no way of one person exploiting
13 others."

14 Document E3/770, the CPK publication on family building, at ERN
15 00417945, admonished cadres - I quote: "Do not leave your spouse
16 to cook, look after children, and look after the house. Do not
17 consider your spouse someone only you can educate."

18 Now, all these documents, we submit, Mr. President, are all
19 irrelevant on their face.

20 The Prosecution's last document in respect of this alleged policy

21 is an interview with Ieng Sary from December 1980. This is

22 document E3/681. In that interview, Ieng Sary is quoted at ERN

23 00122194 as saying that from now on - and I quote - "marriages

24 will be free, and families will live together" - end of quote.

25 Now, the Prosecution sees in this an admission that forced

1 marriages had previously been the norm. But even if an inference
2 could be made on the basis of this interview as to CPK policy
3 between 1975 and 1979, there's no specification at all of the
4 sense in which marriages were not free before. Certainly it does
5 not imply that the Party decided who would marry who and then
6 force them to comply.

7 [15.12.37]

8 A last remark on this policy, Mr. President, and it is the
9 documents presented by the civil parties. These documents
10 describe women being forced by the Party to marry men they have
11 not chosen. But these documents, while they speak about this,
12 speak purely to the implementation of the alleged policy and are,
13 therefore, beyond the scope of the trial.

14 As we argued in relation to - as we will - as we will argue in
15 relation to cooperatives, there has been no systematic
16 consideration of that evidence, especially through live testimony
17 before the Chamber, so there's, accordingly, no evidence that
18 this arbitrary selection of statements is representative of the
19 practice in Cambodia as a whole. There's, furthermore, no
20 evidence that Nuon Chea or the Standing Committee was aware that
21 these ceremonies occurred. So, these documents must be
22 disregarded by the Chamber, irrespective of whether they are -
23 quote unquote - "relevant" to the existence of the policy.

24 Mr. President, I'm now moving on to our response to the
25 presentation in respect of cooperatives and worksites. We will be

1 also relatively short about this presentation of key documents.

2 [15.14.13]

3 To begin with, we have to make yet another observation about the
4 scope of this particular trial. Of course, we do not like to
5 repeat ourselves again, but it seems as though it might be
6 necessary. The question at issue in this trial as regards
7 cooperatives is: Did a criminal policy to create cooperatives and
8 so-called worksites exist? Full stop.

9 It follows that the Chamber is required to limit itself only to
10 direct evidence of the intentions of the individuals at the very
11 top of the Party Centre who are alleged to have formulated the
12 policies of the CPK. Now, these are primarily minutes of meetings
13 of the Standing and Central Committee and publications issued
14 directly by the Party Centre. Any other evidence, documents, must
15 be excluded, and that includes any evidence, any documents of how
16 cooperatives or worksites actually functioned and the substance
17 of their reporting relationship both to and from higher levels.

18 [15.15.37]

19 As the Chamber knows, the position of the Nuon Chea defence is
20 and has long been that conditions varied widely across zones,
21 districts, and even in neighbouring cooperatives. The evidence
22 broadly supports our position.

23 François Ponchaud, whose early work was so instrumental in
24 defining an early narrative about DK, conceded to this Chamber
25 that he wrongly assumed that conditions were the same everywhere

1 in the country. He also explained that his information had come
2 largely from interviews with refugees across the Thai border, who
3 had come primarily from the Northwest Zone. And also other
4 evidence suggests that the conditions in the Northwest Zone may
5 have been worst, on average, than the rest of the country.

6 It is for these exact reasons, for these reasons, Mr. President,
7 Your Honours, that any evidence, any documents of implementation
8 at all will be inappropriate and prejudicial.

9 If the Chamber intends to find - to make any findings about a
10 so-called criminal policy to establish cooperatives and
11 worksites, it must do so on the basis of direct evidence of the
12 intent of the Party Centre. It must find on the basis of that
13 evidence, of these documents, that Nuon Chea and other leaders of
14 the CPK adopted a policy to establish cooperatives and worksites
15 with criminal intent.

16 [15.17.20]

17 In that light, the first comment we would seek to make about the
18 documents presented by the Prosecution is a familiar one: not a
19 single document contains direct evidence of any criminal intent
20 of any kind. Establishing cooperatives and worksites in itself is
21 not illegal, we submit. Collectivity, Mr. President, is not
22 illegal. The Prosecution's - the Prosecution asks the Chamber
23 instead to infer criminality, however to say that this matter
24 were to be achieved regardless of the impact on the population,
25 and even where the land could not support the work being done.

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1 But on the contrary, the documents presented by the Prosecution
2 indicate that the primary purpose - primary purpose - of the
3 cooperatives was to feed the people, lift their well-being, and
4 provide for a country eviscerated by war and famine.
5 For example, the Prosecution presents document E3/11, which is an
6 issue of "Revolutionary Flag" from September 1977. At English ERN
7 00486256, the document states that the cooperatives are - and I
8 quote - "transforming our once barren, arid, and miserable
9 countryside into a countryside each day more luxuriant, provided
10 with reservoirs of every size, a network of canals, covered with
11 rice paddies and green fields" - end of quote.

12 [15.19.11]

13 Three other CPK publications presented by the Prosecution:
14 E3/733, an issue of "Revolutionary Youth" from May '76; document
15 E3/5, which is an issue of "Revolutionary Youth" from August '75;
16 and document E3/729, a "Revolutionary Youth" issue from October
17 '75. All these documents, Mr. President, indicate the same, and
18 they show - these documents show that cooperatives and worksites
19 were established in order to increase production of rice and
20 other products in order to - and I quote again - "supply the
21 people in our cooperatives so that they will have enough to eat".
22 That last quote, by the way, was from document E3/733, at ERN
23 00357874.

24 The Prosecution also presented three sets of minutes from
25 Standing Committee meetings: E3/182, E3/229, and 235. Now, these

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1 documents should, in theory, provide the – between brackets –
2 "smoking gun", the proof that a criminal policy was indeed
3 implement from the top. But what do these documents actually say?
4 They say that the Party should examine Kampong Chhnang as a
5 possible airfield site – and that's in all three documents – that
6 the country's rice production levels are on target – that's in
7 document E3/213 and 230 – and – this is very exciting, that quote
8 – efforts need to be made to produce 50,000 to 60,000 tons of
9 salt this year – that's from E3/230.

10 [15.21.19]

11 The Closing Order alleges that in relation to cooperatives and
12 worksites, the Party had unrealistic production targets that had
13 to be achieved – quote – "by any means necessary". Yet the
14 Prosecution hasn't identified a single document showing that the
15 Party believed – that the Party leaders believed that their plans
16 were unreasonable.

17 The civil parties provide witness statements purporting to
18 describe difficult conditions in both the cooperatives and the
19 so-called worksites. As we said before, we think these documents
20 are not admissible. There's no way to know whether the handful of
21 victim complaints and civil party applications handpicked by the
22 Lead Co-Lawyer for presentation before the Chamber are, in fact,
23 representative of the larger experience of workers in the
24 country. They almost surely are not. And we have not had the
25 opportunity to systematically examine this evidence live, in

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1 Court. Therefore, it is all inadmissible.

2 [15.22.33]

3 The Closing Order also alleges that one purpose of the
4 cooperative policy was to – and I quote: "detect, defend against
5 and smash the enemy". To support that contention the Prosecution
6 presented E3/748, an October 1975 issue of the "Revolutionary
7 Flag". And the Prosecution said in Court on 25 June this year,
8 transcript page 7, that this document – and I quote: "explains
9 the tasks of cooperatives, particularly in the area of security
10 and so by extrapolation the search for the enemies."

11 In reality, Mr President, document E3/748 does not mention the
12 search for enemies at all but only lists at ERN English,
13 00495826, six tasks that cooperatives achieved, including:
14 production, trade, political education and – we quote: "carrying
15 out the tasks in the military sector in ensuring security and
16 defence of the country."

17 Now we have a number of comments to make about this specific
18 document. Firstly it supports our clients' contention that an
19 important purpose of the cooperatives was economic: it was a
20 means of production and trade. And in an agricultural society,
21 what were cooperatives producing and trading? Food. So, the
22 Prosecutions documents shows that one of the main purposes of the
23 cooperative system was to organise and equitable system of
24 production and distribution of food.

25 [15.24.43]

1 Secondly, there is nothing criminal or objectionable about using
2 a fundamental social structure as a method of security and
3 protection. Every human society in the history of the world has
4 organised itself, in part, in ways conducive to its own security.

5 Why should the CPK be different?

6 Third, Mr. President, the mere mention of the word security does
7 not have the ominous connotation that the Prosecution is likely
8 seeking to give it. It is not synonymous with the targeting of
9 people. Indeed the evidence shows that cooperative systems -
10 system was an important aspect of the CPK's military victory in
11 April '75. This Chamber, as you are well aware, has held that an
12 armed conflict existed in Cambodia for the entire period of this
13 Courts temporal jurisdiction. There's no reason why cooperatives
14 would not continue to play a role in the CPK's effort to defend
15 itself.

16 And finally if cooperatives were also an effective bulwark
17 against espionage, we can only ask: And so what? Is that, in
18 itself, illegal?

19 [15.26.14]

20 The Prosecution also presented document E3/50, which purports to
21 be a CPK publication celebrating the third year anniversary of
22 the organization of peasant cooperatives. It was dated 20 May
23 1976. Prosecution argued that this document is fundamental -
24 fundamental because it underscores the role of cooperatives in
25 the fight against the enemy and the control of the regime. But

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1 this document simply describes the cooperative workers support of
2 the military. And again that was understandable, indeed
3 reasonable, in light of the state of war the country was in at
4 that time.

5 Finally, Mr. President, the Prosecution presented documents for
6 the purpose of showing that cooperatives and work-sites were
7 established in order to eliminate the private sphere and replace
8 it with a collectivist regime. For example, document E3/729 an
9 issue of "Revolutionary Youth" from October 1975, describes at
10 English ERN, 00357903, how the cooperatives were - and I quote:
11 "responsible for harmoniously and orderly managing the education
12 and building of the more than two million people who had just
13 been liberated from the rule of the contemptible traitors." End
14 of quote.

15 [15.28.13]

16 Document E3/11 the issue of "Revolutionary Flag" from September
17 '77, describes the wish to create cooperatives that are orderly,
18 harmonious, clean and collective. And document E3/16, a book on
19 Cambodian history by Khieu Samphan, describes an effort to create
20 a society where poor workers were in control of the villages or
21 cooperatives. Further documents cited by the Prosecution,
22 including E3/146, 273 and E3/193, only serve to show that in this
23 new cooperative system the rich did not take advantage of the
24 poor.

25 And so, Mr. President, Your Honours, I will repeat what I have

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1 said earlier, that a socialist revolution, for the purpose of
2 implementing collectivity, is not a crime.

3 [15.29.25]

4 Mr. President, just a few last remarks and then I will finish,
5 about the policy of forced transfer. These are actually very
6 brief comments that I have to make, because as the Chamber knows,
7 Nuon Chea has acknowledged that he participated in the decision
8 to evacuate Phnom Penh. And in relation to this policy
9 specifically our dispute with the Prosecution and civil parties
10 is not so much whether the Party Centre decided to evacuate
11 cities, but whether that is a so called policy, criminal policy
12 is maybe another matter. But Nuon Chea does not dispute that it
13 happened or that the Party Centre decided upon it.

14 [15.30.24]

15 Our principle disagreement with the Prosecution is on two fronts.
16 Now I am not going to make submissions today. I will just submit
17 to the Chamber that the probative value in the presentations
18 given by the Prosecution and the civil parties in those respects
19 is zero.

20 One is the Prosecutions use of documents to attempt to show that
21 people living in cities were seen as enemies in April 1975. And
22 to make our point, Mr. President, we can just - I can simply
23 refer back to my earlier arguments about enemies, because the
24 argument is similar. There is a systematic lack of specificity in
25 those documents. Instead these documents concern only vague -

1 vague political goals.

2 Second, those documents do not disprove the defence longstanding
3 claim that the evacuation of Phnom Penh was lawful under all the
4 circumstances. And even if it is true that there were a variety
5 of objectives, motivating the evacuation, the fact would be of
6 minimal probative value in relation to the legal position we have
7 taken in our prior submissions.

8 Third, to the extent that crimes were committed by soldiers or
9 cadres in the course of the evacuation, the Co-Prosecutors have
10 presented no documentary evidence that would support an
11 allegation that our client and the other Khmer Rouge leaders
12 either gave orders or intended for such acts to occur.

13 [15.32.14]

14 Obviously, Mr. President, we need to make that showing with much
15 greater specificity, but we will do that in our closing
16 submissions sometime in October.

17 Thank you, Mr. President, very much for your attention. Thank
18 you, Your Honours. This will conclude my presentation.

19 MR. PRESIDENT:

20 Thank you.

21 Next I hand over the floor to the National Defence Lawyer for Mr.
22 Nuon Chea. You may proceed.

23 [15.33.13]

24 MR. SON ARUN:

25 Good afternoon, Mr. President. Good afternoon, Your Honours. As

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1 my colleague Mr. Koppe indicated, I intend to present Mr. Nuon
2 Chea's response to several specific allegations concerning his
3 role in Democratic Kampuchea.

4 As this Chamber knows, Nuon Chea's acknowledges that he was the
5 Deputy Secretary of the Communist Party of Kampuchea. He also
6 acknowledges that he had a leading role in education. However, he
7 strongly denies that he had any role in military or security
8 affairs or that he acted as Duch's superior at S-21. He also
9 denies - indeed, he's a little bit baffled by the Co-Prosecutors'
10 persistent allegation that he was for about one year the acting
11 prime minister of the Democratic Kampuchea government.

12 [15.34.46]

13 The Co-Prosecutors spent a substantial part of their presentation
14 dealing with these three areas, and because these are the main
15 areas of dispute, I will focus my remarks on documents that
16 concern them.

17 Like my colleague Mr. Koppe, I am not presenting anything like a
18 comprehensive response. Instead, I will give the broad outline of
19 Mr. Nuon Chea's position and some comments about the reliability
20 of the prosecutors' evidence and the extent to which it supports
21 - or, more often, fails to support - their very broad and
22 aggressive claims about Nuon Chea's role in Democratic Kampuchea.
23 Before I begin with those comments, permit me to say a few
24 general words about the quality of evidence, especially with
25 regard to the authenticity of the documents.

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1 As the Chamber will recall, earlier on in this trial, Nuon Chea
2 requested that the Chamber provide him with original copies of
3 documents about which he was being questioned. The Chamber
4 dismissed that request summarily. When Nuon Chea again asked for
5 original copies on subsequent occasions, those requests were
6 treated dismissively. Neither the Co-Prosecutors nor the Chamber
7 took them seriously. The Chamber never made any effort to provide
8 Nuon Chea with a single original document. His requests were
9 instead treated as an effort to obstruct the proceedings and
10 interfere with this Chamber's effort to arrive at a verdict as
11 quickly as possible.

12 [15.37.27]

13 Your Honours, with respect, Nuon Chea's requests were perfectly
14 reasonable despite Chamber's holding that the presumption of
15 authenticity applies. Without any access to original documents-

16 MR. PRESIDENT:

17 Mr. Son Arun, please hold on. There is an objection by the
18 prosecutor.

19 Mr. Prosecutor, you may proceed.

20 MR. LYSAK:

21 Thank you, Mr. President.

22 My objection is that this is an issue that goes to - purely to
23 admissibility, not to probative value. It's an issue on which
24 counsel is making a submission.

25 This was argued a long time ago, it's well established practice

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1 in all courts around the world to use copies of documents, not
2 originals. Counsel's re-arguing a legal issue regarding
3 admissibility that was decided a long time ago, rather than
4 addressing the probative value of the documents.

5 [15.38.41]

6 MR. SON ARUN:

7 Mr. President, I would like to seek your permission to respond to
8 the prosecutor.

9 The request by Mr. Nuon Chea for the original document was made
10 on the early day, and to date he never has received a single copy
11 of the original document, there has never been chance for Mr.
12 Nuon Chea to make any comparisons against the original document
13 for various documents presented to him.

14 And I would like to begin this argument with the authenticity of
15 the documents, particularly the authenticity of the documents
16 presented by the prosecutor. And soon afterwards I'm going to
17 address the issue that the prosecutor is expecting.

18 (Judges deliberate)

19 [15.40.55]

20 MR. PRESIDENT:

21 Counsel, please be reminded that now the Chamber is granting the
22 opportunity for the defence team to present comments or
23 observations on the documents put before the Chamber and
24 presented by the prosecutor. And the defence counsel has been
25 advised that you will make observations to the various documents

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1 presented by the prosecutor and the Lead Co-Lawyer for the civil
2 parties. And just now you dealt with the issue of authenticity of
3 the document, and the issue of authenticity has already been
4 dealt with by the Chamber.

5 And, in addition, your observation just now did not go straight
6 to the issue on commenting and observing on the key documents
7 presented by the Chamber, and you should not be confused with the
8 closing statement. For this reason, the Chamber advises you to
9 revisit your arguments.

10 And please bear in mind that we try to allocate the time as per
11 your request, so please make use of your time.

12 You may now move on.

13 [15.42.17]

14 MR. KOPPE:

15 Excuse me, Mr. President, for - may I just add - and it is not
16 seeking to necessarily ask a reconsideration of your decision,
17 but - of course, I know what my colleague was trying to argue in
18 - today, and that is not, in a general term - in general terms an
19 argument about the admissibility. He is actually making a very
20 specific argument in respect of certain documents which were
21 presented by the Prosecution, when it comes to the probative
22 value and - slash - admissibility. What we are speaking - what he
23 will be speaking about is - you might remember that - these five
24 documents presented to the Chamber, in which the Prosecution - or
25 in respect of which the Prosecution has argued that red ink sign

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1 is in fact his signature.

2 So, the argument, although not only going to admissibility, it
3 also goes to the probative value of these specific five S-21
4 documents. And because the Prosecution refuses to show the
5 original documents – those five original documents – they have
6 direct influence as well to the question of probative value.

7 [15.43.42]

8 So, we are not necessarily arguing the question of authenticity,
9 when it comes to admissibility. We're also now, because he is –
10 because Nuon Chea is specifically denying that that is his
11 signature, we're also touching upon the issue of probative value.

12 So, I felt that it would be good to – for Your Chamber to know
13 that we are not making now a specific general argument about
14 admissibility, that all documents should be shown in the original
15 forms; only those very specific ones that the Prosecution has
16 shown to you two weeks ago, those five documents with the alleged
17 signature on the left corner.

18 So maybe technically it is a question of admissibility, but more
19 specifically, we would argue it is also a question of probative
20 value, and therefore it is our submission that we should be able
21 to make this specific argument.

22 MR. PRESIDENT:

23 Mr. Co-Prosecutor, you may proceed.

24 [15.45.00]

25 MR. LYSAK:

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1 Thank you, Mr. President.

2 I certainly don't have any objection if counsel wishes to address
3 five specific documents, but we were hearing a general argument,
4 here, challenging a ruling that was decided a long ago about
5 whether originals need to be used in Court.

6 And let me correct one assertion counsel just made. He stated
7 that the prosecutors have refused to submit originals. This is
8 not - it is not the prosecutors who were in possession of the
9 originals; it was the Investigating Judges who went out and
10 obtained copies, put them on the case file, and it is those
11 copies which all parties have access to. In regards to these five
12 documents, some of the copies are colour copies.

13 [15.45.50]

14 Moreover, if counsel is really interested in seeing the
15 originals, they could go to DC-Cam and to Tuol Sleng and look at
16 the originals. They're entitled to do that, just as anyone in the
17 public can do that. So, to stand up and assert that the
18 Prosecution has somehow prevented them from having access to the
19 originals is misleading, and they should not be making general
20 arguments about the - issue of original documents.

21 I have no problem if counsel wants to discuss details about these
22 five specific documents.

23 MR. PRESIDENT:

24 Mr. Son Arun, could you please be specific? Because the issue
25 that you have raised just now is general in nature; it is

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1 different from what your international colleague said. He
2 actually mentioned that you refer specifically to the five
3 documents presented by the prosecutor.

4 And as for these five documents, the prosecutors themselves did
5 not object to this observation, so long as you focus on these
6 five documents. If you raise it in general, then you are actually
7 going back to the issue that the Chamber has already ruled upon
8 thus far.

9 And, once again, you are now supposed to raise your observation
10 on key documents presented by the prosecutors, and it is not time
11 for making a final statement.

12 You may now resume.

13 [15.47.40]

14 MR. SON ARUN:

15 Thank you, Mr. President, for your enlightenment. I would like to
16 now resume.

17 Your Honours, with respect, Mr. Nuon Chea's request was perfectly
18 reasonable despite Chamber's holding that the presumption of
19 authenticity applies. Without any access to original documents or
20 any right to investigate, Nuon Chea never had any realistic
21 chance to challenge that presumption.

22 We would ask Your Honours to note that there are serious and
23 legitimate questions surrounding the provenance, chain of
24 custody, and authenticity of documents on the case file.

25 Contemporaneous DK documents were largely collected by the

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1 DC-Cam, and those documents which were provided to this tribunal
2 are not stored on site at the-

3 MR. PRESIDENT:

4 Counsel, you are actually dealing - you're now dealing with the
5 general nature of the document. And just now we already dealt
6 with the issue that - you are supposed to deal with -
7 specifically with the five documents raised by the prosecutor,
8 but you are resuming your arguments based on general nature of
9 the documents. And this issue has already been ruled upon by the
10 Chamber.

11 [15.49.42]

12 MR. SON ARUN:

13 Thank you, Mr. President. So I would like to now move on to the
14 issue of the accusation on Mr. Nuon Chea as the acting prime
15 minister.

16 Now I would like to turn to Nuon Chea's specific roles, and I
17 would like to begin by discussing the prosecutors' allegation
18 that Nuon Chea was the acting prime minister of Democratic
19 Kampuchea between September 1976 and 1977. Your Honours, I am not
20 going to spend very much time on this; I just want to make two
21 very short points.

22 First, the Prosecution does not claim that in his role as acting
23 prime minister, Nuon Chea undertook any new responsibilities. Now
24 we are not at this stage going to make any comments about the
25 role of the prime minister in Democratic Kampuchea, but I do want

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1 to emphasize that there is no allegation from the Prosecution
2 that when Nuon Chea supposedly became the acting prime minister
3 of Cambodia, that caused his role to change in any real way. And
4 there is no dispute here about Nuon Chea's substantive authority.

5 [15.51.20]

6 Second, I would like the Chamber to take note of the fact that
7 Nuon Chea has never disputed his position as the Deputy Secretary
8 of the Communist Party of Kampuchea. He readily concedes -
9 indeed, he is proud - that he held a position of very senior
10 authority in the Khmer Rouge hierarchy. Yet he vigorously
11 disputes that he has never named acting prime minister; he simply
12 has no recollection of it.

13 Your Honours, in our view, there is relatively little in terms of
14 criminal responsibility, which depends on whether Nuon Chea was
15 ever the acting prime minister. For that reason, I will not spend
16 too much more of our precious time disputing it. But that for
17 same reason, we would urge the Chamber to conclude that Nuon Chea
18 has no good reason to lie about his role in this regard.

19 Now I would like to turn to the issue that the prosecutor
20 discussed in - during his key document presentation. Mr.
21 President, I will now turn to Nuon Chea's alleged role in
22 military and security affairs.

23 [15.53.04]

24 The Co-Prosecutors' main evidence that Nuon Chea had a role in
25 military or security affairs was that he allegedly received

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1 certain telegrams. According to the Co-Prosecutor, these
2 communications show that Nuon Chea had a role in military and
3 security affairs. In fact, these telegrams show only that Nuon
4 Chea, among other senior leaders of Democratic Kampuchea, may
5 have occasionally been sent information about military
6 operations. They show nothing of any substance about his
7 so-called role in Democratic Kampuchea.

8 We examined 15 telegrams that the prosecutor says show Nuon
9 Chea's role in military or security affairs. As a preliminary
10 matter, it seems to us that five of the document numbers given by
11 the Co-Prosecutors may have been in error. The document numbers
12 they listed do not correspond to the content of the documents
13 they described. The document numbers they gave were E3/1122,
14 E3/1123 - I repeat: E3/1122, E3/1123, E3/1124, E3/1125, E3/1126.
15 We think that the numbers were probably supposed to be E3/1222
16 through E3/1226. So that is 12 instead of 11, and we therefore
17 ask the prosecutor to please check that now. But since we are
18 pretty sure that it's right, we'll proceed on that basis.

19 [15.55.42]

20 And for lack of time, we are not going to go through each of
21 these documents. I will list them quickly for the Chamber. They
22 are: E3/1222, E3/1223, E3/1224, E3/1225, E3/1226, E3/1135,
23 E3/892, E3/1154, E3/181, E3/867, E3/519, E3/1144, E3/1077,
24 E3/1080 and E3/156.

25 Mr. President, what do these telegrams have in common? Two

1 important things.

2 First, they all come from the later part of the Democratic
3 Kampuchea period. There is one grouping of six telegrams from
4 around October 1976. These five or six telegrams all concern the
5 same general subject matter. The remaining six are all from some
6 time after February 1978. These facts are very important for the
7 purposes of the trial. Most of the crimes charged in this trial
8 are alleged to have happened in April 1975. The other alleged
9 crimes, which concern population movement phase 2, happened
10 mostly in late 1975 and 1976.

11 [15.58.02]

12 Now, as the Nuon Chea defence has argued many times, the evidence
13 shows that in April 1975, the Party Centre had almost no military
14 forces of its own. Even the prosecutor claims that Pol Pot only
15 began to consolidate the military in July 1975. The evidence
16 shows that the process happened gradually and was never fully
17 complete.

18 The Chamber should pay close attention to the fact that the
19 Co-Prosecutors were unable to find a single document showing Nuon
20 Chea's role in the military dated earlier than October 1976, more
21 than one year after the Centre military divisions were first
22 established. The Co-Prosecutors' documents are completely
23 irrelevant to Nuon Chea's role in military in 1975 and 1976. The
24 Chamber should conclude that no evidence exists at all that Nuon
25 Chea had any role in military affairs within the temporal

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1 jurisdiction of this trial. Even if Nuon Chea did receive
2 occasional military communications beginning sometime in late
3 1976, that would prove exactly nothing of substance about this -
4 or his supposed role in military or security affairs in that
5 period.

6 [16.00.05]

7 Most of the telegrams presented by the Prosecution do little more
8 than provide to the Party Centre benign updates about the
9 country's ongoing war with Vietnam. This Chamber held, in the
10 Duch Judgement, that an international armed conflict was going on
11 between Cambodia and Vietnam from the very beginning of the
12 Democratic Kampuchea regime until its very end. (Inaudible) scale
13 invasions were launched during 1977.

14 Under these conditions, does the Prosecution show Nuon Chea, the
15 alleged second in command of the country, leading the troops into
16 battle? Do they show him carefully planning military strategy? Do
17 they show him issuing orders to military leaders? No. They show
18 that 15 times over 19 months he received a three-page update
19 describing vaguely the situation at the border. They show no
20 evidence that he asked for those reports, no clear evidence that
21 he received them, no evidence that he took any action in response
22 to them.

23 [16.02.14]

24 The Prosecution has indeed succeeded in showing the nature of
25 Nuon Chea's role in military and security affairs; it is possibly

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1 not the role they had in mind.

2 Mr. President, permit me to make one last point about these
3 telegrams.

4 The Prosecution argued last week that these documents also show
5 Nuon Chea's role in relation to internal security and the
6 discipline of cadres. Your Honours, it is true that there are
7 perhaps four of five telegrams which briefly mention questions of
8 internal security. I think that if you review these telegrams,
9 you will find that they are mainly about the military campaign.
10 They may, as an afterthought, then provide some information about
11 Party discipline, but it is clear that the point of these
12 documents is to supply the Party Centre with a short military
13 update.

14 There is only one exception, which is document E3/1154. As the
15 Prosecution said, this document appears to be a letter from a
16 cadre who is asking for forgiveness. And if Your Honours will
17 read the very first sentence of that document, you will see that
18 it says, first of all: "Please forgive me for writing directly to
19 you, which is contrary to protocol, while you are overwhelmed by
20 a great deal of leadership tasks."

21 [16.04.48]

22 So, this document, in fact, shows the opposite of what the
23 Prosecution says. It shows that matters of internal discipline
24 were not within the usual responsibility of Nuon Chea.

25 Your Honours, the only other evidence the Prosecution relied on

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1 to show Nuon Chea's alleged role in military and security affairs
2 were his alleged statements in Thet Sambath's book and videos.
3 Mr. Koppe has already addressed that evidence. His comments apply
4 equally here.

5 For all these reasons, Your Honours, the evidence is clear that
6 Nuon Chea had no role of any substance in either military or
7 security affairs.

8 I may now proceed to another section, which is on S-21.

9 MR. PRESIDENT:

10 Counsel, it is already time for the adjournment. We note that you
11 may need additional - another one hour to submit these
12 observations, so it may be good that we now adjourn and resume
13 the sessions tomorrow.

14 [16.06.23]

15 The Chamber will adjourn now, and the next sessions will indeed
16 be resumed tomorrow, at 9 a.m. During tomorrow's sessions, the
17 Chamber will continue hearing the observations or comments made
18 in response to the Prosecution and Lead Co-Lawyer for the civil
19 parties regarding the key documents they presented before the
20 Chamber previously. These documents were presented during June.
21 And counsel for Mr. Nuon Chea will be submitting in response to
22 this also tomorrow. And the Chamber would like all the parties to
23 the proceedings and the public to be informed.
24 Now security personnel are now directed to take Mr. Khieu Samphan
25 and Nuon Chea to the detention facility and have them returned to

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1 the courtroom before 9 a.m. Mr. Nuon Chea is directed to be
2 brought to his holding cell downstairs, where he can observe the
3 proceedings through audio-visual link.

4 The Court is adjourned.

5 (Court adjourns at 1607H)

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