



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 22-Jul-2013, 14:13
CMS/CFO: Sann Rada

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

16 July 2013
Trial Day 211

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
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

DAV Ansan
MIRIAM MAFESSANTI
Faiza ZOUAKRI

Lawyers for the Civil Parties:

PICH Ang
Élisabeth SIMONNEAU-FORT
LOR Chunthy
HONG Kimsuon
VEN Pov
SIN Soworn

For the Office of the Co-Prosecutors:

SONG Chorvoin
Keith RAYNOR
Tarik ABDULHAK

For Court Management Section:

UCH Arun
SOUR Sotheavy

INDEX

MR. STEPHEN HEDER

Questioning by Mr. Koppe..... page 4

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MS GUISSÉ	French
MR. HEDER	English
MR. KOPPE	English
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. RAYNOR	English
MS. SIMONNEAU-FORT	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 Today, we will continue to hear the testimony of the witness,

6 Steve Heder, who will be questioned by the defence teams.

7 And before we commence this proceeding, Mr. Duch Phary, could you
8 report the attendance of the parties to today's proceeding?

9 THE GREFFIER:

10 Mr. President, for today's proceeding, all parties are present.

11 It should be noted that Nuon Chea is present in the holding cell

12 downstairs pursuant to the decision of the Trial Chamber

13 concerning his health. The witness, Mr. Steve Heder, who is going

14 to continue to testify today, is already present in the

15 courtroom. Thank you.

16 [09.04.47]

17 MR. PRESIDENT:

18 Thank you.

19 And before I hand the floor to the defence teams, the Chamber

20 would like to make the oral affirmation that we have made on the

21 18th April 2012 regarding the decision of the accused to exercise

22 his rights to remain silent.

23 By motion dated 5th July 2013, and notified on Monday, the 8th of

24 July 2013, the Khieu Samphan defence team notified the Trial

25 Chamber and the parties that the accused, Khieu Samphan, would no

2

1 longer answer questions before the Chamber. In response, the Co
2 Prosecutors proposed several concessions intended to facilitate
3 the preparation of the Khieu Samphan's defence for the
4 questioning of their client; otherwise, they requested the
5 Chamber to warn the accused, Khieu Samphan, of the legal
6 implications of his decision to no longer answer questions before
7 the Chamber.

8 [09.06.19]

9 The Chamber has decided in the light of these submissions that it
10 should recall its prior oral ruling on this issue made on 18th
11 April 2012.

12 And now the Chamber would like to give the floor to Nuon Chea's
13 defence to put questions to the witness, Mr. Steve Heder. You may
14 proceed.

15 MR. KOPPE:

16 Thank you, Mr. President. Good morning, Your Honours, good
17 morning, counsel, good morning, Mr. Heder.

18 Mr. President, before I proceed, I don't, of course, need an
19 answer immediately, but I would like to bring your attention to
20 the fact that the Prosecution and the civil parties have been
21 questioning the witness for three days minus 30 minutes, 35
22 minutes. It would seem that we need more time to ask questions to
23 this witness, more than the day that was allotted. Now, I will do
24 my very best, nevertheless, to stay within that day, but if that
25 won't be possible, I, of course, would like to be able to use an

3

1 opportunity to go into the next one hour and a half of tomorrow.

2 I just would like to give you advance notice of that possible

3 request which might follow at the end of the day.

4 [09.08.22]

5 MS. GUISSÉ:

6 Yes, good morning, Mr. President, good morning to the Chamber and
7 to all parties.

8 As of now, I would like to state that as far as we are concerned
9 with the Khieu Samphan defence the two days seem insufficient to
10 us to treat all of the topics that have already been covered by
11 the Co Prosecutors during their questioning as well as by the
12 civil parties. Contrary to the Chamber's habit of giving equal
13 time to all teams, and for Mr. Heder we were told that we are
14 only given two days, but given the recent developments and given
15 the time extension that was allowed for the Co Prosecutors, you
16 may understand that as far as we are concerned, given the massive
17 documents that will be considered, we also will need to go over a
18 certain number of documents again, and that will take time. And
19 since the Khieu Samphan team is always the last time or often the
20 last one to speak, especially when maybe the Chamber becomes a
21 little bit more impatient, I wanted to let you know that as of
22 now we will also require a full day and an extra hour and a half,
23 which will represent two and a half total days for all defence
24 teams.

25 [09.59.52]

4

1 So I wanted to make this specification as of now so that no one
2 is caught off guard and to prepare the Chamber psychologically
3 for this new situation.

4 MR. PRESIDENT:

5 The Chamber will take up on the issue and we will see how we go
6 and also it's based on the nature of the relevancy of your
7 questions to the witness. And if the Chamber deems it is
8 necessary to extend the time we will do so.

9 You may now proceed with your questioning, Counsel.

10 QUESTIONING BY MR. KOPPE:

11 Thank you, Mr. President.

12 Once again, good morning, Mr. Heder.

13 Q. You've been hearing three days' questioning from the
14 Prosecution and the civil parties. All the questions were put to
15 you in your capacity as a witness. You have heard numerous
16 objections from the defence when the defence was thinking an
17 expert opinion was solicited, but the question that maybe a lot
18 of people would like to ask you hasn't been asked yet.

19 [09.11.30]

20 You have been summoned as a witness because, as I have
21 understood, you have refused to appear as an expert. You might be
22 aware that the Trial Chamber has considered you to be an expert
23 on the relevant matters. In the words of the Prosecution, you are
24 indeed the world's leading academic in respect of the CPK and its
25 policies.

5

1 My question to you is simple: What made you decide not to want to
2 appear as an expert?

3 MR. HEDER:

4 A. There are some interrelated reasons. It's indeed true, if I
5 understand it correctly, that the Trial Chamber considered me as
6 an expert, and I guess defence, through its submission, did so as
7 well; however, when I was assigned to the Office of the Co
8 Investigating Judges I was definitely not considered to be an
9 expert. Judge Lemonde once remarked to me that "I am the expert",
10 that is, Judge Lemonde is the expert, not you. And there's a
11 level at which - well, there - so to my unlegally (sic),
12 untutored mind it seems to me there is some dispute about this.

13 [09.13.21]

14 I approach the question in my capacity as a scholar or an
15 academic, which may or may not be the same thing as an expert.
16 It's no accident that generally speaking, I think, most academics
17 don't express themselves nor expose themselves to situations in
18 which they express themselves, as it were, for the record in a
19 question and answer format.

20 I mean, I don't want to go into things about intellectual
21 snobbery and all of that, but the normal mode of academic
22 expression is through published materials, and there's a process
23 by which those published materials are produced. You write
24 something, you read it, you think that's crazy what I wrote, you
25 revise it. You read it a couple of more times, you revise it a

6

1 couple of more times. You send it out to your peers who are
2 friendly or at least whom you feel you can rely upon not to
3 betray some confidence or to act in a hostile manner in your
4 regard. They make suggestions about what you should maybe read
5 additionally or think about additionally or what seems to them
6 not to make sense, and then you send it off for publication. And
7 at that point it's sent around for peer review, and at that point
8 you might get some very hostile but anonymous commentary about
9 your work, which you have to - often have to take into account
10 before you publish.

11 [09.15.04]

12 And then finally, after a process that may take months if not
13 years, depending upon the length of the piece, with luck it sees
14 the light of day, and at that point it's in the public domain and
15 it becomes the subject of academic debate. And it's that sort of
16 - that last stage, which is the, as it were, adversarial part of
17 the process. And to my mind that's the right format for an
18 academic or a scholar to express themselves, not in the question
19 and answer format to which I am being subjected or which I've
20 been given an opportunity to have in the Court.

21 So, I would rather do it, express my expert opinion if I have an
22 expert opinion, based on my scholarship and so on, in the proper
23 academic mode. And in that regard I would note that regardless of
24 debates about procedural issues and the actual substance of the
25 resulting work product, previous experts, or people who have been

7

1 considered experts, people like Craig Etcheson and people like
2 the demographers who did the demographic report, followed more or
3 less that route. They were commissioned by somebody or another
4 within the Court to write about something. I am sure they sat and
5 they drafted it, and then they redrafted it, and they drafted -
6 redrafted it yet again, and then it was submitted, and on the
7 basis of what was submitted they were then questioned and that
8 seems to me to be a better way of soliciting an expert opinion.

9 [09.16.57]

10 That takes me to - sorry, taking time - takes me to my second
11 point. That process obviously takes time. In other words, if I
12 was going to do something like that, I would have wanted to have
13 been - had several months, at least, to prepare my report. I
14 wasn't asked to prepare a report for whatever reason. If I were
15 to be asked to prepare a report, as I said, it would take me
16 probably several months in my mind to do it right.

17 And that takes me to my third point, which is sometime around the
18 end of 2011, I decided that I no longer wanted to have all of my
19 intellectual and other energies focused on the Khmer Rouge. You
20 know, when I first started looking at the Khmer Rouge in 1973, it
21 was current events. I've always been interested in current
22 events. I'm a political scientist, I taught the whole of
23 Southeast Asia, and while you all or most of you all were
24 undergoing this steep learning curve about the Khmer Rouge and
25 power, I felt myself being deskilled in terms of the rest of my

8

1 interests and qualifications.

2 [09.18.10]

3 So it the - at the - around the end of 2011, I decided no more
4 Khmer Rouge for now, and if I may be allowed to say so, decided
5 no more Khmer Rouge tribunal forever, and that was because I
6 wanted to concentrate on other things. And if you look at my
7 recent proper academic publications none of them are about the
8 Khmer Rouge anymore; they're all about contemporary Southeast
9 Asian politics.

10 So for those reasons all combined together, I, as I put it in my
11 email, respectfully declined to be an expert.

12 Q. Thank you for that long answer, Mr. Heder.

13 I would like to take you back to the very first sentence or one
14 of the very first sentences of your reply when Judge Marcel
15 Lemonde told you that you are not an expert but that he is the
16 expert. Do you remember if he gave any arguments supporting that
17 position?

18 [09.19.30]

19 A. Yes. I mean, at - maybe not at the deepest level, but at the
20 level of explaining that in his view it wasn't appropriate for
21 someone who was an investigator, researcher, analyst inside the
22 Office of the Co Investigating Judges to also at the same time be
23 an expert. And he didn't at the time nor subsequently to my
24 recollection ever, as it were, cite chapter and verse from his
25 legal tradition to backup that explanation, semi-explanation with

9

1 a reasoned legal judgement, if you will, but he was very strongly
2 of that view.

3 I mean, Robert Petit also said - once said something somewhat
4 similar to me, which is "I am the Prosecutor and you're not". So,
5 you know, this was a view that had a certain currency in those
6 two contexts. I don't know, you know. So - and again, I'm not a
7 lawyer; I'm not in a position to judge these issues, but if I
8 may, one more point.

9 I mean, I thought about - I thought a lot about what's been going
10 on back and forth between yourself and the Prosecution and civil
11 parties and tried to think about it in academic terms. And it
12 seems to me there are two ends of a spectrum here. One end of the
13 spectrum is what you all, or some of you all seem to call a
14 witness, and the other end of the spectrum is something that you
15 or you all seem to call an expert.

16 [09.21.19]

17 And to use an analogy: If somebody were to ask me what time did
18 the sun come up this morning?-

19 MR. PRESIDENT:

20 Mr. Witness, please direct your response only to the facts before
21 this Chamber, and also the Counsel, you're advised to put the
22 questions related to the facts determined by the Chamber to be
23 heard before this Chamber. And try to use the time allocation for
24 your team effectively, and please try to avoid the repetitious
25 nature of the questions. We only want to hear the facts so that

10

1 we would use it as the basis for our decision, and for that
2 reason, please direct your questions to the related facts. Thank
3 you.

4 BY MR. KOPPE:

5 Allow me, Mr. President, then one more question in this respect.

6 Q. Professor Chandler, who wrote a preface to your book on
7 communism, did appear in this courtroom as an expert. My question
8 to you was the fact that he did appear as an expert in
9 consideration in your decision not to come as an expert but
10 rather as a witness?

11 [09.23.09]

12 MR. PRESIDENT:

13 Your question is not related. The witness, you are directed not
14 to respond to this question. And Counsel, you have been reminded
15 on the relevancy of the questions.

16 BY MR. KOPPE:

17 Just to make an argument why I'm asking these questions, Mr.
18 President, it goes directly to the reliability or the credibility
19 of this witness, and I think it is also in the light of earlier
20 questions of the Prosecution, only fair to ask what the
21 considerations were. But I will move on and ask the question
22 maybe in a different way.

23 Q. Mr. Heder, based on your research, based on all your
24 interviews, based on all the articles that you have seen and
25 read, is Professor Chandler one of the leading experts on the DK

11

1 period?

2 MR. PRESIDENT:

3 Witness, please wait.

4 The Prosecutor, you may proceed.

5 [09.24.28]

6 MR. RAYNOR:

7 Mr. President, I object to this question. What it really amounts

8 to is what's your opinion of or what's the received opinion of

9 Professor Chandler.

10 If my learned friend wants to quote from a particular part of one

11 of Mr. Heder's books referencing this question or referencing

12 Professor Chandler there are in fact many references in Mr.

13 Heder's books to Professor Chandler. If it's a direct question to

14 a direct extract from one of Mr. Heder's books, I have no

15 objection, but otherwise, this is an opinion question seeking an

16 opinion answer.

17 BY MR. KOPPE:

18 I will rephrase, Mr. President.

19 Q. Mr. Heder, in your book on communism there is a forward of

20 Professor Chandler. Can you describe for us why it was he who

21 wrote a forward to your book?

22 [09.25.48]

23 MR. HEDER:

24 A. I think I can do this not by citing my own opinion but by

25 referring to the opinion of other scholars and particularly

12

1 historians of Southeast Asia, with whom I've obviously had much
2 contact over now many, too many decades as far as my age is
3 concerned. I mean, anybody who has been an historian of Southeast
4 Asia, particularly writing in English or French, considers David
5 Chandler the doyen of modern Cambodian historical works. So
6 anyone would suggest that if you want your work to have
7 credibility in the community of historians of Southeast Asia, it
8 is a good thing to have an endorsement from David Chandler.

9 Q. In the publications that you have read about Professor Ben
10 Kiernan, would you say the same thing as you have said now in
11 respect of Professor Chandler?

12 A. No, certainly not in the scholarly - the parts of the
13 scholarly community in which I normally travel. There may be
14 other parts of that community, because by its very nature it is
15 intellectually split and full of contestation where the view
16 might be different, but certainly in my circles, which may be a
17 reflection in part of my own views, like likes like, the opinion
18 of his work is not as high.

19 [09.27.51]

20 Q. Is it correct when I say that you have extensively criticized
21 the work of Ben Kiernan in your own publications?

22 A. Yes, and vice versa, and that's, as I suggested earlier,
23 that's normal. That's the adversarial part of scholarship, which
24 arguably, is somewhat analogous to what happens in a courtroom.

25 Q. Have you - do you know - read all Ben Kiernan's publications?

13

1 A. Without being churlish, I think I can say he tends to be even
2 more longwinded than me. I can't say that I have read every page
3 of everything he's ever written, but I've certainly read, I
4 think, every page of everything he's ever written about Cambodia.

5 Q. Now, let me, if you'll allow me, go back again to yourself.

6 Both Kiernan and both Chandler are professors. You do not seem to
7 have that title. Would you be able to explain why it is that you
8 are not a professor in political science or political history or
9 something equivalent?

10 MR. PRESIDENT:

11 Witness, please wait.

12 The Prosecution, you may proceed.

13 [09.29.37]

14 MR. RAYNOR:

15 I object, Mr. President, on the sole ground of relevance. What
16 relevance does this have? Only evidence that is relevant is
17 admissible. In my submission this is irrelevant.

18 MR. KOPPE:

19 And in my reply, Mr. President, this is a relevant question. It
20 goes directly to the person of this witness.

21 MR. PRESIDENT:

22 The objection and ground by the Prosecution is valid, thus
23 sustained. Your question is not relevant and the witness, you're
24 instructed not to respond to the last question put to you by the
25 defence counsel.

14

1 BY MR. KOPPE:

2 Q. Mr. Heder, have you seen, recently watched, a movie called "A
3 Day at Po Chrey"?

4 MR. HEDER:

5 A. No.

6 [09.30.53]

7 Q. Would you be able, based on your research or academic work, be
8 able to say something about the co producers or co directors of
9 that movie, Thet Sambath and Rob Lemkin?

10 A. Not a lot. I mean, I think I may have very briefly met both of
11 them somewhere along the line. I can't say I've ever had an
12 extensive or serious conversation with either of them. I've
13 watched the first film that they produced, but not paid great
14 attention to it frankly. There were some other films that were
15 produced around the same time that I looked at I think more
16 carefully. There was a BBC production and also an interview with
17 Nuon Chea that I had more involvement with, but without, you
18 know, without the equivalent of the document before me I'm not
19 sure how much I can say.

20 Q. One other question, Mr. Witness, about an academic, and I'm
21 referring to your publication, "Racism and Marxism: Labelling and
22 Genocide in Ben Kiernan's 'The Pol Pot Regime'". That is document
23 E131/1/131.3; English ERN, 00773700; French, 00802800; and Khmer,
24 00844 -

25 MR. PRESIDENT:

15

1 Counsel Victor Koppe, could you please repeat the document ID and
2 the ERN page again? Thank you. And please make it a bit slower.

3 [09.33.11]

4 BY MR. KOPPE:

5 It is document E131/1/13.3; English ERN, 00773700; French,
6 00802800; and Khmer, 00844550.

7 Q. In the first page of that article in the footnote you write
8 that you would like to thank certain people for their
9 contribution to this publication. You mention David Chandler but
10 you also mention, among others, Laura Summers. Would you be able
11 to explain to us who this Laura Summers is in the footnote that
12 you're referring to?

13 MR. HEDER:

14 A. Laura Summers is someone who was a PhD student, doing a PhD at
15 Cornell when I was an undergraduate there which would have been
16 in the early seventies, that is, before I came to Cambodia in
17 '73, and subsequently has taught in a number of universities in
18 the U.K. So she was in the U.K. or coming and going from the U.K.
19 at the time this article was written. Her PhD work was on
20 Cambodia. She also did a translation of Khieu Samphan's
21 dissertation with an introduction giving an analysis of its
22 significance, historical, political and otherwise. So in short,
23 she's a fellow academic.

24 [09.35.28]

25 Q. Thank you.

1 Now, retired, I heard you say?

2 Let me go back to a question on your personal background, Mr.
3 Heder.

4 Yesterday, and also the week before, I heard you answering
5 questions of the Prosecutors, often referring to documents or
6 other information that you received between 1973 and 1975 from
7 military attachés working for the U.S. Embassy or the U.S.
8 Consulate. Could you expand a little more on the contacts that
9 you had in those days with U.S. military attachés?

10 A. If I recall correctly, within the U.S. Embassy context there
11 was something called Med Tech (phonetic), military something,
12 something, something, I forget exactly what it stood for. By U.S.
13 law, U.S. military involvement in Cambodia was severely
14 restricted in terms of on the ground involvement. There was
15 supposed to be no U.S. ground troops and I think there were
16 certain restrictions on aid and certainly restrictions on advice.
17 [09.37.16]

18 So neither ground troops, if I recall correctly, neither U.S.
19 ground troops nor U.S. military advisors were legally allowed in
20 Cambodia, but there was this Med Tech (phonetic) part of the U.S.
21 Embassy, or attached to the U.S. Embassy, which I - the main
22 brief, I think, was the overseeing of the provision of military
23 aid, material aid. Alongside that, as is normal in every American
24 embassy or almost every American embassy, there is a military
25 attaché, there is an apparatus known as the Defence Intelligence

17

1 Agency and those are staffed, like Med Tech (phonetic) was, by
2 serving military officers. I think there were sometimes some
3 civilian analysts attached to those offices, not sure about that.
4 So I had contact with some of those people, either in Med Tech
5 (phonetic) or in the defence attaché's office or in the defence
6 intelligence office with whom I discussed the military situation
7 and from whom, on occasion, I got a document or two. If you're
8 going to ask me who those people were, off the top of my head, I
9 frankly don't remember the names. I could try and find out, it
10 will take a bit of time, but that doesn't stick in my memory, nor
11 - in the same way that the name of the Japanese military attaché
12 doesn't stick in my memory either.

13 [09.38.56]

14 Q. Now, if I understand your earlier testimony correctly, you had
15 arrived in '73 in Cambodia, you worked as a journalist. Would you
16 be able to compare yourself with other journalists then in terms
17 of your access to these military - U.S. military attachés? Was
18 that something, if you remember, had more in terms of contact
19 than the other journalists?

20 A. I would say it was about average. I think, you know, some of
21 the more senior correspondents who had much more experience and
22 much better developed and established contacts in the U.S.
23 Government realm, probably had much better access than I did. I
24 think there were some who maybe didn't cultivate these particular
25 kinds of sources to the extent that I did, and therefore had

18

1 fewer contacts. But I don't - I certainly didn't have special
2 access, nor was I, for some reason or another, excluded or
3 self-excluded from contact with that part of the U.S. official
4 establishment.

5 Q. Do you remember at the time interacting, talking, whatever,
6 with a fellow journalist called Sydney Schanberg?

7 A. As you know, Sydney wasn't a full time resident in Phnom Penh,
8 he came and went. I had some contact but I wouldn't say a lot
9 with Sydney.

10 [09.40.57]

11 Q. So you wouldn't be able to tell from your memory if he had
12 substantial contacts or the same kind of contacts that you had
13 with U.S. military attachés?

14 A. No, the relationship between myself and Sidney was not such
15 that that was the kind of information we shared.

16 Q. In those years, and maybe also afterwards, Mr. Heder, were you
17 ever in whatever way employed as a U.S. intelligence officer?

18 A. The short answer is no.

19 Q. And the long answer?

20 A. The long answer is that in the period between 1979 and 1984, I
21 periodically had research funding from something called "The
22 Office of External Research of the Bureau of Intelligence and
23 Research of the U.S. Department of State", and that was on the
24 basis of a contract, which at one point I understood meant that I
25 had been employed by the Department of State. But subsequently,

19

1 I, as a result of some tax matters, and my payment of taxes in
2 the U.S. and the U.K., and having to sort that out in terms of my
3 income and salary and so on, it's now clear to me that that
4 shouldn't be understood as employment.

5 [09.43.01]

6 It was grant money funding not salary. It was research as an
7 expert, as it happens, not employment. So although - and it's
8 like the same - it's the same kind of situation that I described
9 with regard to my other research funding. The money comes to your
10 academic institution or through your academic institution and
11 then you are paid through that route. So it's income but it's not
12 salary. It's grant but it's not employment. And the other point
13 that probably is worth making is that it's research, intelligence
14 gathering, intelligence analysis in the public domain. In other
15 words, both the sources and the work product are in the public
16 domain, and therefore, it's not covert operations.

17 So in that sense, the U.S. Government is one of the three
18 governments from which I received funding over the years. I
19 mentioned, I think in earlier testimony, the British Government
20 for some of the research that I did at DC Cam, and I was also
21 employed in that sense but in fact not employment, had grant
22 money, by the Thai Government, Thai National Commission for
23 UNESCO at one point.

24 [09.44.30]

25 So the technical answer is no.

20

1 Q. Did you ever, sometime in 2003, submit a book proposal under a
2 working title, "Genocide and Auto-Genocide in Cambodia:
3 Communism, Nationalism, and Murder, 1975-1978"?

4 A. I submitted a number of book proposals in that period. I can't
5 be absolutely sure that that's one of them, but it might well be.

6 Q. Did you when you made possibly this book proposal, an
7 accompanying remark saying that you researched the CPK for 30
8 years as a journalist and also as an intelligence officer, quote,
9 unquote?

10 A. The normal formulation I used was intelligence analyst,
11 because that was the rubric under which the grant was made,
12 intelligence gathering and intelligence analysis. To my
13 recollection, the grant rubric was not intelligence officer, but
14 I may have glossed it in that document.

15 I think another point that's worth making in that - in this
16 context is that that office of external research of Bureau of
17 Intelligence and Research of U.S. Department of State grant money
18 was to do research not on the CPK while it was in power, that is
19 to say, not on the period of the temporal jurisdiction of the
20 Court, but on the post '79 period, and in fact, it was part of a
21 larger study that looked at the global situation in Cambodia
22 after 1979. And again, all the results were either published or
23 circulated as academic papers.

24 [09.46.52]

25 Q. Do you know a book from Kiernan, Ben Kiernan, called "Bringing

21

1 the Khmer Rouge to Justice", or rather, a chapter in the book,
2 "Bringing the Khmer Rouge to Justice"?

3 A. That one doesn't ring an immediate bell. If I could - again,
4 if I can see the publication I might recognize it.

5 MR. RAYNOR:

6 Mr. President, we'd also like some clarification, please. Which
7 chapter from which book?

8 MR. KOPPE:

9 I'm referring to document D269/5.1, page 225, footnote -
10 respective footnote 16.

11 (Judges deliberate)

12 MR. KOPPE:

13 Mr. Heder, are you-

14 MR. PRESIDENT:

15 Counsel, please hold on.

16 Judge Cartwright, you may proceed.

17 [09.48.28]

18 JUDGE CARTWRIGHT:

19 Thank you, President.

20 Just a technical matter, Mr. Koppe. This book has a D number. Has
21 it been put before the Chamber, please, and what is its' title?

22 MR. KOPPE:

23 It's before the Chamber. It is - I'm trying to decipher the ERN
24 number. There's a black mark through it. It's - I think it's

25 00489660. It is an official D number attached to it. It is on the

22

1 case file. Here I have the proper ERN number, 00488360.

2 JUDGE CARTWRIGHT:

3 But has it been put before the Chamber, and what is its title,
4 please?

5 MR. KOPPE:

6 Its' title is: "Ben Kiernan: Genocide and Resistance in Southeast
7 Asia", and it's only in English.

8 JUDGE CARTWRIGHT:

9 Has it been put before the Chamber?

10 [09.49.47]

11 MR. KOPPE:

12 I have to get back to you on that with an answer, Judge
13 Cartwright.

14 JUDGE CARTWRIGHT:

15 In that case, could you move to something different in the
16 meantime, please?

17 BY MR. KOPPE:

18 I will rephrase my question in more general terms.

19 Q. Mr. Heder, are you aware that Ben Kiernan qualifies you as an
20 intelligence officer?

21 MR. HEDER:

22 A. I don't recall specifically having noted that, but it may well
23 be.

24 And on the basis of the same confusion about the exact nature of
25 the relationship between myself and INR, which is as I explained

1 is a confusion about whether the contractual arrangement actually
2 made me an employee of the U.S. Government or not. And the answer
3 to that question is not, in the same way that my funding from the
4 British Embassy here in Phnom Penh didn't make me an employee of
5 the British Government, and my funding from the Thai National
6 Commission for UNESCO, which is a state body in Thailand, didn't
7 make me an employee of the Thai Government.

8 [09.51.01]

9 My exact job title is something that's a bit hazier. As I said,
10 with regard to the INR work, the rubric and the contract, as I
11 recall it, was intelligence gathering and intelligence analysis,
12 and one could summarize that as yes, as intelligence officer.

13 Q. Thank you.

14 Let me move on, Mr. Heder, to an answer that you gave to
15 questions from the Prosecution last week in the very beginning.
16 You testified that you applied for a position at the UNAKRT, a
17 position with the Office of the Investigating Judges, and that
18 after you received that position almost immediately, sometime in
19 2006, you were detached at the request of Prosecutor Petit to
20 work as an analyst, researcher, or whatever for the Prosecution.
21 Did I summarize that correctly your answer?

22 A. Yes.

23 Q. When you were given on loan, so to speak, to the Prosecution,
24 was it clear to you that after a while you would go back to the
25 Office of the Investigating Judges?

1 [09.52.45]

2 A. It was certainly clear to Judge Lemonde. I think maybe
3 Prosecutor Petit had different plans or hopes and I was caught
4 somewhere in between those two perceptions or persons.

5 Q. Do you remember a specific - in light of this specific
6 decision anything from Judge Lemonde in terms of the possibility
7 of a conflict of interest once you would come back to the Office
8 of the Investigating Judges?

9 A. If I recall correctly, his view was that the Anglo Saxons
10 might think that way, but of course, they would be wrong.

11 Q. Do you remember if he gave any arguments to back up his
12 position?

13 A. Frankly, Judge Lemonde wasn't prone to explain his managerial
14 decisions to his staff with extensive legal reasoning.

15 Q. When you were working for the Prosecution in 2006, before you
16 returned, did you make recommendations to the Prosecutors about,
17 for instance, whom to interview?

18 MR. PRESIDENT:

19 Witness, please hold on.

20 [09.54.49]

21 Mr. Prosecutor, you may proceed.

22 MR. RAYNOR:

23 I only object at this stage, I've not objected to the previous
24 questions.

25 There have been a variety of decisions about the extensive

25

1 questioning in terms of other phases of the trial process. I have
2 before me a decision from the 7th of December 2012. The ECCC
3 legal framework does not envisage examination by the Trial
4 Chamber of the procedural correctness of the judicial
5 investigation upon being seized of the case file. It seems to me
6 we're veering into that territory. I'll of course be guided,
7 given what Judge Cartwright said on day one of the examination of
8 Mr. Heder, but in my respectful submission we're getting into the
9 sort of territory that her Honour, Judge Cartwright, was
10 cautioning against. But I'm, of course, in the Court's hands, but
11 it seems to me we are in that territory and for that reason I
12 object.

13 [09.56.03]

14 MR. KOPPE:

15 If I may reply, Mr. President, I know - I'm aware of your ruling
16 on this issue. It's not my intention to go into big detail as to
17 the work and activities of this witness when he was employed by
18 the Prosecution. I do have a few general questions about sort of
19 the general terms of his work there. So I will not go into any
20 specifics in respect of names of witnesses or just some general
21 questions as to be able to understand the things that he has done
22 in general terms, once again, when he was working with the
23 Prosecution.

24 (Judges deliberate)

25 [09.58.05]

26

1 MR. PRESIDENT:

2 The objection and grounds for objection by the Prosecutor against
3 the last question put by the defence team for Mr. Nuon Chea is
4 sustained. It is well grounded and the Chamber wishes to advise
5 the parties that the issue of procedural conflict, it has been
6 addressed by the Pre Trial Chamber. Thus far, for this reason,
7 the counsel is advised to put substantive question in order to
8 ascertain the truth in these proceedings.

9 [09.58.48]

10 You may proceed.

11 MR. KOPPE:

12 Then my question to you, Mr. President, would it please be
13 possible to, for the record, have me pronounce the four or five
14 questions that I have, assuming that you will not allow me - not
15 allow the witness to answer them, but just for the record, that
16 these questions are known to you?

17 MR. PRESIDENT:

18 The Chamber has already ruled on this issue that the objection by
19 the Prosecutor is well grounded and the witness is directed not
20 to respond to this question. And the counsel is now directed to
21 put substantive questions to the witness so that it is conducive
22 for the Chamber to ascertain the truth and this will contribute
23 the interests of the proceedings before us.

24 [10.00.06]

25 BY MR. KOPPE:

27

1 I'm just trying, Mr. President, to distinguish the many hats of
2 this witness, the knowledge that he has acquiesced in the various
3 roles that he fulfilled in his life. One last question then, in
4 respect of your position later, for the Office of the
5 Investigating Judges, did Judge Lemonde ever ask you only to seek
6 for inculpatory (sic) evidence, rather than exculpatory evidence?

7 MR. PRESIDENT:

8 Witness, please hold on. The Prosecutor, you may proceed.

9 MR. RAYNOR:

10 Same objection, same grounds.

11 MR. PRESIDENT:

12 If the counsel does not have anything to respond then the Chamber
13 rules that the objection and its ground by the Prosecution is
14 sustained. Witness, you are directed not to respond to the last
15 question put to you by the defence counsel.

16 BY MR. KOPPE:

17 Q. Then I'll ask the question again, and I think I'm entitled to
18 ask that question. Mr. Witness, did Judge Lemonde ask you only to
19 collect inculpatory evidence and not exculpatory evidence? And
20 anticipating the objection of the Prosecution, I think this is a
21 very relevant question.

22 [10.01.56]

23 MR. RAYNOR:

24 Same objection, same grounds, already ruled upon. But I repeat
25 the objection.

1 MR. PRESIDENT:

2 The Chamber already ruled that the witness, you are directed not
3 to respond to that question.

4 BY MR. KOPPE

5 Q. Mr. Heder, I will move on. It is still related to that phase
6 in 2006, but it's moving on more in terms of your material. You
7 have testified earlier that you were, in 2006, possible also
8 afterwards, in the possession of original CPK material; original
9 documents such as the Revolutionary Flag, maybe telegrams, or
10 other original documents. Would you be able to tell us when you
11 got the position in 2006, with the Tribunal, if you - that you
12 indeed handed over all your original documents to the
13 Investigating Judge?

14 [10.03.22]

15 MR. HEDER:

16 A. They were offered in their entirety, but they weren't all
17 taken. In other words, I offered everything, but much of it was
18 declined.

19 Q. More particularly, did you offer original copies, original
20 versions of Revolutionary Flags? Do you remember specifically
21 giving these documents to the Investigating Judge?

22 A. Yes.

23 Q. Do you have any knowledge as to where these original
24 Revolutionary Flags are now, the ones that you gave to the Court?

25 A. No, I didn't give them, I offered them. They were declined, so

29

1 I took - they're the same ones that ended up later in the
2 possession of the Court. So these documents, among others were
3 offered, they were declined. So at some point I took them back to
4 London and then when the Court asked for them, the Trial Chamber
5 asked for them then I supplied them.

6 [10.04.52]

7 Q. The reason I'm asking you this question is, or the background
8 of the questions to follow it. Our client, Nuon Chea, would
9 really like to see as to what you have in your hands, an original
10 version of one of the Revolutionary Flags. You as a scholar, as
11 an academic who has researched the period extensively, can you
12 tell us how an original version of a Revolutionary Flag that we
13 placed here, so to speak not literally of course but here in the
14 middle so that we can see the authenticity, or judge the
15 authenticity of it? Just in terms of general procedure, how do
16 you, based on your experience and your knowledge, how to be able
17 to get an original version of the Revolutionary Flag?

18 MR. PRESIDENT:

19 Witness, please hold on. The Prosecution, you may go ahead.

20 MR. RAYNOR:

21 Mr. President, I can't see how it's appropriate to ask Mr. Heder
22 how this could - how could this be shown. Two documents were
23 shown yesterday and read. They're on the case file. I gave the
24 file numbers. I don't understand why this line of questioning is
25 being pursued. The "Red Flags" that they are, are on our case

30

1 file. The red ones, on our case file, with a case number. Why are
2 we asking how does Nuon Chea access it? Press a button on the
3 computer and it comes up on the screen. What's the problem?

4 [10.06.53]

5 MR. KOPPE:

6 Mr. President, I'm just trying to make the witness understand the
7 background of my question. The question is about - but let me
8 rephrase it.

9 BY MR. KOPPE:

10 Q. Mr. Witness, would you explain how in your research and the
11 writing of your academic articles got into the possession of
12 these original Revolutionary Flags?

13 MR. HEDER:

14 A. As I think I explained, when I came to the Tuol Sleng genocide
15 museum, which I did first in late 1980 and then again in 1981,
16 but I believe all of this happened on the first occasion, I was
17 shown by the then archivist, a collection of Revolutionary Flags,
18 Revolutionary Youth, and some other evidently original CPK
19 documents, and in the situation where there was no photocopy
20 facility available they decided to give me originals from that
21 collection of which there were other originals.

22 [10.08.20]

23 So they gave me those originals and then - in 1981, and then on
24 numerous subsequent visits to the Tuol Sleng genocide museum I
25 made photocopies, once photocopying was a technical possibility,

31

1 of all the other Revolutionary Flags, stroke Flags, and
2 Revolutionary Youth that they had in their possession. I'm trying
3 to think whether there are some photocopies in my files which
4 came off of Revolutionary Flag Flags, or Revolutionary Youth that
5 are in the possession of DC-Cam. I don't specifically recall
6 whether those were photocopies of originals, or photocopies of
7 photocopies.

8 The upshot of all of this is that in addition to the ones that I
9 eventually, having previously offered them, and then been told
10 they weren't needed, having eventually been asked by the Trial
11 Chamber to provide the two I take it missing originals, I
12 provided those two. I'm pretty sure that I didn't get rid of the
13 other originals in my possessions somewhere along the line. So
14 they're probably somewhere in those 45 filing cabinets of paper
15 materials that I have on various aspects of Cambodian politics,
16 including the Khmer Rouge. So if there are missing additions, in
17 theory, with sufficient time I might be able to find them.

18 [10.10.03]

19 Q. When was the last time that you had in your hands, physically,
20 documents like those Revolutionary Flags or S-21 confessions,
21 particularly the ones with the alleged annotations of Nuon Chea
22 on it; do you remember when you had those physically in your
23 hand?

24 A. Well, I would have brought them with me to Cambodia in the
25 middle of 2006. I recall the presumption having been at the

1 office of the Co-Prosecutors that other originals were available
2 in other locations and, therefore, they would be obtained from
3 other locations. When I first went to office of the
4 Co-Prosecutors I offered these documents, they were declined.
5 When the introductory submission came in the middle of 2007 – is
6 it July 2007, the introductory submission – they were offered
7 again and again, declined.

8 [10.11.29]

9 So I probably brought them back to London maybe around Christmas
10 of 2007, the next time I went to London. I don't remember exactly
11 when, but most likely sometime in the latter part of 2007, I
12 packed up all the stuff that I had brought that hadn't been taken
13 or copied either by Prosecution or the Office of the
14 Co-Investigating Judges, and took it home and put it back in the
15 filing cabinet.

16 Q. You've testified and also written that you have extensively
17 studied S-21 confessions. A very concrete question, do you know
18 on the basis of your research and your academic writing, where
19 exactly you can – the S-21 confessions with the alleged signature
20 of Nuon Chea, where they are – where they are physically
21 situated?

22 [10.12.38]

23 A. I think the answer to that is no, because – well, back up to
24 your earlier question – among all of those documents there are
25 very, very, very few of my documents, documents in my possession,

33

1 there are very, very ,very few that are original S-21 materials.
2 The archivists weren't happy to have any of that stuff leave the
3 building. On a couple of occasions, when there were like seven or
4 eight carbon copies, they gave me one of the carbon copies. But
5 99.9 per cent of the S-21 confession material that's in my
6 possession is photocopies.

7 So originals either I have never seen or I don't know where the
8 originals are and I've only seen a very few of them. Other than -
9 I mean I saw the originals that were filed in the Tuol Sleng
10 genocide museum and many of my copies are copies from there. But
11 those, generally speaking, from what I have seen, are not the
12 ones that are annotated. The ones that are annotated come, to my
13 knowledge, from a different location not specifically or directly
14 known to me, and those that were originally on file at the Tuol
15 Sleng genocide museum.

16 [10.14.06]

17 Q. Just to make sure that I understand your answer, the 15, 20,
18 plus confessions with a signature allegedly belonging to Nuon
19 Chea, the whereabouts of the actual originals, you do not know?

20 A. I'm thinking about it again. If I recall correctly, the - on
21 the case file there are colour scans of said documents, and my
22 recollection is that I did some of those colour scans myself
23 while at the Office of the Co-Investigating Judges. But in - on
24 the grounds of DC-Cam, so at the point in time when I did those
25 colour scans, the originals - if I recall correctly - from which

34

1 I made the scans were at DC-Cam. It doesn't mean they are
2 necessarily - they were necessarily stored there. They were
3 brought to me in a photocopy room. I used a scanner that was a
4 photocopier to do the scans and then they went back to wherever
5 they came from. Where that - wherever it is, I don't know.

6 [10.15.42]

7 Q. Would you be able to tell how you were able to determine
8 whether these specific confessions with the signature on it, were
9 in fact authentic and original versions?

10 MR. PRESIDENT:

11 Witness, please hold on. The Prosecution, you may proceed.

12 MR. RAYNOR:

13 It seems to me that's an expert opinion question. I object.

14 BY MR. KOPPE:

15 I will rephrase.

16 Q. When you saw those documents that were handed to you, did you
17 do anything in order to come to some assessment of its
18 authenticity?

19 MR. HEDER:

20 A. No.

21 [10.16.44]

22 Q. I might come back to this subject. Instead let me move on to
23 the next subject, and that is something - there's an answer that
24 you gave earlier in your testimony to a question of the
25 Prosecution, and that is the interview that you apparently had

35

1 with Ke Pauk. Now, if I remember correctly, this material on the,
2 in the interview, you were allowed to give that free once Ke Pauk
3 had died. As I understand as well, you tried to offer this
4 material to the Office of the Co-Investigating Judges, they
5 didn't want to accepted it and now it is stored, literally you
6 said, somewhere in your 75 cabinets - 45, sorry - 45 cabinets in
7 London. Do you remember what was told to you when you offered
8 this specific testimony, as I may call it, of Ke Pauk to you?

9 [10.18.17]

10 MR. PRESIDENT:

11 Witness, please hold on. The Prosecution, you may proceed.

12 MR. RAYNOR:

13 Mr. President, really, it's a two-fold objection. One going back
14 to the direction that the Trial Chamber is not interested in what
15 Judges said or didn't say, or what the OCIJ said about material
16 that was being given is the first point; and the second one
17 again, just simply on relevance. What's the relevance of what
18 somebody said about some piece of evidence that's not on the case
19 file? How does that assist you in determining the truth?

20 [10.18.57]

21 MR. KOPPE:

22 I'm just trying to establish, Mr. President, what exactly
23 happened to the alleged testimony of Ke Pauk. We have been
24 speaking extensively about the interviews of Ieng Sary and Khieu
25 Samphan have given to the witness. There seems to be an interview

36

1 with Ke Pauk but we don't have a transcript as we have when it
2 comes to the interviews of this witness with all of these other
3 people. So I'm trying to find out what happened and I'm trying to
4 find out why, or if the witness has any knowledge as to why
5 nobody seemed to be interested in this particular testimony.

6 (Judges deliberate)

7 [10.20.47)

8 MR. PRESIDENT:

9 I'd like to give the floor to Judge Jean-Marc Lavergne to respond
10 to the objection to the last question. Judge Lavergne, please
11 take the floor.

12 JUDGE LAVERGNE:

13 Yes, thank you, Mr. President. The Chamber would like to note
14 that the - Ke Pauk's interview is an element of evidence which
15 has been placed on the file. So this element will be considered.
16 The question is, why wasn't this element placed on the case file
17 during the investigation. Well, this question does not seem
18 relevant so we should move on to another topic.

19 MR. KOPPE:

20 With all respect, I didn't ask anything about placing it on the
21 case file. But I'll move on and ask the question more
22 specifically.

23 [10.21.52]

24 BY MR. KOPPE:

25 Q. I'm referring to document E190.1.398, ERN number 00661459, and

37

1 that is your footnote - it is your article reassessing the role
2 of senior leaders and local officials, and in that footnote 14,
3 that you have been - that the Prosecution has been referring to
4 earlier, you speak about the interview that you had with Ke Pauk.
5 Then going back to this particular footnote, and I quote from the
6 footnote as follows:

7 "In an interview with the author on 22nd of February 2001 in Siem
8 Reap, Cambodia, Pauk agreed to discuss evidence against himself
9 and others, on the condition that his remarks not be made public
10 while he was alive.

11 "He conceded that as a secretary of the CPK North (later Central)
12 Zone Committee, he had implemented a CPK policy of killing Khmer
13 Republic officials, initiated the arrest and ordered the
14 execution of alleged traitors among CPK members subordinated to
15 him, and followed orders from Nuon to assist in the arrest of
16 other alleged traitors in the CPK ranks whom he knew would be
17 executed after interrogation by the CPK security service
18 headquarters, S-21, in Phnom Penh."

19 [10.23.51]

20 This footnote in your article seems to suggest that this is, at
21 least in that particular footnote, the only evidence used by you
22 to establish a possible link between a policy to kill and the
23 role of Nuon Chea. Would that be a fair summary of that footnote
24 14?

25 MR. PRESIDENT:

1 Witness, please wait. The Prosecution, you may proceed.

2 MR. RAYNOR:

3 The next words talk about corroboration and in order for this
4 question to be properly placed in context before Mr. Heder there
5 needs to be reference, in my respectful submission, to the next
6 sentence and the word corroboration and identifying where the
7 corroboration was from and whether the corroboration went to the
8 element of the question. It's wrong to suggest to a witness that
9 something is not corroborated when the next sentence talks about
10 corroboration.

11 [10.25.05]

12 MR. KOPPE:

13 I think this witness is perfectly capable of correcting me if I
14 made a wrong suggestion when it comes to a footnote, first of
15 all. Secondly, I would like to remind the Chamber that when my
16 learned friend was quoting extensively from a passage of an
17 interview of Khieu Samphan he left out the very last sentence
18 referring to East Zone cadre, Heng Samrin. So now to express a
19 problem with me not quoting the complete footnote seems to be
20 quite odd, I might add. So it is a footnote - it's about a
21 footnote that this particular witness wrote in an article and I'm
22 sure he's able to assist the Chamber and the defence in answering
23 the question, whether the Ke Pauk testimony was the only
24 testimony relevant to a possible role of Nuon Chea.

25 [10.26.17]

1 MR. PRESIDENT:

2 Witness, you may now respond to the question put to you by the
3 defence counsel. However, the defence counsel and other parties,
4 you shall be reminded that names of other witnesses shall not be
5 pronounced during your questions except the pseudonyms that have
6 been used, that have been allocated to those witnesses, and that
7 is the general practice for the questioning time. If the
8 witnesses bear their pseudonyms, please use the pseudonyms
9 instead of the actual names.

10 MR. HEDER:

11 Sorry, could you repeat the question?

12 BY MR. KOPPE:

13 Q. Of course. I just read you an extract from the footnote 14 of
14 - in respect of your article reassessing. Now, my question
15 reformulated would be whether Ke Pauk was in fact the only source
16 for your - for the paragraph in your article that there was a
17 link between a policy to kill and target Lon Nol officials and
18 soldiers, and the role - the possible role of Nuon Chea.

19 [10.27.53]

20 MR. HEDER:

21 A. I mean, the obvious answer is that whatever is said above
22 footnote 14 is based on whatever appears in footnote 14, which is
23 not to say that there might be evidence elsewhere that's not
24 included in the footnote, that speaks to the same issue, which
25 was left out of the footnote or was not in my possession at the

40

1 time the piece was written. But yes, of course.

2 Q. I'd be happy, for your memory, to read the paragraph that this
3 footnote is referring to.

4 MR. RAYNOR:

5 Mr. President, every time I put a footnote to Mr. Heder, he had
6 the full document in front of him. Can he please be shown full
7 documents and not just have them put up on the screen? This is
8 important evidence, and in my respectful submission, Mr. Heder
9 should be given the courtesy of being given this document in hard
10 copy so that he can follow the question.

11 [10.29.10]

12 MR. KOPPE:

13 I'd be happy to do that, Mr. President.

14 MR. PRESIDENT:

15 Court officer, could you deliver the document from the counsel
16 for the witness examination?

17 MR. HEDER:

18 Again, I mean I can only say that I must have considered this to
19 use loosely, a legal phrase, but only in an academic sense, this
20 was the best available evidence that I had at the time to
21 substantiate the conclusion or the assertion that's contained in
22 the sentence that ends with number 14.

23 [10.30.34]

24 BY MR. KOPPE:

25 Q. Hence my question, if you remember why nothing was done with

41

1 your offer to give that – the transcript of that interview. But I
2 will move on, Mr. President.

3 [10.30.52]

4 I'm mindful of the time. I'm going to question of methodology
5 now. It is 10.30. I'd be happy to move on, but I'm in your hands,
6 Mr. President.

7 MR. PRESIDENT:

8 Thank you, counsel. The time is appropriate for a short break. We
9 will take a 20 minute break and return at 10 to 11.00.

10 Court officer, could you assist the witness during the break and
11 have him return to the courtroom at 10 to 11.00.

12 (Court recesses from 1031H until 1052H)

13 MR. PRESIDENT:

14 Please be seated. The Court is now back in session. And, once
15 again, the floor is given to Nuon Chea's Defence to continue
16 putting questions to the witness. You may proceed.

17 BY MR. KOPPE:

18 Q. Thank you Mr. President. Good morning again, Mr. Heder. Right
19 now, I would like to turn to the topic of the methodology of your
20 writings and your academic publications. Before I come to that
21 specific topic, I would like to ask you a question in respect to
22 the answers that you have been giving today and the previous
23 days. From your testimony, it is clear that you did extensive
24 academic scholarly research in the 80's and the 90's. In 2006,
25 you started working for the Office of the Investigating Judges,

1 and were detached for a while to the Prosecution.

2 [10.53.22]

3 Afterwards, when you left, you continued writing at least some
4 publications in respect of politics in Cambodia, sometimes making
5 references to the DK period. My question to you is; when you were
6 giving the answers to the questions of the Prosecution, and when
7 you were asked to give evidence as to whether sources were
8 confirmed by other sources, etc. – were you able to distinguish
9 between the knowledge that you have gathered in your scholarly
10 period, so to speak, and when you were working as an
11 Investigator?

12 MR. HEDER:

13 A. Generally speaking, I think, yes. I certainly tried to do so.
14 Of course, realistically speaking, I don't have even the
15 beginnings of a case map, much less ZyLab, in my head. So it's
16 not always possible for me to be absolutely certain that I can
17 segregate in my own mind what knowledge came to me when via what
18 channel as the result of what work.

19 [10.55.00]

20 But I've tried to – I'm aware of this distinction, and I've tried
21 to segregate, to the best of my memory and the best of my mental
22 capacities, out the various parts of the knowledge and the
23 provenance thereof.

24 Q. Then are you saying that answers that you have been giving the
25 past days are based on your knowledge gathered in respect of your

43

1 academic publications, and not so much as to what you have
2 learned through the investigations?

3 A. Yes. That's what I've attempted to do. And, with regard to the
4 period that the Khmer Rouge were in power – I mean, I think it
5 might be useful to go through that. I mean, I did – obviously, I
6 did some work on the Khmer Rouge before they were in power, when
7 I was in Cambodia '73/'75. And I've indicated that I attempted to
8 look at policy structure and organization, both as it related to
9 the situation between '73 and '75 and as it related to the
10 origins of the movement. That was the archive rat in the National
11 Library in Cambodia, and also some field interviews.

12 [10.56.38]

13 I followed the Khmer Rouge in power, to the extent that I could.
14 The limited extent that I could while I was at Cornell. And then
15 after that, in a series of capacities, I looked both at the
16 post-Khmer Rouge period and the Khmer Rouge period itself. And
17 I've tried to, you know, focus on the parts of my work that
18 relate specifically to the Khmer Rouge in power. So, delimited by
19 what I understand to be the temporal jurisdiction of the Court.
20 And I have kind of a reversal of the situation I face now. There
21 was a time after January of '79 where everybody was interested in
22 what was happening after January '79, and I had to kind of make
23 time to look at the Khmer Rouge. Now every – the situation where
24 I've tried to reverse that polarity.

25 [10.57.41]

44

1 Q. One last question on this particular topic. I know it's a
2 difficult question, but are you able to make a distinction in the
3 sense of your post-investigation academic articles and your
4 pre-investigation academic articles, in the sense that you maybe
5 not have changed your mind academically in respect of the DK
6 period, '75-'79?

7 A. If memory serves, there's only one piece of writing that's
8 come out about Khmer Rouge policy since I left the employ of
9 UNAKRT, to be precise. Which was in April, May 2011 - that I
10 left, I think. And there's one piece of work that relates to
11 Khmer Rouge policy. Not practice so much, but policy. It came out
12 later - based primarily on "Revolutionary Flag" - Flag/Youth.
13 Based on the ones that were already in my possession, either in
14 original form or in photocopy form before the Tribunal started,
15 plus some in-Court open-Court testimony. And in that I tried to
16 elaborate on some of the themes that I put forward in the paper
17 before the German Historical Society, which later led to the
18 summarized, shortened version that was in academic publication
19 under the general rubric "Senior Leaders and Local Authorities".
20 And in that regard, if you're talking about my thinking, I think
21 the crucial turning point is my stance as a fellow - research
22 fellow - at the Centre for Advanced Holocaust Studies in
23 Washington, which is a part of the U.S. Holocaust Memorial
24 Museum.

25 [10.59.59]

45

1 And I sort of went there - that's late 2001, early 2002 if I
2 recall correctly. After 9/11, whenever that was. And I went there
3 with this notion in my head, based on my previous interviews,
4 including the ones I did in the 80's, of there being a
5 significant amount of local initiative, local deviation, local
6 power in the overall picture. And I sort of went there with some
7 - to the Centre for Advanced Holocaust Studies, which is sort of
8 - one of the - maybe the highest-level place for studying the
9 Holocaust - with some trepidation, fearing that I would go there
10 and see myself seen - as I put it in my worried head - as the
11 David Irving of Khmer Rouge-ology. That is to say, someone who
12 was putting themselves effectively in the position of what some
13 would say is holocaust-denial of a sort, only to discover that
14 the way in which I had come to understand the Khmer Rouge regime,
15 based on my previous work, was pretty much in line with at least
16 one major part of holocaust studies, which precisely puts an
17 emphasis on local initiative, local deviation, local power as
18 opposed to the old model of totalitarian control.

19 [11.01.47]

20 A model which in academic circles has pretty much long-since been
21 seen as discredited and discarded as a way of looking at how
22 these kinds of regimes operate.

23 Q. Now, I take it from your answer that that particular academic
24 stance has maybe also led to the article "Reassessing the Role".
25 But if I make it more general - more broad - in terms of your

46

1 post-investigation thinking and your pre-investigation thinking
2 and scholarly publications; what would be, if any, the big
3 difference between your post-investigation scholarly publications
4 and your pre-investigation publications?

5 A. I'll answer the question maybe slightly not head on. I think
6 that it's the case that the views that I had - the empirical
7 views, if you will. The factual views that I had come to before I
8 went to the Centre for Advanced Holocaust Studies, and for which
9 my time at the Centre for Advanced Holocaust Studies provided a
10 kind of general theoretical framework - one which I discovered,
11 as I said, was very much in line with one major school of thought
12 and understanding of the Holocaust.

13 [11.03.39]

14 Those views, empirical and analytical if you will - witness and
15 expert, if you will - were not in any way significantly changed
16 by the evidence, documentary or in terms of pre-witness witness
17 testimony, as a result of my interaction - my employment by
18 UNAKRT to assist the Trials. So, again, I think the major turning
19 point - the major turning point in my thinking occurs before the
20 Court is established. It's not changed as a result of my
21 employment either full-time or as a part-time consultant, if that
22 was employment. I guess that was employment. It's salary, not
23 funding. I was an employee, not a grantee - wasn't changed by
24 Court experience, nor by the little bit of additional field
25 research that I did in the latter part of 2011, after I left the

1 Court but before I decided I was done for now with research on
2 the Khmer Rouge.

3 [11.04.55]

4 Q. So, to summarize and to take a different angle on this - and
5 it will be my last question on it - the things that you wrote in
6 "Seven Candidates for Prosecution" and its sources - that is
7 still also after the investigation your view of what happened in
8 the DK period, '75-'79 - more specifically, as to the roles of
9 the two accused. Is that correct?

10 MR. PRESIDENT:

11 Witness, please wait. The Lead Co-Lawyer, you may proceed.

12 MS. SIMONNEAU-FORT:

13 Yes, Mr. President. Well, I would like to make an objection now.
14 I could have made it regarding the previous question. I think
15 that asking a person how his thoughts have developed, how his
16 opinions have developed, how his analysis is different now - this
17 means putting questions to an expert, and not putting questions
18 to a witness. My colleague was very mindful of the fact that we
19 wouldn't step beyond that line, and it wasn't very easy, but I
20 think here these questions are being put to someone as an expert.
21 Asking this person to define the developments of his thoughts.
22 And that's why I object.

23 [11.06.25]

24 MR. KOPPE:

25 If I may reply, Mr. President. This is exactly a question which

48

1 is not about his opinion. It's about the development of his
2 thoughts leading to academic articles and publications before a
3 certain point and afterwards. So, we have been asking this
4 witness all along about his academic publications, so it would be
5 perfectly within the realm of Mr. Heder here being a witness to
6 ask this specific question. I'm not asking about - for an
7 opinion. I'm asking about the development within himself, so to
8 speak, in respect of the DK period.

9 (Judges deliberate)

10 [11.08.43]

11 MR. PRESIDENT:

12 The objection and its grounds by the Lead Co-Lawyer to the Civil
13 Parties to the question by the International Counsel for Nuon
14 Chea to Steve Heder proper, thus sustained. The witness Steve
15 Heder appears before this Chamber as a witness. For that reason,
16 the questions shall be put to him as a witness, not as an expert.
17 And, for that reason, the defence counsel - you're instructed to
18 rephrase your question, and the witness - you are directed not to
19 respond to the last question.

20 BY MR. KOPPE:

21 Q. I'm struggling how to reformulate my question. Maybe if I put
22 it very simple. Mr. Heder, are your views, as laid down in your
23 book "Seven Candidates for Prosecution", today still the same?

24 MR. RAYNOR:

25 Mr. President -

1 MR. PRESIDENT:

2 The Prosecution, you may proceed.

3 [11.10.14]

4 MR. RAYNOR:

5 Mr. President, it's the use of the word "views", I think, that
6 causes problems. Because views are expressions of opinion. There
7 is a way my learned friend could ask the question, but I'm not
8 going to tell him how.

9 BY MR. KOPPE:

10 Q. Thank you for your help, my learned friend. The things that
11 you have written in your book, "Seven Candidates for
12 Prosecution", and the sources that you have been using to write
13 those things; are they still reflective of your knowledge as a
14 scholar today?

15 [11.11.13]

16 MR. HEDER:

17 A. Broadly speaking, yes. I mean, the - what's stated in "Seven
18 Candidates" is like what's stated in "Reassessing", reflective of
19 my interviews and other first-hand personal or individual -
20 personal or documentary knowledge. But it's only a part of the
21 picture. It's a matter of emphasis or research focus. So, I would
22 describe "Seven Candidates" as less complete than what's in
23 "Reassessing", but not at all entirely antithetical. There might
24 be some - if I redrafted, re-circulated and re-published it now,
25 there are probably some changes that could be considered

1 qualification that I might make. But it would be more one day -
2 once all of this is over and everything is available - a matter
3 of resituating some of those - some of that evidence, or some of
4 that data. Some of that material. Rather than changing it.

5 Q. I would love to have a long conversation with you, Mr. Heder,
6 but I have to move on because of time constraints. And that is
7 going to the methodology used in your academic publications and
8 books, etc., that was we have been asking so many questions to
9 you about. And, by way of introduction, in respect of the used
10 methodology, let me just quickly, for times sake, quote a few
11 comments that you have made in respect of the methodology used by
12 Ben Kiernan in his book on Pol Pot.

13 [11.13.25]

14 And just to give a very quick selection, I have written down that
15 you are saying that Kiernan sometimes uses false evidence, used
16 selectively documents, has come to baseless conclusions, he is
17 sometimes misleading, he is sometimes wrong, he is sometimes
18 inconclusive, and he is sometimes using stereotypes. Now, I would
19 be happy to present the ERN numbers for the Prosecution, so the
20 Prosecution can confirm that I have, in fact, summarized it well.
21 When it comes to false evidence, it is ERN 773753. The selective
22 use of documents would be ERN 773744. The baseless conclusions
23 would be ERN 773724 or 773747. The misleading, in respect of the
24 Cham, would be ERN 773726, and the ERN 773732. Where "Kiernan is
25 wrong, fundamentally wrong" - that would be ERN 773736. Where

51

1 "Kiernan is inconclusive" - that would be 773764. And where "he
2 is using stereotypes", that is on that same ERN number.

3 [11.15.03]

4 MR. PRESIDENT:

5 Counsel Victor Koppe, could you please slow down when you read
6 the ERN number, as the interpreter cannot catch up with you.

7 Please repeat those ERN numbers?

8 MR. KOPPE:

9 All of them?

10 MR. PRESIDENT:

11 There are two issues. First, please specify all the ERN numbers
12 again. And secondly, whether the document that you have referred
13 to has been placed before this Chamber. And before that, I'd like
14 to give the floor first to the Prosecution.

15 MR. RAYNOR:

16 Mr. President, I hope it might save time, because my objection is
17 actually to relevance. How is it relevant for you to receive Mr.
18 Heder's opinion on Mr. Kiernan's methodology? It's wholly
19 irrelevant. So, my objection isn't just to E-numbers. This line
20 of questioning is wholly irrelevant. By all means, ask Mr. Heder
21 about his methodology, which I've already covered at length - and
22 I hope there wouldn't be unnecessary repetition. But you're not
23 going to be assisted by receiving Mr. Heder's opinion on Mr.
24 Kiernan's methodology. And it's for that reason that I object.

25 [11.16.46]

1 MR. KOPPE:

2 Mr. President, I was trying to save time-

3 MR. PRESIDENT:

4 The International Lead Co-Lawyer for Civil Parties, you may take
5 the floor.

6 MS. SIMONNEAU-FORT:

7 Yes, Mr. President. I perfectly support the prosecutor's
8 objection. Second is a comment on the way my colleague mentions
9 the documents he wishes to use. We never get the document
10 reference, first of all. We don't know - we can't check if this
11 document has been placed on the case file or not. That's the
12 first thing that should be provided - is the document index
13 number.

14 [11.17.27]

15 Now, regarding the ERNs - we all here provide the ERNs in all
16 three languages, but the Nuon Chea Defence believes that it's
17 beyond this. So I would like also the Nuon Chea Defence to abide
18 by this obligation to make things easier for us.

19 MR. KOPPE:

20 I understand there is no point in saving time. I will do it
21 slowly, and it's - I'm referring E131/113.3. It's Steve Heder's
22 article, called "Racism, Marxism, Labelling and Genocide in Ben
23 Kiernan's the Pol Pot Regime". We have extensively been
24 discussing this article already earlier. I will give you the ERN
25 numbers - English once again, together with the French and Khmer

1 ones. "Kiernan sometimes uses false evidence"; that is ERN
2 773753; French, ERN 00802825; Khmer, 00844599-00844600.
3 [11.18.50]
4 "The selective use of document"; that is English ERN, 773744;
5 French ERN, 00802821; Khmer, 00844591 up until 92. "The baseless
6 conclusions"; ERN, 773724; French, 00802811; Khmer, 00844572 up
7 until 3. "Misleading"; ERN, 773726 - that is French, 00802812;
8 Khmer, 00844574. "Kiernan is fundamentally wrong" would be ERN,
9 773736; French, 00802816 up until 00802817; Khmer, 00844583 up
10 until 84. "Inconclusive" would be ERN English, 773764. In French,
11 that would be 0082280 - 2830, excuse me, up until 31. And Khmer
12 00844609 up until 610. And finally, Mr. President, the
13 stereotypes accusation, so you will, is on that same page.
14 [11.20.56]
15 I'm using - and that's why I think it's relevant - as an
16 introduction to the methodology of - used by this witness to-
17 MR. PRESIDENT:
18 The International Lead Co-Lawyer, you may proceed.
19 MS. SIMONNEAU-FORT:
20 I simply would like to draw your attention to the fact, once
21 again, that the references are given so quickly that they were
22 not provided by the French interpreter. I just simply want you to
23 notice this. So I would like at least for us to - for him to
24 respect our right to know what he's talking about.
25 MR. PRESIDENT:

1 The observation is appropriate.
2 Defence counsel, once again, please slow down when you read the
3 ERN numbers so that it can be simultaneously interpreted into the
4 other two languages. And this is not the first time that the
5 Chamber has reminded you and other parties, and for that reason,
6 please try to use the time effectively. And if you keep pushing
7 through quickly, then it's going to backfire, as it's a waste of
8 time, not an efficient use of time.

9 [11.22.26]

10 BY MR, KOPPE:

11 I had hoped my learned friend from the civil parties had read
12 this article and would find these conclusions or these
13 observations of Mr. Heder - that she would recognize them.
14 So I'll - I'll skip all this ERN numbers because I don't have the
15 time for it. I'll move on straightly - straight, Mr. Heder, to
16 your methodology.

17 Q. As I've understand (sic) your testimony, you, when writing
18 your academic scholarly publications, have used - used interviews
19 of former DK cadres. You have read documents like Revolutionary
20 Flag. You have used U.S. intelligence newspaper articles, etc,
21 other publications, publications of other historians, academics,
22 etc. And you have used extensively confessions of cadres who were
23 interrogated in S-21.

24 [11.23.40]

25 Let me start, if you allow me, my question in respect of the

55

1 interviews that were given to you by former DK leaders or cadres,
2 more specifically, to – to limit myself to one interview, the
3 interview that you had with Ieng Sary.

4 Now, the Prosecution has asked many questions in respect of that
5 particular interview, and you have always confirmed that this was
6 something that Ieng Sary had, in fact, told you. My question to
7 you would be if you remember what you did in preparation of this
8 interview to make sure that the answers given by your source were
9 not somehow directed by a hidden or double agenda.

10 For instance, you spoke to Ieng Sary in a politically turbulent
11 time. It was a period that he had been won over by the then
12 government in Cambodia.

13 What did you do in those – in that interview with him to make
14 sure that he did not give his answers driven by a double agenda?

15 [11.25.20]

16 MR. HEDER:

17 A. Is the question whether I had a double agenda or he had a
18 double agenda?

19 Q. He. He, he.

20 A. I mean, if he had a double agenda, of course, that was, in a
21 sense, his right to have whatever agenda he might have had. I
22 think his – I mean, if I were to guess to try and figure out what
23 was in his head, part of the context of this – and this actually
24 relates to your previous question, by sheer chance, circumstance.
25 Ben Kiernan, among others, had widely asserted that Ieng Sary was

56

1 Brother Number 2 and I was fairly confident, on the basis of my
2 previous research, that that was incorrect. That, in fact, the
3 person widely known within party circles as Brother Number 2 was
4 your client. So in the context of Ieng Sary's purported
5 leadership of a breakaway of Khmer Rouge elements or PDK
6 elements, it was widely reported on the basis of the assertions
7 by Ben Kiernan and others that Brother Number 2 had emerged.

8 [11.26.59]

9 And I had said to a number of people that I didn't think that
10 Ieng Sary was Brother Number 2. I thought that Nuon Chea was
11 Brother Number 2. And I think Ieng Sary, to a certain extent,
12 wanted to use this interview as an opportunity to attempt to
13 confirm that I was right in my conclusion that it wasn't him, but
14 Nuon Chea, who was Brother Number 2. And certainly, this - what
15 he said, you know, seems to confirm that position.

16 So yes, I mean, I think he had an interest in - in contributing
17 to the refutation of the, to my mind, even before the interview
18 and certainly ever since, the notion now which I think everybody
19 has dropped, at least in the scholarly community - I don't know
20 about in here - this notion that Ieng Sary was Brother Number 2.
21 So if that's what you're after, I think that's probably correct,
22 yes.

23 [11.28.15]

24 Q. Maybe also in more general terms, Philip Short has written in
25 his book that he - that Ieng Sary is devious and manipulative.

1 When you interviewed Ieng Sary, was that something you could hear
2 in his answers as well, or were you, before you went into that
3 interview, cautious about his alleged manipulative personality?

4 A. I mean, I think the broader answer is he, like almost -
5 virtually every last one of the other former CPK cadre, that is,
6 persons in a position of at least some authority to whom I have
7 spoken over, now, many - too many decades, seem to be at pains to
8 try to convince me that they, themselves, were not responsible
9 for all the terrible things that some, but not all, but most,
10 admitted had happened. So it was - has rarely, if ever - very,
11 very rarely, if ever, been the case that somebody admitted direct
12 responsibility or what, in their mind, was direct responsibility
13 for what happened. And I think - and this is the same experience
14 that, if I recall correctly, has been recounted by Chhang Youk
15 and others from DC-Cam.

16 So, in that sense, again, like almost everybody else, he seemed
17 to be at pains to try and convince me, persuade me that he was
18 not responsible for those matters, or at least not directly
19 responsible. Not directly responsible in the layman's sense that
20 a scholar and not necessarily an international criminal lawyer
21 would understand it. That's a separate issue.

22 [11.30.32]

23 This wasn't a courtroom. He wasn't represented. I wasn't - didn't
24 have counsel present, either. So this was a conversation on a
25 different level.

58

1 Q. More concretely, would you be able to – to say after the
2 conversation that you had with Ieng Sary in '96 which parts are
3 truthful and which parts are not truthful or, rather, which parts
4 are – which parts of the interview are confirmed by other sources
5 that you have approached and talked to?

6 MR. RAYNOR:

7 Mr. President, I let the last question run, but certainly not
8 this one. It's an impossible task for Mr. Heder, even with a
9 witness hat on – it's an impossible task for him to determine
10 during which parts of the interview Ieng Sary was telling the
11 truth and which parts he may not have been, and for what reason.
12 Whether Ieng Sary was telling the truth in this interview is an –
13 entirely a matter for the Trial Chamber, and it's not something
14 which Mr. Heder can properly be asked, nor should be asked to
15 give an answer upon, and I object.

16 [11.32.00]

17 MR. KOPPE:

18 My learned friend is, I think, making a mistake in – in the
19 interpretation of the word "truth". Obviously there is a trial
20 truth, a legal truth, so to speak, but any witness in any normal
21 conversation would be able to make an assessment based on his
22 human nature and the human nature of the other person that he's
23 interacting with whether this person is telling the truth, yes or
24 no.

25 So that's not a question as to the legal truth. It's a question

59

1 as to the truth in the sense how it came out and the demeanour of
2 Ieng Sary at the time. But not only this, I was also asking the
3 witness if the things that Ieng Sary had said in that interview
4 were somehow confirmed by other sources that the witness has been
5 speaking to or had been reading.

6 So I think it's a perfectly legitimate question to a specific
7 witness in respect of an interview that he had.

8 (Judges deliberate)

9 [11.33.42]

10 MR. PRESIDENT:

11 The objection and ground for objection by the Co-Prosecutor to
12 the question by the counsel is appropriate and, therefore, this
13 objection is sustained. And witness is directed not to respond to
14 the last question posed by the defence counsel.

15 BY MR. KOPPE:

16 I'll move on, Mr. President.

17 Q. Mr. Heder, you have written many articles and many books in
18 respect of the Democratic Kampuchea period, '75-79, and the CPK
19 policy and the views on Communism. I've also noticed that you
20 have never been able to speak to many senior leaders of the DK
21 period.

22 [11.34.51]

23 You haven't spoken to Pol Pot. You haven't spoken to Nuon Chea.

24 You haven't spoken to Ta Mok. You haven't spoken to Son Sen. Vorn

25 Vet, obviously, you couldn't have. Same goes for So Phim and Ros

60

1 Nhim.

2 Would you be able to tell us something in terms of methodology
3 whether that was a problem or you saw that as a problem in
4 writing your academic publications and books?

5 [11.35.30]

6 MR. HEDER:

7 A. I'll be my pedantic self and say it's not true that I haven't
8 spoken to Nuon Chea. I have. It's not true that I haven't spoken
9 to Son Sen. I have. It's not true that I haven't spoken to Ta
10 Mok. I have. But it is true that I didn't speak to them
11 substantively.

12 I met your client at his home in Wat Koh (phonetic) in Battambang
13 at one point. He didn't tell me much, so there's not much to say
14 about that encounter.

15 And of course, it's - it's obvious that the more sources, the
16 better. And every gap in sources brings with it certain
17 weaknesses, makes the case that you're making, be it an academic
18 or legal case, for that matter, less strong than it might
19 otherwise be. And in the real world, you know, scholars and legal
20 practitioners alike face this problem. I think we all face this
21 problem.

22 And if I might be allowed, the reality is that from a comparative
23 perspective, comparative political science perspective,
24 comparative historian's perspective, the data, be it evidence or
25 not, be it deemed probative or not, that we have with regard to

61

1 the Khmer Rouge regime is less quantitatively and qualitatively
2 less good than that which we have for Soviet – the former Soviet
3 Union, for Nazi Germany, even, arguably, for China and Vietnam.
4 So yes, these – these gaps, these absences are a significant
5 problem with regard to drawing conclusions, historical, political
6 scientific or otherwise, with regard to what really happened and
7 how it happened and why it happened under that particular regime.

8 [11.37.49]

9 Q. In your work, Mr. Heder, your publications, sometimes you're
10 only referring to a publication of one writer, sometimes
11 Ponchaud, for instance, sometimes Donald Kirk, sometimes somebody
12 else.

13 Now, would you be able to tell us how you went about in the
14 selection of specific books or articles in general terms when it
15 comes to your publications?

16 [11.38.31]

17 A. Well, in part this answer is a subset of my answer to the
18 previous question. As a Khmer Rouge-ologist, going to the U.S.
19 Holocaust Memorial Museum, going to the Centre for Advanced
20 Holocaust Studies and seeing what they had in terms of secondary
21 materials – and now we're talking about secondary materials – in
22 their centre library certainly would make one want to cry because
23 in terms of the richness of the secondary literature, the
24 situation is – the contrast I would use, if anything, even more
25 stark.

62

1 You know, what happened in Nazi Germany, what happened in the
2 Soviet Union, what happened in Mao's China, what happened at
3 least during the revolutionary struggle, if you'll accept that
4 terminology, in Vietnam in the sixties has been written about
5 much more than what happened in Cambodia under the Khmer Rouge.
6 So there's a lot more to choose from in those other instances
7 than there is in this instance.

8 And I guess in terms of choosing sources for working on the Khmer
9 Rouge, my bias would be in favour of those who, in some sense, to
10 my mind, were on the ground. You know, the more time they spent
11 in Cambodia, the more people they talked to while they were in
12 Cambodia, the greater the effort they made to get out of Phnom
13 Penh and the like, the more generally likely I was, I suppose, to
14 feel that their secondary writings, these secondary sources, were
15 worth consulting and citing.

16 [11.40.33]

17 Q. Let me follow up on that, Mr. Heder, in giving you one
18 example, the book of François Ponchaud. I'm sure you have read
19 the extensive criticisms that Michael Vickery has on the use of
20 interviews by Ponchaud in the period after 17 April, '75.

21 Can you tell us if you have somehow incorporated this - these
22 criticisms of Vickery in your writings?

23 A. This is a realm of some irony because it's not - not so much
24 the - well, let me back up.

25 I think in general terms, my experience has been that there's no

1 fundamental problem in relying on what's sometimes deprecated as
2 refugee testimony in attempting to ascertain the truth, to use
3 the phrase that's the legal favourite in the Court. And indeed,
4 it's certainly the case that if you look back on the sometimes
5 somewhat sad history of understandings of the - of Democratic
6 Kampuchea when Democratic Kampuchea was in power and the stated
7 public published positions of various - the then tiny little
8 group of scholars, academics who looked at Cambodia in that
9 period, the crucial moment, it seems to me, in their
10 understanding of the regime and the moment at which most, if not
11 all, came to what, in retrospect, seems to me to be the right
12 conclusion about what was going on is the moment at which they
13 began talking to large numbers of people who had direct
14 experience and upon whose accounts of those direct experience
15 they relied.

16 [11.42.54]

17 So in general terms, I think that's not a huge methodological
18 problem. And then to return to the realm of irony, much of
19 Michael Vickery's own work relies on testimony or interviews, if
20 you prefer, that could be categorized as refugee interviews and,
21 indeed, many - in many instances, interviews that were, in fact,
22 conducted by me, the results of which were made available to
23 Michael and which Michael then interpreted in some instances, at
24 least - many instances at the moment back in those days in a
25 manner that's - was not the same as my interpretation of the

1 data.

2 That said, there's a kind of irony on top of the irony, which is
3 in some ways the conclusions that are stated in - in, among other
4 places, "Reassessing", resonate, echo what Michael has said about
5 the Khmer Rouge regime.

6 [11.44.11]

7 The difference, again, is not - there's a similarity in the
8 extent of the emphasis on bottom up initiative, bottom up
9 deviation, bottom up abuse. The major difference is my attempt to
10 say this is characteristic of Communist and other such regimes
11 and Michael's attempt, which resonates with Kiernan, to suggest
12 this has nothing to do with Communism, this has nothing to do
13 with Marxism, Leninism. It's some kind of non-Communist,
14 anti-Communist phenomena.

15 So again, the - in some senses in the - in the "Hederian"
16 version, in the "Vickeryesque" version much of the basic
17 description is similar. The analytical conclusions, the expert
18 opinion, if you will, derive from that data. The descriptive
19 part, which is closer to what I understand a witness does, is, in
20 fact, rather similar. And no coincidence since, as I said, in
21 many instances he's relying on stuff that came from me.

22 [11.45.28]

23 Q. I'm following - I'm following your answer well, I think. But
24 just to be clear and make - and give you a very concrete example
25 in terms of percentages, in your "Reassessing" article you

65

1 describe CPK documents, speeches, Revolutionary Flags, etc. in
2 which the official policy is presented as in the sense that 95
3 per cent of the people in the DK period were good and five per
4 cent, the remaining five per cent, were, according to CPK
5 official policy, no good and were enemies or whatever you want to
6 call them.

7 Now, assuming for a moment just for clarity's sake that this 95
8 per cent and five per cent were accurate, how did you – what were
9 your endeavours – how did you make sure that you were not only
10 speaking to the people in these five per cent or 10 per cent or
11 15 per cent and not also to the remaining 95 per cent of the
12 people who were not seen as enemies?

13 In other words, how did you make sure that when you spoke to
14 people you were, in fact, speaking to a selective section of the
15 DK period people?

16 [11.47.06]

17 MR. PRESIDENT:

18 Mr. Witness, please hold on.

19 Mr. Prosecutor, you may proceed.

20 MR. RAYNOR:

21 I'll try and count the objections on one hand.

22 Firstly, making reference to supposed concrete examples without
23 taking us to a page of "Reassessing". No document reference, no
24 page reference, no footnote reference, no ERNs.

25 Secondly, referring to statistics which takes us inevitably into

1 the realm of expert evidence.
2 Thirdly, asking the witness to make assumptions about 75 (sic)
3 per cent and five per cent being accurate.
4 Fourthly, then asking the witness how the witness made sure that
5 the person they spoke to was in this group or not in that group
6 or representative of this group or representative of that group.
7 It's an absolutely jumbled question which, in my respectful
8 submission, is going to expert opinion and one which cannot be
9 unjumbled and cannot be made admissible, so I object to the
10 question in its entirety on all those grounds.

11 [11.48.36]

12 MR. KOPPE:

13 If I may reply, Mr. President.
14 I've been trying to make things more clear by using percentages
15 that the author has, himself, been using in the "Reassessing"
16 article. I have not - I've not been saying that these percentages
17 were somehow correct.
18 My point was very simple. What did the witness do when he was
19 writing his articles, that he was, in fact, speaking to a - to a
20 proper cross-section of the population in the DK period between
21 '75 and '79. If he was only speaking to refugees in - at the Thai
22 border refugee camp, obviously this would give a completely
23 different picture as to the living circumstances than if he would
24 be speaking to - to peasants who hadn't been fleeing the DK
25 period.

67

1 [11.49.29]

2 So let aside 95 or five, I think the – Mr. Heder's perfectly
3 capable – capable of understanding my question. It goes directly
4 to the – the selective use, or not, of witness statements. So
5 that is what it's all about, and given the background of Mr.
6 Heder, he perfectly understands what my question is.

7 (Judges deliberate)

8 [11.53.32]

9 MR. PRESIDENT:

10 I hand over the floor to Judge Jean-Marc Lavergne to pronounce
11 the ruling on the objection by the Co-Prosecutor to the question
12 by the defence counsel for the witness.
13 Judge Lavergne, you may proceed, please.

14 JUDGE LAVERGNE:

15 Thank you, Mr. President.

16 At the outset, let me say that the Chamber would like to point
17 out to the defence that throughout the questioning of the witness
18 by the Prosecution or by the civil party lawyers, the defence
19 requested that the witness be treated as a witness. Now it seems
20 that, today, the questions that are being put about the
21 methodology used by Mr. Steve Heder concern the methodology not
22 of an – of a witness, but of an expert.

23 [11.54.44]

24 So asking how he selected witnesses and how he conducted his work
25 are obviously things that concern university work, the work of an

68

1 expert, and they are not relevant in examination of a witness,
2 Steve Heder.

3 The objection is, therefore, sustained and we would ask you to
4 move on to another subject. Thank you.

5 BY MR. KOPPE:

6 I'm not quite sure if I understand this ruling. The Prosecution
7 has been asking many questions, two full days of - in respect of
8 all the articles that this witness has written asking about
9 footnotes, about sources, etc. And now I'm asking about
10 methodology. I'm not asking about an opinion of these articles,
11 and then I'm cut off.

12 [11.55.50]

13 And may I remind the Chamber that I think the defence should be
14 given a little more leeway than we have been given so far. We're
15 questioning Mr. Heder, who I might call Mr. Khmer Rouge Tribunal.
16 If it wasn't for him, we wouldn't be here. So I think I should
17 get some more leeway in my questioning.

18 So - but nevertheless, I move on, Mr. President, sadly.

19 Q. I have some questions, Mr. Heder, about the use in your
20 articles of confessions.

21 Would you be able to describe how you used those confessions in
22 your articles?

23 [11.56.43]

24 MR. RAYNOR

25 Mr. President, I object. I hope you remember on the first day of

69

1 my questioning that I made it absolutely plain that no question I
2 asked Mr. Heder would be about confession material.

3 I said on day one that I was certain of it, in other words, that
4 I was certain that no question I asked would be based on
5 confession material. And I challenge the defence to intervene if
6 I did.

7 In two and a half days, I did not ask questions about confession
8 material, and in two and a half days, the defence never suggested
9 that I did so. Confession material has been rightly excluded from
10 this case, generally speaking, unless it's, for example, an
11 annotation on a confession or a letter accompanying a confession.
12 This Chamber is not going to be assisted by hearing answers from
13 Mr. Heder about confession material. That material has been
14 excluded and, given Judge Lavergne's ruling, this is not an
15 appropriate subject for Mr. Heder to comment upon.

16 I have not touched upon confession material, and neither should
17 the defence unless it's for permissible reasons.

18 [11.58.28]

19 MR. KOPPE:

20 Mr. President, there's a big difference between question -
21 whether we can legally use for probative value reasons
22 confessions in terms of evidence. I'm now asking the author of
23 many articles and many books about his use of confessions and the
24 way he has used confessions to come to whatever he has been
25 writing in these books.

70

1 So there's a big difference, a huge difference in the question
2 whether you, as a Court of law, can use it for probative value
3 reasons or for reaching a judgment on the basis of that
4 particular evidence or to the use by this author of many books of
5 confessions.

6 [11.59.18]

7 Apparently this witness, when writing his book, has used many,
8 many, many confessions and he came to certain conclusions. Now,
9 I'm not asking about his conclusions on the basis of these
10 confessions. I'm use - I'm asking simply about the way he has
11 been using these confessions.

12 Now, sadly, there is an article, a very interesting article from
13 the hand of Mr. Heder himself which is not part of the case file,
14 so for very formalistic reasons, I am not - I will not be allowed
15 to use it. It's an article called "The Khmer Rouge Opposition to
16 Pol Pot: Pro-Vietnamese or Pro-Chinese". And it's a very
17 interesting article from Mr. Heder about the way he is using
18 confessions and about the danger they are - the dangers which
19 exist when interpreting the literal text and meaning of these
20 confessions.

21 Now, I think Mr. Heder is perfectly capable and perfectly allowed
22 to give us his views on the methodology when it comes to
23 confessions in respect of the publications that he has written.

24 [12.00.34]

25 MR. RAYNOR:

71

1 Take him to a passage. Take him to what he's written. Take him to
2 his footnotes. Extract the footnotes, and you're left with the
3 admissible material in this case.

4 You're not going to be helped by "Look at this passage, there
5 were 16 confessions, irrelevant". What's the point of you hearing
6 from Mr. Heder how 16 inadmissible confessions related to a
7 footnote? I've extracted all the confessions from my examination,
8 and the defence should do the same. You're not going to be helped
9 by hearing how inadmissible confessions were part of the writing
10 of a book.

11 MR. KOPPE:

12 And I'm sure you can reply as well.

13 Please, Mr. President, there's a difference in standard when
14 treating the defence when it comes to this particular witness
15 than the Prosecution.

16 We have all heard today this witness has written this book,
17 "Seven Candidates for Prosecution". He worked for the
18 Prosecution. He works for the Judges – the Investigating Judges.
19 And now I'm trying simply to ask questions about the methodology
20 used.

21 [12.02.00]

22 Now, if I'm provided the exact same standard as the Prosecution,
23 that would be completely unfair. So it is appropriate and within
24 the realm of the capacity of this witness to ask him about his
25 particular use of confessions. How did he deal with language? How

72

1 did he deal with literal meanings? How did he deal with – when
2 did he decide a confession was valid and could be used for his –
3 for his research and his publications?

4 That is a perfectly valid question. It's not a question about his
5 opinion, just a question about how he uses confessions, how he
6 uses interviews, how he uses intelligence, how he uses
7 newspapers. That is within the realm of this particular witness.

8 (Judges deliberate)

9 [12.05.20]

10 MR. PRESIDENT:

11 I hand over the floor to Judge Jean-Marc Lavergne to pronounce
12 the ruling of the Chamber regarding the objection by the
13 Prosecutor to the question put by the counsel.

14 Judge Lavergne, you may proceed, please.

15 JUDGE LAVERGNE:

16 Thank you, Mr. President.

17 The Chamber considers that through the questions being put to
18 witness, Steve Heder, the defence of Nuon Chea is attempting to
19 assess the quality of the work of an expert and the same point
20 applies to all parties. The same requirement that was demanded by
21 the Nuon Chea defence, namely, that Mr. Steve Heder should be
22 treated as a witness, not as an expert, that same demand applies
23 to the defence of Nuon Chea, and so we are not going to authorize
24 this line of questioning and we ask you to move on to another
25 subject.

1 [12.06.48]

2 MR. PRESIDENT:

3 Thank you, counsel, and thank you, Mr. Witness. Now it is an
4 appropriate point to adjourn for lunch break. The Chamber shall
5 adjourn now and resume at 1.30 this afternoon.

6 Court – court officer is instructed to assist the witness during
7 the break and please have him returned to this courtroom by 1.30
8 this afternoon.

9 And security guards are instructed to bring Mr. Khieu Samphan to
10 the holding cell downstairs and have him return in this courtroom
11 this afternoon before 1.30.

12 The Court is now adjourned.

13 (Court recesses from 1207H to 1332H)

14 MR. PRESIDENT:

15 Please be seated. The Court is now back in session and once
16 again, the floor is given to Nuon Chea's defence to put further
17 questions to the witness, Steve Heder. You may proceed.

18 [13.33.02]

19 BY MR. KOPPE:

20 Thank you, Mr. President.

21 Q. Good afternoon Mr. Heder. I am going to change my ways of
22 questioning you. What I will do is read you a passage from your
23 book, from your article, I'm sorry. More precisely, your article:
24 "Racism, Marxism Labelling and Genocide." I will ask the
25 President's leave to have the Court officer give you a copy of

74

1 this specific article. What I will do is I will read from this
2 article after having giving all ERN numbers, 11 passages and then
3 I'm going to ask a very interesting question whether you wrote it
4 and I'm going to ask whether you have direct factual information
5 without expressing an opinion or speculating, whether you have
6 any other factual information to corroborate this particular
7 passage. You get my drift, Mr. Heder.

8 MR. PRESIDENT:

9 Court officer, could you deliver the document from the counsel
10 for the witness' examination?

11 BY MR. KOPPE:

12 Q. I will start with my first quote from document E131/1/13.3, as
13 mentioned it's your article: "Racism, Marxism Labelling and
14 Genocide in Ben Kiernan's the Pol Pot Regime." I would like to
15 start with page four of your article; English ERN, 00773703;
16 French, 00802801; Khmer, 00844553 to 54.

17 [13.35.32]

18 If everything goes well, it's also - it will also appear on the
19 screen. You write and I quote as follows: "While challenging his
20 theoretical and historical categories, this review also confronts
21 Kiernan's conclusions by re-examining many of the same sources
22 and same kinds of sources used by him. These include interviews
23 of Cambodians who were CPK members when it was in power from whom
24 this reviewer like Kiernan interviewed in considerable numbers in
25 the first years after the collapse of the DK regime. They also

75

1 include confessions extracted from purged CPK cadre by
2 interrogators of the National CPK Security Service, S-21, Tuol
3 Sleng and maintained after 1979 in the archives of the Tuol Sleng
4 Genocide Museum in which Kiernan and this reviewer have conducted
5 research on numerous occasions since 1980.

6 [13.36.37]

7 "Re-examination of these sources suggests that Kiernan's use of
8 the confessions is patchy and selective and that his use of
9 interview material is sometimes tendentious. This review also
10 raises questions about selectivity in Kiernan's use of
11 non-confession documentary evidence and about the accuracy of his
12 translations. It points the need for readers to be cautious, not
13 only with regard to Kiernan's arguments and conclusions, but also
14 to the data I presented to buttress them."

15 Mr. Heder, did you write this?

16 MR. HEDER:

17 A. Yes.

18 Q. Would you be able to expand on the words "patchy and
19 selective?" Never mind, I'll continue.

20 MR. RAYNOR:

21 No, I object.

22 BY MR. KOPPE:

23 No, I don't even ask the question. Mr. Heder, relying on direct
24 factual information, without expressing an opinion or
25 speculating, is there any other factual information as to the

1 information that I just read to you?

2 [13.37.57]

3 MR. PRESIDENT:

4 The Prosecution, you may proceed.

5 MR. RAYNOR:

6 Mr. President, this is Mr. Heder's book or article commenting on
7 Mr. Kiernan's book. You are not, in my respective submission
8 going - respectful submission, going to be assisted in hearing
9 what Mr. Heder has to say about Mr. Kiernan's book and Mr.
10 Kiernan's use of his sources. It goes back to exactly the same
11 point that Judge Lavergne has now, on behalf of the Trial
12 Chamber, ruled upon on two occasions in the 20 minutes before we
13 took lunch.

14 [13.38.50]

15 Also, the extract that was read was not supported by a footnote.
16 If you look at footnote five on page five, that's the footnote.
17 So the portion that's been read to Mr. Heder, inadmissible though
18 it is my submission anyway, is not even supported by a footnote
19 upon which evidence can be given. So I object on both those
20 grounds. If you're quoting an extract, make it relevant and give
21 a footnote. But you hearing what Mr. Heder has to say about what
22 Mr. Kiernan's research methods are, is expert evidence; it's
23 inadmissible, it's irrelevant and I object.

24 MR. KOPPE:

25 I read a passage, I asked the question: "Did you write this" and

1 I quoted the exact same question line of the Prosecutor. Please
2 tell me what I'm doing wrong?

3 (Judges deliberate)

4 [13.41.15]

5 MR. PRESIDENT:

6 The objection and its ground raised by the Prosecution to the
7 last question put to the witness by the defence counsel for Nuon
8 Chea is appropriate, therefore sustained. Witness, you are
9 directed not to respond to that last question and defence
10 counsel, please move on to another question.

11 BY MR. KOPPE:

12 Q. Next quote Mr. Heder is from your - from the same article;
13 this time it is on page 24; English ERN, 00773723; French,
14 00802810 up until 811; and Khmer, 00844571.

15 "In this regard, Kiernan collates the wide variety of
16 contemporary and subsequent accounts that demonstrate that up
17 until the purge, conditions in the East Zone were, generally and
18 relatively speaking, less bad and deteriorated less rapidly than
19 in most other parts of Cambodia.

20 [13.42.46]

21 "It seems plausible to attribute this difference, at least in
22 part, to the leadership and political proclivities of East Zone
23 Secretary So Phim. However, in comparing the east with other CPK
24 structures and leaders particularly the Southwest Zone of Ta Mok,
25 Kiernan overdraws his case and essentializes these structures to

78

1 give them a false coherence, putting himself through numerous
2 convolutions in order to do so. His construct of the East Zone as
3 a moderate pro-Vietnamese, possibly even "orthodox Marxist"
4 entity is tautologically dependent on its cadre and geographical
5 subdivisions being East Zone only-

6 MR. PRESIDENT:

7 Witness, please wait. There is no French translation. Court
8 officer, could you check with the ITU?

9 MS. SIMONNEAU-FORT:

10 Yes, Mr. President, I have another issue here. I do not have the
11 proper ERN in French or in any case, the ERN provided by the
12 interpreter is not the correct one, so could you please repeat
13 the French ERN?

14 BY MR. KOPPE:

15 Q. 00802810 up until 811, so 810/811. I'll read it again, Mr.
16 Heder.

17 "In this regard, Kiernan collates the wide variety of
18 contemporary and subsequent accounts that demonstrate that up
19 until the purge, conditions in the East Zone were, generally and
20 relatively speaking, less bad and deteriorated less rapidly than
21 in most other parts of Cambodia.

22 [13.45.03]

23 "It seems plausible to attribute this difference, at least in
24 part, to the leadership and political proclivities of East Zone
25 Secretary So Phim. However, in comparing the east with other CPK

1 structures and leaders particularly the Southwest Zone of Ta Mok,
2 Kiernan overdraws his case and essentializes these structures to
3 give them a false coherence, putting himself through numerous
4 convolutions in order to do so. His construct of the East Zone as
5 a moderate pro-Vietnamese, possibly even "orthodox Marxist"
6 entity is tautologically dependent on its cadre and geographical
7 subdivisions being East Zone only when some evidence can be found
8 to substantiate the characterization.

9 [13.46.01]

10 "It also relies on testimony from former East Zone cadre about
11 animosity between them and cadre from other zones, particularly
12 the Southwest."

13 Did you write this, Mr. Heder?

14 MR. HEDER:

15 A. Yes.

16 MR. PRESIDENT:

17 It seems that the approach of questioning by the defence counsel
18 remains unchanged. And, of course, when there is an objection,
19 you said that you would reformulate your questions and, of
20 course, you know clearly the status of this witness. He's not an
21 expert; he's a witness before this Chamber.

22 BY MR. KOPPE:

23 Q. I simply read a passage from his book and asked the witness if
24 he wrote it; nothing else. Did he answer the question? And now
25 I'm asking, not to comment on Kiernan, I'm not interested in

80

1 that, but just if you would be able to give direct factual
2 information without expressing an opinion or speculating; whether
3 there is any other factual information as to this particular
4 passage?

5 [13.47.46]

6 MR. RAYNOR:

7 Mr. President, I don't know if - I don't know if I'm missing
8 something and I don't know if this comes from lack of experience
9 or what. You've ruled on about four occasions now. Can I explain
10 this again, this book or this article is Mr. Heder commenting on
11 Mr. Kiernan's book. The passage that has been confirmed is about
12 Mr. Kiernan's comparison of structures and leaders in one zone
13 with another. It's about an opinion being expressed that Kiernan
14 overdraws his case. It's making reference to numerous
15 convolutions. It's making reference to an opinion that something
16 is a construct. It's making reference something being plausible
17 which is an expression of opinion.

18 [13.49.05]

19 It's not allowed in accordance with your ruling repeated on four
20 occasions. Now, can I make this general objection observation; I
21 anticipate that it will be my respectful submission that most, if
22 not all questions the defence ask based on a book, where Mr.
23 Heder is expressing his opinion on what Mr. Kiernan thinks or
24 what Mr. Kiernan wrote or what Mr. Kiernan opines is
25 inadmissible. Now, why is the message not getting through?

1 MR. KOPPE:

2 I'm doing the exact same thing as the Prosecutor has been doing;
3 reading a passage from an article, asking the witness did he
4 write it and then asking him for factual information to possibly
5 corroborate yes or no. I'm not asking about his opinion about Mr.
6 Kiernan, I'm just reading the passage, then I'm doing the exact
7 same thing as the Prosecutor.

8 MR. PRESIDENT:

9 I would like to give the floor to Judge Cartwright to rule on
10 this issue once and for all.

11 JUDGE CARTWRIGHT:

12 Thank you, President. The Chamber accepts the Prosecutor's
13 submission that it has made multiple rulings on this precise
14 matter.

15 [13.50.46]

16 The issue is this; the material on which Mr. Heder was commenting
17 in his article is not relevant to our inquiries. So please, no
18 more questions based on this article which, in any event, was
19 presumably written by Mr. Heder in his capacity as an expert, and
20 he is appearing today as a witness to testify as to what he, as a
21 witness, saw, heard, observed during the period that the Chamber
22 is concerned with. No more questions based on this article. Thank
23 you.

24 [13.51.35]

25 BY MR. KOPPE:

1 Q. Mr. Heder, have you done any research, have you read articles
2 - written articles on events that happened in the East Zone in
3 1975?

4 MR. HEDER:

5 A. I certainly have interview material on that. I've not written
6 anything it's alluded to in here, I believe, in this review
7 article and there may be some allusions to it elsewhere, but in
8 terms of a substantial focus piece of academic work, no. The
9 research is there, the article or the book remains to be written.

10 Q. Have you done specific research on matters of security within
11 the East Zone, questions relating to members, DK cadres of the
12 East Zone?

13 A. Yes.

14 Q. Would you be able to tell us what your research has provided?

15 A. Yes, the Security Office structure and hierarchy in the East
16 was broadly similar to what it was elsewhere. That is to say,
17 there was a Zone Security Office which somewhat - which somewhat
18 as was the case in Phnom Penh, at the Centre that is, at S-21,
19 was a kind of integral part or subordinate piece of the general
20 staff such that the Zone Security Office coded S-79 was directly
21 subordinated to the East Zone general staff which was seated in
22 Prey Veng, Prey Veng provincial town of Prey Veng province.

23 [13.54.58]

24 And like S-21 in the Centre, initially dealt with, if not
25 primarily, then largely with military personnel from within the

1 Khmer Rouges' own ranks, in this case the East Zone Ranks, East
2 Zone military ranks as opposed to the national armed forces; and
3 subsequently primarily with East Zone cadre. Further down the
4 line as elsewhere, there were security offices at the sector - in
5 every sector and in every district. As was true in other parts of
6 the country, although rather inconsistently; there was often a
7 linkage of some kind between the sector or district Security
8 Office and the Armed Forces at those levels.

9 [13.56.08]

10 That is to say, the sector army, the district army or an
11 interpenetration of the cadres such that the chairperson of a
12 Security Office would be a former sometimes, disabled (sic)
13 military cadre. In other instances, the chairpersons of these
14 offices were former heads of leading cadre's bodyguard units, the
15 so called Defence Units.

16 And as was true generally throughout the country, the further one
17 went down this formal security office structure, the more the
18 Security Offices dealt with ordinary people and the more
19 generally speaking, decisions about executions of people
20 detained, were primarily made at the district level; sometimes in
21 consultation in formal terms at least with the sector. And then
22 beneath all of that, was the co-operative or sub-district level
23 militia, the gorillas, to use the conventional FBIS translation,
24 the chlop sometimes just rendered in English to sort of add to
25 the aura of the word, who, as elsewhere in the country, arrested

84

1 people, sometimes killed them themselves.

2 So it's not an overall - it's - put it the other way, I put it
3 positively, again an overall structure, an organization very
4 similar to what existed elsewhere. I can add that at the sector
5 level that the Security Office answers normally directly to the
6 Party Secretary, sometimes the Party Secretary's deputy and at
7 the district level, the same pattern generally seems to have
8 obtained.

9 [13.58.25]

10 Q. In your research, have you found any factual information
11 indicating that the policy, the general policy of the CPK was
12 executed in the East Zone in the same manner as in other zones?

13 MR. RAYNOR:

14 Mr. President, I only object to the way in which the question is
15 being asked. It's been broadly, in terms of this introduction,
16 "In your research." You may recall when I used the word
17 "research" on day two of my examination, there were two
18 objections.

19 [13.59.18]

20 You will recall that in my questioning I raised interviews that
21 Mr. Heder had conducted or from any other direct factual
22 information, but to use "research," in my respectful submission
23 is too broad and invites almost inevitable opinion evidence.

24 BY MR. KOPPE:

25 I will rephrase.

1 Q. In your interviews and reading of documents, do you have
2 factual information which indicates that the execution of a
3 general policy - general CPK policy in the East Zone was the same
4 as in other zones?

5 MR. HEDER:

6 A. I believe the answer appears on many T-shirts, same saying,
7 but better. In the sense that policy was implemented in a manner
8 that was more in line with what was on the face of centre policy
9 so that the - the relative moderation that I mentioned elsewhere
10 in the article, review article, can be attributed to adherence to
11 that centre policy on the face of it rather than attributed to a
12 deviation from it.

13 But with that caveat, the answer is still yes, that there were
14 widespread executions. Maybe not as widespread in some - as in
15 some other places, and executions for the same kinds of reasons
16 and through the same kinds of processes that took place elsewhere
17 in the country.

18 [14.01.49]

19 Q. The interviews that you had, the documents that you studied,
20 did they provide you with factual information as to who in the
21 East Zone was responsible for these - for these executions?

22 A. Responsible is a big word. I certainly have data from the -
23 from interviews over the years that identifies by name some of
24 the members of the security office - the members of the general
25 staff committee, the East Zone level, the names of chairpersons

1 of sector and district security offices. And there is data in the
2 interviews, in at least some instances, that says that their
3 formal positions included actual authority commensurate with
4 their formal positions.

5 Q. Are you able to tell us from your interviews and the studying
6 of the documents what role, if any, So Phim played?

7 A. Well, I think that the formal notion according to which the
8 secretary of the zone was in overall charge of all affairs in the
9 zone is sustained in broad strokes by the interview information
10 and the non-confession documentary information such as it's
11 available.

12 [14.04.02]

13 So in that regard, in general terms, he seems to have exercised
14 the kind of authority over the zonal security apparatus that was
15 indicated by his formal position and thereby indirectly over more
16 local security offices, again with the caveat that - to the
17 extent that non-confession data or material - I avoid using the
18 word evidence - is available, it does not seem to be the case
19 that the formal requirement that all executions right down to the
20 very lowest levels in the so-called grass roots or, if you
21 prefer, in the Bases, to use a more literal translation - that
22 all of those executions were decided by the Standing Committee of
23 the zone committee.

24 That does not appear to have been the case in the East Zone,
25 generally speaking, as it was not generally the case in any of

1 the other zones, either.

2 [14.05.34]

3 Q. Do you have any factual information coming from your
4 interviews or your study of the documents about the role of East
5 Zone troops during the evacuation of Phnom Penh?

6 MR. PRESIDENT:

7 Witness, please hold on.

8 Mr. Prosecutor, you may proceed.

9 MR. RAYNOR:

10 Mr. President, I just want to go back to the parameters of Mr.

11 Heder's evidence. I've set this out before in terms of the

12 memorandum that was circulated by the Court and, indeed, Judge

13 Cartwright has also referred to this.

14 The clearest exposition was in the email of the 3rd of June - 3rd

15 of July, rather:

16 "The question shall be directed primarily to evidence the witness

17 gathered either during the interviews he conducted or the

18 evidence that he accumulated during the research..."

19 And these words I underline:

20 "...which forms the basis for the books or articles authored by

21 him."

22 [14.06.54]

23 The point I'm making is that for the last, I think, four

24 questions there's been no reference to any part of any book.

25 There's been no reference to book or extract from a book authored

1 by Mr. Heder.

2 Now, the - the risk this presents has been illustrated by the
3 last answer. Mr. Heder was talking about non-confession
4 documentary information and used this phrase, and this is why
5 these questions have to be so tightly framed, and it was about So
6 Phim:

7 "In general terms, he seems to have exercised authority".

8 Now, when we start using those phrases, "In general terms, he
9 seems to have", we're getting into opinion evidence. So I do
10 object to broad-sweeping references to broad-sweeping research or
11 interviews without any specific reference to any passage that Mr.
12 Heder has authored.

13 [14.08.18]

14 Now, the reason my examination was so tightly prepared was, for
15 every question I asked, there was an introduction by reference to
16 an extract from a book that Mr. Heder had authored, and that
17 meant that when I asked him the supplemental question, "Is there
18 other interview material or factual information to corroborate?"
19 you, as the Judges, were able to have a piece of information
20 authored by Mr. Heder as your starting point. But when the
21 starting point is, in effect - and I understand why, and I don't
22 blame my learned friend for it. But when the starting point for
23 the questions is a fishing expedition into Mr. Heder's brain, we
24 have real risks of opinion evidence being extracted.
25 That risk is lessened, if not obviated, when there is a specific

1 passage put to Mr. Heder from a book because you're then
2 grounding yourself in Mr. Heder. You're grounding yourself, in
3 accordance with your own direction, in books authored by him. But
4 if we proceed for the rest of this afternoon with fishing
5 expedition questions with no reference, it is inevitable, in my
6 respectful submission, that we will be in opinion territory as
7 illustrated by the last answer.

8 So I ask that Mr. Koppe be directed to ensure that his
9 questioning attaches to, to quote your direction, a book authored
10 by Mr. Heder or other material.

11 MR. KOPPE:

12 I'm not allowed to use Mr. Heder's book. I ask questions based on
13 his factual knowledge. That is not allowed. But let me translate
14 for the public what's really happening here, so that they
15 understand this objection of the Prosecution. I'm entering a
16 territory that the Prosecution wants to stay away as far as
17 possible from. And we all know what area in the '75-'79 DK period
18 we are not allowed to enter. That is the things that happening in
19 the East Zone. I think I am perfectly entitled to ask questions
20 relating to the studying of documents and interviews done by the
21 witness about what he can tell us as a witness about what
22 happened in the East Zone. So, this objection is not about
23 technicalities, don't let - let the public not be fooled by this.
24 This is about me entering the East Zone and the things that
25 happened in the East Zone.

1 [14.11.37]

2 MR. RAYNOR:

3 Well, can I respond just very briefly? Counsel makes submissions
4 to Judges. Counsel do not showboat for the public. This is not
5 about politics, this is about evidence. Had we been talking about
6 a totally different subject, I would have made the same
7 objection. But please, Counsel needs to be told it's not his
8 function to explain your rulings to the public. His function is
9 to make legal submissions to you.

10 (Judges deliberate)

11 [14.15.10]

12 MR. PRESIDENT:

13 I hand over the floor to Judge Silvia Cartwright to clarify the
14 ruling of the Chamber concerning the rule governing the
15 examination of the testimony of the witness. Judge Cartwright,
16 you may proceed, please.

17 JUDGE CARTWRIGHT:

18 Thank you, President. The Chamber reiterates its many rulings on
19 this topic. And, contrary to what you have indicated, Mr. Koppe,
20 the rulings are concerned with ensuring that this witness gives
21 testimony as a witness, and not as an expert. In fact, you were
22 the first to insist on this when Mr. Heder first started giving
23 his testimony. And the Chamber agrees with you on that topic.
24 Please comply with the ruling that the Chamber gave in the
25 message quoted by the Prosecutors. And if you cannot do that,

91

1 then the President has asked me to indicate that, as so many of
2 the questions are not relevant, he may turn instead to Khieu
3 Samphan and give the floor to him. Thank you, Mr. Koppe.

4 [14.16.59]

5 BY MR. KOPPE:

6 Q. I will give it another and last try. I'm now going, Mr. Heder,
7 to an article that you wrote that's called "Reassessing the Role
8 of Senior Leaders and Local Officials in Democratic Kampuchea
9 Crimes: Cambodian Accountability in Comparative Perspective". I
10 think you have it there. It is E190.1.398. More specifically, Mr.
11 Heder, I'm referring to a page in your article - ERN English,
12 00661490. For you it is page 36. More specifically, I will refer
13 you to footnote 207. It is French ERN, 00792948, 49, I have to
14 say I think. Khmer 00830815 until 16. So it's all relating to
15 footnote 207. I'm happy to read to you what is footnote 207
16 relating to, but I'm sure I will meet another objection, so I
17 will just read to you the footnote 207. And I remind the Chamber
18 that I'm reading from a public document. A publicly available
19 document.

20 [14.19.23]

21 "Various evidence implicates Heng Samrin in war crimes, massacres
22 of Vietnamese civilians committed by troops under his command
23 during cross-border raids into Vietnam in 1977."
24 Now, you refer to your other book - page 142 and 143. Did you in
25 fact write this footnote, Mr. Heder?

1 MR. HEDER:

2 A. Yes.

3 Q. Would you be able to explain what you meant – what you mean
4 with this footnote?

5 A. If I recall correctly, at this point in time I'm referring to
6 some interview material, and maybe some confession material.
7 Probably also some confession material.

8 Q. Do you know which confession material and which interviews you
9 are referring to?

10 A. (Microphone not activated)

11 Q. Sorry –

12 [14.20.50]

13 A. It should be in the other article – the review article.
14 Unfortunately, the review article has been retyped, so it doesn't
15 have the same pagination as in the footnotes. So I would have to
16 leaf through this in order to try and figure out what's referred
17 to. What the reference back to this article – review article –
18 is.

19 (A short pause)

20 [14.21.47]

21 Q. So you cannot say right now, at this point, which specific
22 interviews, which specific documents, etc., you refer to in this
23 particular footnote. Is that correct?

24 A. Well, if we follow the footnotes, we should be able to find
25 it. Follow the footnotes back as far as they will take us.

1 (A short pause)

2 [14.22.53]

3 Q. (Inaudible), Mr. Heder, would be an idea if you could have a
4 look at it in the break?

5 A. I think it's pages 53 and 54 of the review article. And this
6 is based on - actually, in part on Vietnamese documents
7 identifying the unit involved, and in part on interview data
8 identifying Heng Samrin as in charge of that unit. And putting
9 those two facts together puts him in command of the unit that is
10 identified as having carried out the attacks. And I think there's
11 also, then, the inadmissible citations to confessions. It goes on
12 for several pages. So, it starts on page 53 and it runs through
13 to page 58, but I can't link - because of the change in the
14 pagination, I can't be absolutely sure which exact passages in
15 the review article are referred to in the book chapter. That's
16 the reassessing document. It bears saying, I suppose, that that -
17 those kinds of data - again, I will remain neutral on the
18 question of whether data constitutes what other people in this
19 room would call evidence. That kind of data is also available in
20 subsequent Vietnamese publications or semi-publications, and
21 subsequent interviews done by me. So I don't feel uncomfortable
22 about standing by what was based earlier on less data, and is
23 based now on more data than back then.

24 [14.25.30]

25 I would like to turn your attention now, Mr. Heder, to some

1 passages in the book of Ben Kiernan. Document E3/1593. I have a
2 copy for you in respect of the relevant passages that I would
3 like to read for you. I would like, more specifically - I would
4 like to read a few quotes. I would like to start with the first
5 quote from this book. And it is on English page 00678528 and 9;
6 French ERN, 00638799; Khmer, 00637460. For you, it is page 67 of
7 Ben Kiernan's book. I would like, with your leave Mr. President,
8 to present a copy -

9 MR. PRESIDENT:

10 Counsel, please hold on.

11 (Judges deliberate)

12 [14.27.34]

13 MR. PRESIDENT:

14 The Chamber has already ruled on this issue, that the counsel
15 must not base on a book by Ben Kiernan as the basis for his
16 questioning. And the Chamber reiterates, once again, that if you
17 do not have any substantive question that may be necessary for
18 this questioning, in the interest of defending your client, then
19 the Chamber will grant the floor to the defence team for Mr.
20 Khieu Samphan. Because you have to make sure that you make the
21 best use of the time allocated. And the Chamber is of the view
22 that you are not making good use of the Court's time. And for
23 this reason, if necessary, the Chamber will cede the floor to the
24 defence team for Mr. Khieu Samphan, if you do not have any
25 further substantive questions.

1 MR. KOPPE:

2 So now you are saying I'm also not allowed to use Ben Kiernan's
3 book and ask factual questions to the witness? I mean, I'm really
4 losing it now, Mr. President. This is Ben Kiernan's book. The
5 Prosecution has asked many - several questions in relation to
6 this book. I have some questions on the factual information in
7 this book, and I was hoping the witness could, yes or no,
8 corroborate these passages. Factual passages about events in
9 1975, from his own interviews and document studying. [14.29.37]
10 So I'm doing now - I am now exactly within the realm of how you
11 think I should interview this witness. So it was my point to
12 quote one passage of events in May, 1975, and ask the witness if
13 he has himself any factual knowledge coming from interviews or
14 documents which could corroborate this. So, no opinion, no
15 Kiernan disqualification, just the usage of this book.
16 More specifically, I'm asking about the evacuation of Phnom Penh
17 in 1975. I'll be asking questions about a meeting at 20 May,
18 1975, which has been the subject earlier of the same questions,
19 from I think the Lead Co-Lawyers. So now I'm at a loss, Mr.
20 President.

21 MR. PRESIDENT:

22 The Prosecution, you may take the floor.

23 [14.30.50]

24 MR. RAYNOR:

25 Mr. President, only to say that when I was examining on -

96

1 examining Mr. Heder on Mr. Kiernan material, I was referring to
2 how Pol Pot came to power. The reason that I referred to that
3 book was Mr. Heder had himself referenced Mr. Kiernan in one of
4 his footnotes. But, I think, in fairness to my learned friend,
5 that was not always the case, and I recall asking some general
6 questions of Mr. Heder about Kratie in 1973, basing it on Mr.
7 Heder's book.

8 I think that's the only example where I used it, but I don't
9 object wholly to this. If there's a nexus Mr. Koppe makes between
10 this subject matter and the issues in the trial then, for my part
11 - and I don't wish to disrespect for the ruling - but for my part
12 I have no objection.

13 (Judges deliberate)

14 [14.33.10]

15 MR. PRESIDENT:

16 I'd like to give the floor the Judge Cartwright. Judge
17 Cartwright, please go ahead.

18 JUDGE CARTWRIGHT:

19 Mr. Koppe, the Chamber intervened previously because that was not
20 the manner in which you put the question to Mr. Heder. Rather,
21 your subsequent explanation changed the basis on which you would
22 put the questions. You are entitled to ask this witness questions
23 of fact. You are not allowed to ask him to give his opinion on
24 someone else's opinion.

25 [14.33.50]

1 So, if you can confine yourself to questions of fact, you may put
2 the question to Mr. Heder.

3 MR. KOPPE:

4 But I hadn't even asked the question, Judge Cartwright. I was -

5 JUDGE CARTWRIGHT:

6 Look, just please - you are in serious danger of losing the rest
7 of your time. Please just get to the question that you wish to
8 ask. Thank you.

9 BY MR. KOPPE:

10 Q. English ERN, 00678529; French ERN, 00638799; Khmer, 00637460.

11 It is in relation to - Mr. Heder, for you, I don't know if you
12 have - the Court Officer hasn't given it to you.

13 [14.35.03]

14 MR. PRESIDENT:

15 Court Officer, could you deliver the document from the defence
16 counsel for the witness' examination?

17 BY MR. KOPPE:

18 Q. Page 67, Mr. Heder.

19 "Heng Samrin was born in 1934. The third of eight children". A
20 few sentences down the line: "In 1962-63, he met Pol Pot in both
21 locations." A little further down the line, down that same
22 paragraph: "He then volunteered for the officer corps of the
23 burgeoning revolutionary army and became a company commander. His
24 promotion to command of the 126th Regiment and his prominent role
25 in the capture of Neak Loeung and Phnom Penh would not end his

1 opposition to forces aligned with the Centre."

2 [14.36.33]

3 Now, Mr. Heder, I'm only asking you about the factual information
4 in relation to this specific passage. Without expressing any
5 opinion or speculating, is there any factual information that you
6 have which corroborates this particular passage?

7 MR. HEDER:

8 A. In general terms, yes. I can't say that, off the top of my
9 head, I'm absolutely clear that the regimental designation is the
10 correct one. But it certainly was a regiment. One could quibble
11 about the use of the word "command". Technically, within the CPK
12 structure, the Party secretary was not the military commander of
13 a unit. It was usually the deputy-Party secretary of a unit who
14 was the military commander. But yes, in general terms, it's in
15 agreement with what I know from interviews and non-confession
16 documents.

17 [14.37.54]

18 Q. Let me move now, Mr. Heder, to page 31 of this same book.

19 English ERN, 00678510; French, 00638758-762; Khmer, 00637406. At
20 the passage "the surrender", I read to you as follows, and I
21 quote:

22 "Heng Samrin was ordered to send his troops 'to fight their way
23 into Phnom Penh'. They led one of three thrusts from the east.
24 The 126th, along with the 173rd and 160th regiments, made up the
25 Eastern Zone's 1st Division, deployed southeast of Phnom Penh.

1 Its commander was a veteran revolutionary, the 173rd's Chan
2 Chakray. Samrin was his deputy. The 2nd Zone Division, commanded
3 by Samrin's younger brother, Heng Thal, fought through to the
4 east bank of the Mekong, opposite the capital. The 3rd, which
5 included marines, advanced along the west bank under the command
6 of a former teacher named Chhean. These Eastern Zone divisions
7 would soon distinguish themselves from other CPK units. Their
8 more moderate behaviour won them the reputation of
9 'Sihanoukists'." End of quote.

10 Just solely in respect of the factual things being said in this
11 quote; do you have, based on your research - based on your
12 interviews, documents - have factual information which
13 corroborates this particular passage in the book?

14 [14.39.59]

15 A. Some yes, and some no. Again, I'm not sure I - my information
16 gives exactly same designations to the regiments of East Zone
17 Division 1. Again, with the caveat about the distinction between
18 about military commander and Party secretary, the secretary of
19 Division 1 was Chan Chakrey. The brother of Heng Samrin I would
20 quibble about the name, it's T-A-L, not T-H-A-L, Tal not Thal.
21 And again, he was Party secretary, not military commander as
22 such. And my recollection of what I have been told is that
23 Division 3 - maybe some elements of Division 3 were involved in
24 the attack on Phnom Penh - or the advance into Phnom Penh. But
25 most of Division 3 actually was assigned to Svay Rieng provincial

100

1 town and entered - seized - if you'll excuse that translation -
2 seized Svay Rieng provincial town and was bivouacked there.

3 [14.41.36]

4 So in broad terms, yes, on certain maybe petty issues of detail,
5 I have some quibbles.

6 Q. Thank you. Now two quotes together - two passages together
7 from that same book, I'm now for you on pages 55 and 57, I will
8 start with 55 -

9 MR. PRESIDENT:

10 Counsel, please wait.

11 Mr. Steve Heder, you may take the floor.

12 MR. HEDER:

13 The other - sorry, I was dealing with the sort of strictly
14 structural and organisational questions.

15 I wouldn't fully agree with the last sentence about the East Zone
16 divisions distinguishing themselves from all other units by their
17 moderation. I think the picture was much more mixed and
18 complicated than that.

19 [14.42.42]

20 Some of the East Zone - among the divisions that came into Phnom
21 Penh from each of the zones, specific assignments were given to
22 particular units. So some units were assigned to carry out
23 executions, some units were assigned to gather up war booty, and
24 other units were assigned to do patrolling. And I think that was
25 pretty much the same pattern across all the zones. And two and a

101

1 half to three - or two and a part to three divisions was a fairly
2 standard formation for entry into Phnom Penh. So the distinction
3 between - from one unit to the next was not as a result of its
4 zonal (sic) subordination, but the result of the specific tasking
5 it was given by the zone secretary and/or the zone chairman of
6 general staff.

7 MR. PRESIDENT:

8 Thank you.

9 [14.43.56]

10 The time is appropriate for a short break. We will take a break
11 now and return at five past 3.00.

12 Court officer, could you assist the witness during the break and
13 have him returned to the courtroom at five past 3.00.

14 The Court is now in recess.

15 (Court recesses from 1444H to 1507H)

16 MR. PRESIDENT:

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

18 We would like to give the floor to Nuon Chea once again to put
19 questions to the witness Steve Heder.

20 You may proceed.

21 BY MR. KOPPE:

22 Thank you, Mr. President.

23 [15.08.01]

24 Mr. Witness, Mr. Heder, two related quotes, these will be my
25 final quotes from the Ben Kiernan book.

1 I'm referring you to page 55 of his book – page 55 and page 57,
2 English ERN, 00678522; French ERN, 00638784 up until 85; Khmer,
3 00637441 up until 00637442. I'm reading you the first paragraph,
4 it's a chapter called "Consolidation: the 20 May 1975
5 Conference":

6 "All military and civilian officials of the new regime were
7 summoned to a special meeting on 20 May 1975. 'District and
8 region secretaries came from all over the country and
9 representatives from all armed forces and units and regions, so
10 there were thousands.'"

11 This is actually a quote.

12 [15.09.46]

13 "The assembly was held in the old sports centre in the northern
14 part of Phnom Penh. Its purpose was 'to receive the plan
15 distributed by the Centre' and then return home 'to implement the
16 plan'. The meeting lasted five days."

17 Mr. Heder, you will see that this passage refers to a footnote,
18 the footnote 106. And the footnote 106 reads as follows and I
19 quote – the same page: "This is Heng Samrin's 1991 account. Chea
20 Sim thought the meeting took place at the Khmero-Soviet
21 University. In 1992, Heng Samrin insisted he was right, saying
22 that he was living in the city at the time."

23 This is the first quote. The second quote is on page 57, English
24 ERN, 00678523; French ERN, 00638786 until 87; and Khmer, 00637444
25 until 46. Now on this page 57, Mr. Heder, I read the following

103

1 quote - it's the second paragraph:

2 "Heng Samrin, then studying military affairs under Son Sen, was
3 also at the meeting. He recalls the use of yet another term 'they
4 did not say kill,' they said 'scatter the people of the old
5 government.' Scatter (komchat) them away, don't allow them to
6 remain in the framework."

7 [15.12.04]

8 "It does not mean 'smash' (komtech)... Smash means kill, but they
9 use a general word scatter. Nuon Chea used this phrase. This
10 appears to be Sin Song's point number 5, though the use of varied
11 euphemisms isn't an important qualification."

12 Now I read you - Mr. Heder, two quotes. One about the general
13 presence of Heng Samrin at this 20 May 1975 conference, and one
14 about the things that he said he heard in respect to - presumably
15 enemies.

16 Q. My question to you is the following: do you have - on the
17 basis of your interviews or reading of documents etc., any
18 factual information to corroborate this - these two particular
19 passages which I just read to you?

20 [15.13.26]

21 MR. HEDER:

22 A. Yes and no. I think I previously mentioned that my material
23 indicates that there was a - there was more than one meeting,
24 which would explain why one person says there was a meeting in
25 one place and another person says there was a meeting in another

104

1 place. It's not that one of them is wrong and one them is right,
2 it's that people described - people have described to me more
3 than one meeting in more than one place attended by at least not
4 entirely overlapping groups of people.

5 And I think I did describe these as dissemination of line for
6 implementation meetings. And it's indeed around this time, late
7 May, early June 2000 - 1975 - wrong century. And my recollection
8 is that this kind of information doesn't come from sources as
9 high level as Ben Kiernan's, and not necessarily people who were
10 directly present, but people from defence units, that is to say
11 bodyguard units who accompanied cadre to these meetings. So I
12 have some indirect knowledge - well, I have direct knowledge of
13 where and when meetings were held, and indirect knowledge based
14 on what they were told by their superior or superiors about what
15 went on in those meetings. Off the top of my head, I think in
16 terms of at least superficial quality of interviewee, Kiernan's
17 data on this is superior to mine.

18 [15.15.32]

19 Q. But are you able to say whether your data collected from your
20 studying of documents and talking to people - do your data
21 corroborate the particular phrase used by Heng Samrin in respect
22 of what Nuon Chea, during these - this meeting or other meetings,
23 said?

24 A. I don't have trouble with the bit that's on - I don't see the
25 - oh, it's a half-page, the right hand side of ERN in English

105

1 00678523, which is original page 57. I don't have any problem
2 with the reporting about the use of the word – or the non-use of
3 the word "smash" which I agree according to many respondents was
4 a euphemism generally used to mean "kill". I'm troubled by the
5 way in which the term komchat is dealt with here. It's not
6 consistent with my interview data and it's – the translation of
7 komchat as scatter is to my mind incorrect.

8 [15.17.28]

9 There's a bound form typical in Southeast Asian languages where
10 something is – something that sounds similar is repeated, a
11 reduplicative pattern. And a reduplicative – the applicable
12 reduplicative pattern here in Khmer is komchat, komchai. Komchai
13 literally means something like disperse or scatter. Komchat is
14 stronger and means get rid of, eliminate.

15 So the reduplicative bound form komchat, komchai could be
16 rendered into English as eliminate-disperse. So komchat to my
17 mind has a stronger and potentially more worrying meaning than
18 simply komchai and comes closer to the notion of komtech.

19 But – and I can't tell you off the top of my head whether those
20 particular specific terms are dealt with in any of my interview
21 data. Here I'm speaking from the way in which other interview
22 data generally has been – gives some indication of the meaning
23 and the usage of these terms.

24 Q. Have you at one point read the underlying interview itself
25 that led Kiernan to write this particular passage in his book?

106

1 [15.19.30]

2 A. Well, again, at one level Kiernan is better than me because
3 his interview notes are – unlike my sort of idiosyncratic
4 peculiar shorthand – written out in full and in longhand. But
5 they're in English, so to my knowledge the original notes of this
6 interview which I first saw at DC-Cam, are in English. So I
7 presume what's happened is he's written down the English
8 interpretation that he was given when he did the interview. I
9 don't think it's transcribed into Khmer from a tape and then
10 translated from the tape – from the transcription into English. I
11 think what happened was that he took the notes down in English
12 from interpretation. So I can't go back and look at any original
13 Khmer because I don't think there is an original Khmer for this
14 text.

15 Q. If I can take you to the original interview and this
16 particular passage that Kiernan seems to be referring to, now
17 that is document E3/1568, English ERN, 00651884; French ERN,
18 00743356 to 57; Khmer, 00713954 – 00713955. And in the middle of
19 that page I read as follows – here is Heng Samrin being quoted:

20 [15.21.37]

21 "They didn't say kill (the Lon Nol leaders). They said (unclear
22 Khmer words). Don't allow them to remain in the framework, it
23 doesn't mean 'smash'. Nuon Chea used this phrase."

24 Could you react on this?

25 M. LE PRÉSIDENT:

107

1 Witness, please hold on.

2 The Prosecution, you may proceed.

3 MR. RAYNOR:

4 Mr. President, it's only really to put this document in context.

5 The Defence have in the past objected to this document, they're

6 now plainly wishing to refer to it. But I want to place that

7 objection on the record. And we also have an extract being read

8 that has some unclear Khmer words being referred to.

9 Thank you.

10 [15.22.49]

11 MR. KOPPE:

12 Just a quick reply, Mr. President.

13 The Prosecution is I'm sure well aware that we have used or

14 quoted this passage on various occasions in our requests to have

15 witness 223 be summoned. So I don't see the objection has any

16 validity. We do wish to use this specific passage from this

17 document.

18 So I would like to be able to put the question to you more

19 specifically, to give a reaction, that's my question to you, Mr.

20 Heder, about the words "don't allow them to remain in the

21 framework."

22 MR. PRESIDENT:

23 Witness, please hold on.

24 The national Lead Co-Lawyer for civil parties, you may take the

25 floor.

108

1 MR. PICH ANG:

2 Mr. President, the formula of question by the defence counsel is
3 for the expert and Mr. Steve Heder is here as a witness, not as
4 an expert. And for that reason, I object to the question.

5 [15.24.12]

6 MR. KOPPE:

7 Correct. Mr. Heder has offered many linguistic interpretations of
8 certain words; he just did it in his previous answer. So I'm now
9 putting another version of the same Khmer words to the witness
10 and asking him to give a reaction. I think that's perfectly
11 within his capacity as a witness.

12 (Judges deliberate)

13 [15.27.05]

14 MR. PRESIDENT:

15 I'd like to hand the floor to Judge Lavergne to clarify the
16 decision of our ruling that we made to the objection to the last
17 question put to the witness by Nuon Chea's defence counsel.
18 Judge Lavergne, please take the floor. Thank you.

19 JUDGE LAVERGNE:

20 Yes, thank you, Mr. President.

21 The Chamber rather believes that it would be necessary to
22 consider the question put as a question aiming at interpreting an
23 expression in Khmer, rather - so it seems that rather this
24 interpretation would be within the scope of an expert.

25 [15.28.01]

109

1 So unless the witness has factual elements which would allow us
2 to provide a more precise answer to the question raised by the
3 Defence, the Chamber believes that there's no need to put this
4 question to the witness, and therefore is asking the Defence to
5 put another question.

6 Unless, Mr. Heder, you have any precise and factual elements that
7 you would like to raise.

8 MR. HEDER:

9 No, I don't actually, because in this instance I can't figure out
10 what the original Khmer may have been. It doesn't make sense to
11 me in English. It doesn't appear to me as something that I can
12 understand as a mistranslation of something with which I'm
13 familiar.

14 And if I could figure out what I thought it was, then I could say
15 what others have told me about what that means. But I can't do
16 that because I can't get to the first step. So without the
17 original Khmer document or the original Khmer transcription of
18 the discussion, I can't address it.

19 [15.29.25]

20 BY MR. KOPPE:

21 I'll move on, Mr. Heder.

22 The last hour we have been speaking about - in detail about Heng
23 Samrin, we discussed a little bit his joining the revolution, we
24 discussed to a certain extent his role during the evacuation of
25 Phnom Penh, we have also now discussed his presence at this 20

110

1 May meeting - 20 May '75 meeting.

2 Q. What we haven't discussed yet - and that is my question to you
3 - do you have any factual information based on your talks with
4 interviewees, reading documents etc., which allows you to give -
5 which allows you to give factual information as to the
6 relationship between Heng Samrin and on the other hand, Nuon
7 Chea?

8 [15.30.51]

9 MR. HEDER:

10 A. To my recollection, the only such information of which - the
11 only such information - let's put it this way, the only
12 information I can remember I think is on the case file as a
13 result of interviewing done under the auspices of OCIJ, and not
14 something that is in my possession as a result of my own
15 non-court related work. So I think the answer is no.

16 Q. Now after the open question, I would ask you now a close
17 question in respect of a possible relationship between Nuon Chea
18 and Heng Samrin.

19 Do you have factual knowledge coming from your interviews or
20 reading the documents or confessions etc., which suggests that
21 Heng Samrin was in fact for many years the personal messenger of
22 Nuon Chea?

23 [15.32.10]

24 A. I'm pretty sure that comes from sources other than mine. And
25 by other than mine, I include sources which may be in the case

111

1 files as a result of investigation done in the OCIJ period. But -
2 therefore, is not my personal information. I don't think I have
3 that data as a result of my own non-court work or as a result of,
4 you know, I don't have it directly myself, I've seen it. I've
5 either seen it inside the Court or within the context of the
6 Court or in somebody else's work.

7 Q. To be absolutely sure, have you - do you have any factual
8 information from your interviews with people, reading of
9 documents etc., that corroborates the possibility or that
10 corroborates the fact that Nuon Chea and Heng Samrin know each
11 other since the 50s - the 1950s?

12 [15.33.21]

13 MR. PRESIDENT:

14 Witness need not answer this question because it is repetitive,
15 it has been asked several times already. And the defence counsel
16 is once again reminded that any request for additional time will
17 not be entertained because you have been viewed as not using the
18 best Court time.

19 BY MR. KOPPE:

20 Last question on the subject, Mr. Heder. I would like to refer
21 you to a footnote in Kiernan's book. That is footnote 97 on page
22 206, English ERN, 00678598; French, 00638963; Khmer, 00637675 to
23 76. I have maybe another ERN number when it comes to the footnote
24 that seems to be 97 - sorry, 00639340. Footnote 97, I'll just
25 read the first few lines:

112

1 [15.35.04]

2 "Heder first suggested that the Eastern Zone anti-Pol Pot rebel
3 Heng Samrin was 'a kind of Kim Philby character' who had 'been
4 passing all the secret documents of the Cambodian Communist Party
5 to the Vietnamese all along.' According to Heder, in 1959 Samrin
6 was 'infiltrated into the ranks of the Cambodian revolution by
7 the Vietnamese and he rose as high as he could, and when it
8 became impossible for him to continue to operate, he fled to
9 Vietnam, just as Kim Philby fled to the USSR."

10 Now he's referring to an article that you wrote in "The Call", an
11 organ of the Communist Party of the USA, 5th March 1979.

12 [15.35.59]

13 Q. My question to you is did you in fact write this passage about
14 Heng Samrin being Kim Philby?

15 MR. PRESIDENT:

16 Witness, please hold on.

17 The National Lead Co-lawyer for the civil party, you may proceed.

18 MR. PICH ANG:

19 Good afternoon, Mr. President and good afternoon, Your Honours.

20 I look at the email sent by the senior legal officer of the Trial
21 Chamber dated the 3rd of July 2013; it specifies very clearly
22 that this witness before us will testify on Case 002/01. And I
23 believe that the question being put by the defence counsel is not
24 relevant and it is beyond the scope of the current case. And I
25 object on this basis, Mr. President.

113

1 [15.37.20]

2 BY MR. KOPPE:

3 I'm only asking about – a question about a footnote referring to
4 something that this witness has written. And my only question is
5 did you in fact write whatever has been quoted in the footnote?

6 That's my only question.

7 MR. PRESIDENT:

8 The objection is not sustained.

9 Witness is now directed to respond to the question.

10 MR. HEDER:

11 I don't think it's something that I wrote. I think it's something
12 that I was quoted as having said and quoted in a manner that
13 didn't reflect the full context in which this was put forward as
14 one of several alternative versions of what might be the reality.

15 [15.38.26]

16 BY MR. KOPPE:

17 Q. I'm not quite sure if I understand fully your answer. Could
18 you clarify?

19 MR. HEDER:

20 A. I previously mentioned that I was in contact with this group,
21 and my recollection is that I had conversations with them, both
22 with regard to their trip to Cambodia in mid '78 and events that
23 occurred thereafter and this is quoted by them, not written by
24 me, but quoted by them in their journal and quoted in a manner
25 that didn't reflect my full views at the time. So it's one of

114

1 several possibilities.

2 Q. But did you in fact – that is my last question on the subject
3 – did you in fact say that Heng Samrin was the Kim Philby of
4 Cambodia?

5 A. One of several–

6 [15.39.33]

7 MR. PRESIDENT:

8 Witness needs not answer this question. The witness is not an
9 expert and this question elicits speculation on the side of the
10 witness.

11 BY MR. KOPPE:

12 I'll move on, Mr. Heder, to another subject and that is your book
13 on Communism, ERN – sorry, that's E3/22. And what I would like to
14 do in order to speed up things, is to quote a few passages from
15 the Forward of the book. The Forward written by David Chandler
16 because it seems that he summarizes quite – quite well what your
17 point is in the book, what you're trying to prove in the book. So
18 I'm reading these passages and then I would just like you to say
19 if in fact he is making an accurate summary of your book. And if
20 not, maybe you could then expand. And that is – it has not been
21 translated–

22 [15.40.56]

23 MR. RAYNOR:

24 Sorry, sorry–

25 MR. PRESIDENT:

115

1 Mr. Prosecutor, you may proceed.

2 MR. RAYNOR:

3 This isn't putting to Mr. Heder what he's written now. It's
4 putting Mr. Heder to Mr. Heder what Professor Chandler has
5 written about Mr. Heder's book, and asking Mr. Heder to comment
6 on whether Mr. Chandler's view of what he wrote correctly
7 reflects something.

8 Again, this is - this is an invitation to opinion throughout. The
9 direction from the Chamber did not say "Please put to Mr. Heder
10 what people have written about him in forwards to his books."
11 The Chamber's direction was "Put Mr. - to Mr. Heder what he's
12 written in his books, not what other people have written about
13 his books."

14 [15.41.56]

15 And this, in my respectful submission, is the flip side of the
16 coin that we had earlier where Mr. Heder was being asked to
17 comment on something he'd written about what Mr. Kiernan had
18 written. This is not about this portion of the evidence about
19 what Mr. Chandler's written about what Mr. Heder, Mr. Heder's
20 written about Mr. Kiernan, Mr. Kiernan's written about Mr. Heder.
21 This portion of the trial is designed to address books authored
22 by Mr. Heder and what Mr. Heder's had to say.

23 And in my respectful submission, you're not going to be assisted
24 by what Mr. Chandler thinks of Mr. Heder's book.

25 BY MR. KOPPE:

116

1 It's not a review or anything. There's no dispute between Mr.
2 Chandler and Mr. Heder. In fact, Mr. Chandler is very happy it
3 seems with the book of Stephen Heder.

4 [15.43.01]

5 It's from the Forward, I thought it was easier to speed up
6 things, but apparently the Prosecution is doing everything to
7 frustrate the questioning, so I'll rephrase, Mr. Heder.

8 Q. Are you in fact - are you in the book - let me rephrase, are
9 you in the book speaking about the four myths about Cambodian
10 Communism? And if yes, could you please explain what you have
11 written in respect of four myths of Cambodian Communism?

12 MR. HEDER:

13 A. Sadly, you're going to have to refresh my memory, maybe
14 Chandler enumerates - goes on to enumerate the myths, specify the
15 myths?

16 MR. PRESIDENT:

17 Apparently the defence counsel does not have any substantive
18 question. Have you exhausted your list of questions?

19 [15.44.17]

20 According to the nature of your questioning now, it appears to me
21 that you do not have any other substantive questions.

22 BY MR. KOPPE:

23 That is not correct, Mr. President. I have many substantive
24 questions.

25 Q. Mr. Heder, did you write in your book that the Communist Party

117

1 of Kampuchea and its predecessors were not Communist at all?

2 MR. RAYNOR:

3 Page, reference, help, please.

4 MR. KOPPE:

5 No, I'm not allowed to quote from the book, so I won't give a
6 page.

7 MR. RAYNOR:

8 Are we in a court of law or a playground?

9 [15.45.01]

10 MR. KOPPE:

11 Now that is a very good question.

12 MR. RAYNOR:

13 Can I say that stronger? Can this counsel please be directed not
14 to ask any more questions?

15 We are in the bounds of irrelevance. We're now getting to the
16 bounds of insults. He should be stopped now and other counsel
17 should take over.

18 MR. KOPPE:

19 I'm asking a very relevant question on the book of this witness
20 about Communism. And I'm asking if in his book he wrote in fact -
21 or one of his central points in the book was that the Communist
22 Party of Kampuchea and its predecessors were Communist and if he
23 -

24 [15.46.02]

25 MR. RAYNOR:

118

1 Why do we have conventions of courtesy? We have them so that you
2 can follow this question and I can follow this question.

3 Can he please be directed – because I can't do it, only you can
4 do it? And it's time for a direction now.

5 MR. KOPPE:

6 May I respectfully submit that the Prosecution has nothing to say
7 about the way I phrase my questions. It is a perfectly legitimate
8 question and I was trying to do it by using the words of the
9 Forward by David Chandler –

10 MR. PRESIDENT:

11 Counsel, you should follow the practice that we have done thus
12 far and other parties are also supposed to do the same. And you
13 have been in this proceeding for a long time, so if whenever you
14 refer to any particular portion, you should mention the document
15 reference, document number, as well as the relevant ERN page, so
16 you should try to be as specific as possible.

17 [15.47.15]

18 You have to point to a specific document as well as the relevant
19 pages, and it should be available in the three languages as well
20 for the questioning of this witness.

21 BY MR. KOPPE:

22 As you know, Mr. President, his book has not been fully
23 translated, it's only in English, there's a few passages in
24 French and Khmer. I will put a very simple question to this
25 witness.

119

1 Q. Mr. Heder, what is your central thesis in the book
2 "Communism..." - "Cambodian Communism and the Vietnamese Model"?

3 MR. HEDER:

4 A. One could say that this book is written in the intellectual
5 tradition of something known as "post-colonialism", the central
6 thesis of which is that anti-colonial political activity often -
7 maybe even typically - involved internalized practices derived
8 from colonialism, but turned outwardly against the colonists.

9 [15.48.46]

10 And in this particular instance, this book is - as an example of
11 that genre - intellectual genre. I'm looking at the ways in which
12 - according to the evidence that I saw - the Cambodian Communist
13 movement in its origins was very heavily influenced by Vietnamese
14 Communist structure, organisation, ideology and practice, which
15 was natural because it grew out of an Indo-Chinese Communist
16 Party which included both Vietnamese and Cambodians, and that
17 over time those internalized phenomena were turned against the
18 Vietnamese so that in a sense, the colonialist modes of thinking
19 and modes of behaviour were used against those who were deemed
20 colonialist. And this is in fact a pretty clichéd standard mode
21 of analysis in the time that I was writing the book with regard
22 to understanding colonialism and anti-colonialism. It was a bit
23 novel of me to apply it to this particular situation, but it was
24 kind of standard in terms of general political theory.

25 [15.50.23]

120

1 MR. KOPPE:

2 Q. I would like you to have a look at – I don't know if you have
3 your book in front of you?

4 Mr. President, could I hand a copy of the relevant pages to the
5 witness?

6 MR. PRESIDENT:

7 Court Officer, please obtain the document from the counsel and
8 hand it over to the witness for his examination. The witness, you
9 may proceed.

10 MR. HEDER:

11 I've now looked further at the footnote in the Kiernan volume
12 about which you asked me, and I note that – then goes on to quote
13 something that is dated 1980 in which, as he points out, I put
14 forward a rather different view; one might say hypothesis about
15 Heng Samrin. And I think the – you know, the important thing here
16 is that this is at a period, a point in time, when indeed I was
17 guessing and so various very different possibilities were coming
18 from me.

19 [15.52.17]

20 And it's sort of been portrayed as if this is a weakness. Well,
21 may it's a weakness but maybe changing your mind as more and more
22 evidence emerges, more and more interviews are done, more and
23 more documents are viewed, that should be, in fact, not
24 considered a weakness but a strength. That's what one ought to
25 do. One ought to revise one's understanding, one's summary of the

121

1 facts, hopefully an objective summary of the facts, as the facts
2 become more voluminous.

3 So I would - he goes on then to talk about something we
4 previously discussed and that's why I want to link these things
5 together.

6 At the end of the footnote, he reverts to the question of what
7 happened in cross-border raids in 1977 and suggests that because
8 I changed my mind or may have changed my mind between March of
9 1979 and sometime in 1980 that everything I subsequently have
10 concluded is suspect. Well, yes, it shows that I am infallible -
11 not, sorry, I'm not infallible, shows that I change my mind. But,
12 as I said in my previous testimony with regard to the last point
13 that's covered in this footnote, that reflects an accumulation of
14 data, material or, if you will, evidence, whereas these earlier
15 things I - I wouldn't necessarily stand by either of those two
16 earlier formulations.

17 [15.53.55]

18 MR. KOPPE:

19 Q. Thank you for that clarification. I would like to turn your
20 attention to page 123 of your book on Communism, Chapter 7. For
21 the record, that is E3/22, or particular it is ERN 00393786.

22 Since there is no French translation, I will read it slowly; page
23 123, last paragraph:

24 "In July 1967, the Vietnamese proclaimed that Communists in other
25 countries could best help them against the U.S. by waging violent

122

1 struggles against imperialism like the Bolshevik, Chinese and
2 Vietnamese revolutions. Even if empty-handed they must eventually
3 rise up to wage armed revolution. While attacking their enemies
4 politically, economically and diplomatically was also necessary,
5 the decisive factor would always be the masses armed and
6 political struggle." End of quote.

7 [15.55.19]

8 A little further, the next page in fact, Mr. Heder – that is page
9 124 for you, ERN 00393787:

10 "By deviating from the violent path, Communists would allow the
11 local lackeys of imperialism to 'exterminate the party of the
12 proletariat and do away with the revolutionary organization.' All
13 Communists must understand that when political struggle developed
14 to a certain level, not supporting it with armed struggle would
15 cause heavy damage to the revolution."

16 A little further on that same page:

17 "In an October analysis, similarly disseminated by Vietnamese
18 media, party chief Le Duan raised the spectre of a reactionary
19 coup d'état in Cambodia as a result of U.S. machinations there to
20 take advantage of its economic difficulties and certain weak
21 points of Sihanouk, who was in danger of again becoming dependent
22 on U.S. imperialism."

23 [15.56.38]

24 A little further:

25 "Le Duan's October analysis has also reaffirmed that other

123

1 Communists must learn the lessons of the Vietnamese revolution in
2 order to fulfil their duties as revolutionary vanguards in their
3 own countries. To give the struggles a popular character they
4 must use both political and military forces to launch uprisings
5 of the oppressed and exploit the masses when the situation was
6 ripe for the revolution."

7 The next page, Mr. Heder:

8 "Senior..."

9 In the middle, that is ERN 00393788:

10 "Senior Vietnamese theoretician, Truong Chinh, made the same
11 points in an early November 1967 speech: when a revolutionary
12 movement was suppressed in an extremely cruel manner, it had no
13 other path to follow than that of revolutionary violence."

14 And, finally, that is the next page, page 126, ERN 00393789:

15 [15.57.55]

16 "Everything the Vietnamese were saying provided the Cambodians
17 with reasons why this path was the only ideologically sound one.
18 It was the right one for small countries and small peoples, even
19 if their Communist Party was weak and empty-handed, and
20 regardless of how much more powerful U.S. imperialism might
21 appear to be. It was the only way to avoid inviting destruction
22 by U.S. imperialism and its local lackeys and the best way to
23 help the Vietnamese in their war against the U.S."

24 And, finally, the next page, that is page 00393790, ERN, page 127
25 on the top:

124

1 "Not to proceed on one's own would be contrary to the principle
2 of independence, self-reliance, self-sufficiency and mastery of
3 its own destiny. Moreover, the need to follow the path of
4 revolutionary violence remained an inescapable law of
5 contemporary world history, part of every Communist Party's
6 historic mission to be fulfilled is one of its vanguard duties."

7 [15.59.04]

8 Now, I've read you various quotes from leading Vietnamese
9 politicians and military in the '60s. Does your reading of
10 interviews, documents etc. allow you to make a factual
11 confirmation as to the policy that was advised to the Cambodians
12 or the CPK as the one they should follow? Is there any-

13 MR. RAYNOR:

14 This is the trouble again we get when we don't have footnotes
15 read out. Some of the assertions that my learned friend has
16 referred to are backed up by footnotes. I'll give you an example
17 of one phrase that's not backed up by any footnote and amounts to
18 opinion evidence:

19 "Moreover, the need to follow the path of revolutionary violence
20 remained an inescapable law of contemporary world history, part
21 of every Communist Party's historic mission to be fulfilled as
22 one its vanguard duties."

23 [16.00.35]

24 There's no footnote attaching to this. There's not a footnote
25 attaching to each portion that my learned friend has quoted, and

125

1 now Mr. Heder is being asked to give an answer which is based on
2 opinion elements in a question about a policy that is not defined
3 in the question and which relates to six separate abstracts, four
4 of which were not footnoted. This is not the way to do it, and I
5 object.

6 MR. KOPPE:

7 The fact that the prosecutor has been refer-

8 MR. PRESIDENT:

9 The International Lead Co-Lawyer for civil parties, you may
10 proceed.

11 MR. PICH ANG:

12 Thank you, Mr. President. I want to be on my feet to support the
13 objection raised by the Prosecution and I wish add that the -
14 this kind of question is for the expert and the read-out by the
15 counsel is too fast and it is difficult to understand the Khmer
16 interpretation of that fast pace of speech. Please, if you need
17 to refer to long extracts, please do it slowly so that the
18 interpreter could get a full interpretation of your text.

19 [16.02.04]

20 MR. KOPPE:

21 I'm reading a passage. I'm asking the question to the writer of
22 this passage - these passages, that he has factual information to
23 back-up what he has been saying in addition to the sources
24 mentioned in his footnotes. That's - I'm not interested in the
25 footnotes, I can read the footnotes myself. I'm interested in if

126

1 he has any other factual information to these passages and
2 whether there's factual information which corroborates his
3 apparent point of view, that Vietnam was supplying the policy in
4 policy terms to the CPK.

5 [(Judges deliberate)

6 [16.05.34]

7 MR. PRESIDENT:

8 The objection raised by the Prosecution and supported by the
9 National Lead Co-Lawyer by civil parties to the last question by
10 the International Counsel for Nuon Chea, Victor Koppe, which
11 seems to draw his opinion as an expert and which is contradictory
12 to the instruction by the Chamber as this witness appears before
13 this Chamber as a witness.

14 And for that reason the witness is directed not to respond to
15 that question and the objection that is raised is sustained, and
16 Mr. Steve Heder you may take the floor.

17 MR. HEDER:

18 I'm not sure I fully understand the connection between the
19 Prosecution objection and your ruling. Not questioning the
20 ruling, but the Prosecution argument, as I understood it, is
21 there are things in this text for which there are no footnotes
22 and as I - I think a conclusion was drawn, either by Prosecution
23 or by the Bench, that this means that what is there is opinion
24 and not factual in the sense that it's something that is
25 attributed to another document.

127

1 [16.06.54]

2 And, again, it's been a while. I think what's going on here is
3 "intertextuality", as it's known in the academic business. I'm
4 using - I'm re-stating here things that are footnoted somewhere
5 else in the document. The phraseology, the formulations I use
6 here are lifted, if not entirely verbatim rather closely from
7 something that I've already said somewhere else with a footnote
8 and, therefore, the sort of standard practice to save space and
9 for other kind of just silly reasons, is not to repeatedly
10 footnote the same thing when you've already footnoted it.
11 So I'm not sure of the conclusion, however drawn, but whoever has
12 drawn it here that this is opinion in the sense of it's my
13 interpretation rather than fact in the sense that it's
14 effectively me quoting something someone else has said. I'm not
15 sure that's a correct inference from just this page. You'd have
16 to look throughout - I'm afraid you'd have to look throughout the
17 entire book to see whether I, in fact, indeed - because I think I
18 have said it somewhere else and footnoted it.

19 [16.08.23]

20 BY MR. KOPPE:

21 Q. And to assist you, Mr. Heder, from the beginning of the-

22 MR. PRESIDENT:

23 I think the time for today's hearing is now adjourned and the
24 time allocation for Nuon Chea's defence is expired. Today's
25 proceeding has come to an adjournment and the Chamber will

128

1 adjourn now and resume tomorrow morning, that is Wednesday 17
2 July 2013, and for tomorrow we will continue to hear the
3 testimony of the witness, Mr. Steve Heder, who will be questioned
4 Khieu Samphan's defence. This information is for the parties, the
5 support staff, and for the general public.

6 Mr. Steve Header, the hearing of your testimony has not yet
7 concluded and you are invited to return to the courtroom tomorrow
8 morning, and it will commence at 9 a.m.

9 Court Officer, in collaboration with WESU, please assist the
10 return to the residence of the witness, Steve Heder, and have him
11 returned to the courtroom tomorrow morning before 9 a.m.

12 And, security guards, you are instructed to take the two accused,
13 that is Nuon Chea and Khieu Samphan, to the detention facility
14 and have them returned to the courtroom tomorrow morning prior to
15 9 a.m.

16 As for Nuon Chea, bring him to the holding cell downstairs which
17 is equipped with audio-visual means for him to follow the
18 proceeding remotely.

19 The Court is now adjourned.

20 (Court adjourns at 1610H)

21

22

23

24

25