



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

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Case File N° 002/19-09-2007-ECCC/TC

5 January 2016
Trial Day 351

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

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
Victor KOPPE
SON Arun
LIV Sovanna
KONG Sam Onn

Trial Chamber Greffiers/Legal Officers:
CHEA Sivhoang
Maddalena GHEZZI

Lawyers for the Civil Parties:
Marie GUIRAUD
LOR Chunthy
PICH Ang
TY Srinna
VEN Pov

For the Office of the Co-Prosecutors:
Joseph Andrew BOYLE
Nicholas KOUMJIAN
SENG Leang
SONG Chorvoin

For Court Management Section:
UCH Arun

I N D E X

MR. PAK SOK (2-TCW-1000)

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Mr. THANG Phal (2-TCW-848)

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Mr. BOYLE	English
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Mr. KONG Sam Onn	Khmer
Mr. KOPPE	English
Mr. KOUMJIAN	English
Judge LAVERGNE	French
The President (NIL Nonn)	Khmer
Mr. PAK Sok (2-TCW-1000)	Khmer
Mr. PICH Ang	Khmer
Mr. THANG Phal (2-TCW-848)	Khmer
Mr. SENG Leang	Khmer

1

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

2 (Court opens at 0905H)

3 MR. PRESIDENT:

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

5 Today we proceed with the hearing and the proceedings in Case

6 002/02. And today we will conclude the testimony of Witness,

7 2-TCW-1000, who will be questioned by the two defence teams.

8 We also have a reserve witness today, that is, 2-TCW-848.

9 And before we proceed to hear the testimony of today's witness

10 and for the following witnesses; Judge Ya Sokhan, who is a

11 National Judge, is absent for personal matters. And after the

12 bench deliberated this morning, we decide to appoint the Reserve

13 Judge Thou Mony in Ya Sokhan's place for today's proceedings

14 until such time Judge Ya Sokhan is able to return to the bench.

15 This decision is based on Rule 74 -- 79.4 of the ECCC Internal

16 Rules.

17 Ms. Chea Sivhoang, please report the attendance of the Parties

18 and other individuals at today's proceedings.

19 [09.08.12]

20 THE GREFFIER:

21 Good morning, Mr. President. For today's proceedings, all Parties

22 to this case are present except Ms. Anta Guisse, the

23 International Counsel for Khieu Samphan, and Mr. Calvin Saunders,

24 the stand-by counsel for Khieu Samphan's defence, are absent for

25 personal reasons.

2

1 Mr. Nuon Chea is present in the holding cell downstairs. He has
2 waived his rights to be present in the courtroom. The waiver has
3 been delivered to the greffier.

4 The witness who is to conclude his testimony today, that is,
5 2-TCW-1000, has Mr. Moeurn Sovann as his duty counsel. He is
6 ready to be called by the bench.

7 We also have a reserve witness today, namely, 2-TCW-848. The
8 witness confirms to his ability he has no relationship by blood
9 or by law to any of the two accused, that is, Nuon Chea and Khieu
10 Samphan, or to any of the civil parties admitted in this case.

11 The witness took an oath before the Iron Club statue this
12 morning. Thank you.

13 [09.09.30]

14 MR. PRESIDENT:

15 Thank you, Ms. Chea Sivhoang. The Chamber now decides on the
16 request by Nuon Chea.

17 The Chamber has received a waiver from Nuon Chea, dated 5 January
18 2016, which states that due to his health, headache, back pain,
19 he cannot sit or concentrate for long, and in order to
20 effectively participate in future hearings, he requests to waive
21 his rights to participate in and be present at 5 January 2016
22 hearing.

23 He affirms that his counsel has advised him about the
24 consequences of this waiver, that it cannot in any account be
25 construed as a waiver of his rights to be tried fairly or to

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1 challenge evidence presented to or admitted by this Court at any
2 time during this trial.

3 Having seen the medical report of Nuon Chea by the duty doctor
4 for the accused at the ECCC, dated 5 January 2016, which notes
5 that Nuon Chea has severe back pain when he sits for long and
6 recommends that the Chamber grant him his request so that he can
7 follow the proceedings remotely from the holding cell downstairs.
8 Based on the above information and pursuant to Rule 81.5 of the
9 ECCC Internal Rules, the Chamber grants Nuon Chea his request to
10 follow today's proceedings remotely from the holding cell
11 downstairs via audio-visual means.

12 The Chamber instructs the AV Unit personnel to link the
13 proceedings to the room downstairs so that Nuon Chea can follow.
14 This applies to the whole day.

15 [09.11.26]

16 And before I invite the witness and his counsel into the
17 courtroom, the Chamber would like to inform the Parties that, in
18 relation to the request by Nuon Chea's Defence and the
19 Co-Prosecutors for statements and witnesses pursuant to Rule 87.3
20 and 87.4 for the <facts against> Vietnamese target group,
21 <document E380, E381 and E382,> that is, in relation to those
22 documents, the floor will be given to the parties tomorrow, not
23 today, <based on Khieu Samphan's Defence request>.
24 And second, the Chamber will now issue its ruling -- oral ruling
25 on Khieu Samphan's Defence request to admit four documents <into

4

1 evidence> for questioning Witness 2-TCW-1000.

2 [09.12.44]

3 The Chamber is seized of a Khieu Samphan's Defence request dated
4 23rd December 2015, to admit four written records of interview
5 prior to the Defence questioning of 2-TCW-1000, that is, in
6 relation to document E319/23/2. No responses were received <from
7 other parties> by the deadline of 31st December 2015, fixed by
8 the Chamber.

9 The Chamber finds that the request is timely, as the written
10 records of interview were not available prior to the start of the
11 Case 002/02 trial. They were taken by the Office of the
12 Co-Investigating Judges and, therefore, met the prima facie
13 standards of reliability and authenticity.

14 Based on the Defence submissions, the Chamber further considers
15 the written records of interview relevant to Case 002/02 and may
16 be conducive to ascertaining the truth. The Chamber therefore
17 admits all four requested documents <into evidence>.

18 Court officer, please usher Witness 2-TWC-1000 and his counsel,
19 Moeurn Sovann, into the courtroom.

20 (Witness enters the courtroom)

21 [09.16.00]

22 MR. PRESIDENT:

23 The Chamber would like to give the floor to the defence teams to
24 put questions to this witness. First the floor is given to the
25 defence team for Nuon Chea.

1 You may proceed, Counsel.

2 QUESTIONING BY MR. KOPPE:

3 Thank you, Mr. President. Good morning, Your Honours. Good
4 morning, Counsel. Happy New Year to everyone in the courtroom.

5 Q. Good morning, Mr. Witness. I have a few questions for you this
6 morning. I have quite some follow-up questions in relation to
7 your earlier testimony.

8 And I would like to start with you in 1972 or 1973 when you said
9 you joined the revolution. Was it 1973? Is my understanding
10 correct?

11 <MR. PAK SOK:>

12 A. I joined the revolution on the 2nd May 1972, in the Kampot's
13 <provincial> area.

14 [09.17.20]

15 Q. I apologize. It was '72. Can you describe for me what you did
16 in the years leading up to 17 April '75? What was your role in
17 Kampot during those years? What did you do, exactly?

18 A. Thank you for asking me the question, and I will tell you the
19 truth. I have nothing to hide in relation to my duties at the
20 time. I was, at that time, <just> a messenger in a <battalion>.

21 Q. And who was your commanding officer in the platoon?

22 A.<> In fact, in my battalion, my military commander was Ta Man,
23 and I was his personal messenger.

24 Q. And how long did you stay his personal messenger; until when?

25 A. I began working as his personal messenger between 1972 to

6

1 1973. Subsequently, Angkar sent me to the zone.

2 [09.19.24]

3 Q. What did you mean with that, sent you to "the zone"? You were
4 in Kampot, so were you not already in a zone?

5 A. In 1972, I got <to> Kampot <province> and, in 1973, my
6 battalion was sent by Angkar to an area called Dos Kanhchor
7 (phonetic). And subsequently, we advanced to Phnom Penh.

8 Q. You said you were a messenger until '73. What did you do after
9 '73?

10 A. After 1973 and into 1974, I was with the artillery unit <after
11 I was removed from my position as a messenger>.

12 Q. What were your functions within the artillery unit? What did
13 you do?

14 A. Thank you for asking me the question. And to tell you the
15 truth, I did not do anything while I was in the artillery unit. I
16 was simply a combatant.

17 Q. What; were you involved in armed conflict? Were you involved
18 in battles with the Lon Nol forces while being a member of the
19 artillery unit?

20 A. Of course, it was a war period and we fought against the Lon
21 Nol soldiers.

22 Q. How big was your unit? How many men were in your artillery
23 unit?

24 [09.22.08]

25 A. In the battalion, there was one <> company <but it was divided

7

1 into smaller groups>, and there were <> armed units with the DK
2 75 or DK 80 and 60 millimetres. And I was with the artillery unit
3 with the 81 millimetres cannon.

4 Q. But within the unit, were you a mere combatant, or were you
5 also commanding people below you?

6 A. I received orders from the upper superiors, and I was merely a
7 combatant receiving orders in a chain of command <consisted of>
8 unit chiefs up to the chiefs of <platoon, and of >the company.

9 Q. And were you in this artillery unit until 17 April '75, when
10 Phnom Penh was liberated?

11 A. I was with the artillery unit until 1975, when Phnom Penh was
12 liberated. I was then assigned to go to work in Kampong Som.

13 Q. And in those years that you were a member of the artillery
14 unit until the liberation, you, yourself, were never giving any
15 orders to people below you. You only received orders. Is that
16 correct?

17 [09.24.43]

18 A. Yes, thank you.

19 Q. And is my understanding correct that, after 17 April '75, you
20 were always in the position of a combatant and there were never
21 any combatants below you in rank? Is that correct?

22 A. Yes, thank you.

23 Q. You just mentioned a particular form of artillery that was
24 used by you and your fellow combatants. Have you ever handled a
25 machine gun with 12.7 millimetre guns or bullets -- or

8

1 ammunition, rather? Twelve point seven; does that sound familiar?

2 A. Yes. Of course, I heard of the 12.7 cannon. However, usually,
3 this <kind of machine guns were> equipped on a ship, and not used
4 on land. For the infantry, they used various types of machine
5 guns, that is, the <12.7 or the 12.8> millimetre guns, <Mikiyeu
6 (phonetic) or Bang Trolaok (phonetic) guns>. And the 12.7
7 millimetre was used only on vessel or ship.

8 Q. Did you, yourself, ever use 12.7 millimetre machine guns? Were
9 you, yourself, a specialist in using those machine guns, or were
10 those other people in the artillery units that were using those?

11 A. When I was attached to the artillery unit, I used to engage in
12 firing the <12.7 or the 12.8> millimetre machine guns <made in
13 China and the American-made 12.7 millimetre machine guns>. And as
14 part of the artillery unit, we were constantly on mobile.

15 [09.27.45]

16 Q. I will get back to the 12.7 millimetres later. But my question
17 is, were you, yourself, ever using the 12.7 machine gun?

18 A. I used to fire the 12.7 millimetre machine gun.

19 Q. Fine. I will come back to that later, Mr. Witness. Now, 17
20 April '75, when Phnom Penh fell, were you stationed in the
21 Southwest Zone at the time, in Kampot?

22 A. In fact, for 1975, the <artillery units were demobilised to be
23 part of a newly established unit in the> navy.

24 Q. But my question was, where were you on 17 April '75, and in
25 the weeks after 17 April '75? Where were you?

1 [09.29.36]

2 A. In 1975, I was assigned to work in Kampong Som.

3 Q. When, exactly, did you arrive in Kampong Som?

4 A. I cannot recall the date. However, I was in Kampong Som about
5 three days after the liberation <in 1975>.

6 Q. And were you still a member of that same artillery unit?

7 A. When I was assigned to work in Kampong Som, <the> artillery
8 units <were demobilised and integrated into an infantry unit.> I
9 was integrated into <that> infantry unit in Kampong Som.

10 Q. Within the next, let's say, four weeks after 17 April '75,
11 after your arrival in Kampong Som, did you go to one of the
12 islands belonging to Cambodia at the time?

13 A. In 1975, Angkar sent me to station in an island called Kaoh
14 Tang Island.

15 Q. And when, exactly, did you go to Kaoh Tang Island?

16 A. I cannot recall it. It happened long time ago. I cannot recall
17 the date when I arrived at Kaoh Tang.

18 Q. Was it within a few weeks after 17 April '75? Is that correct?

19 A. Yes, that is correct.

20 Q. Now, can you remember something that happened on Kaoh Tang
21 Island on or around the 7th of May 1975?

22 [09.32.54]

23 A. There was an incident in 1975. At the time, <one ship,> the
24 Mayaguez, was seized, and it was pulled to Tang Island. There was
25 an intensive fighting in 1975.

10

1 Q. What, exactly, happened with this ship, the Mayaguez? Can you
2 explain to us what you remember what happened with this ship; to
3 whom belonged this ship; what happened after the ship was
4 arrested? Can you tell us a little more?

5 A. I cannot recall exactly of the date when the Mayaguez was
6 captured. What I knew is that the Mayaguez belonged to America,
7 and there were American crews on the Mayaguez. <I saw it with my
8 own eyes. I even> went up onto the Mayaguez <which was seized
9 from the international waterway>.

10 [09.34.20]

11 Q. So when you were stationed at Kaoh Tang Island, the Mayaguez
12 ship was stopped and the people on board were arrested? Is that
13 correct?

14 A. That is true. After the capture of the Mayaguez, people or
15 crew members on the Mayaguez were removed and sent to Kampong
16 Som. <Before they were sent there,> there was an intensive
17 fighting on the island at that time.

18 Q. Fighting between which forces?

19 A. The intensive fighting happened between American soldiers and
20 our soldiers <on the island>. There was fighting between the
21 infantry and the naval soldiers. <But the> fight <became more
22 intensified. All> American <troops> got onto <two aircrafts> and
23 left the place. <Later on,> there was also aerial <and naval>
24 fighting <that took place on that island>.

25 Q. Do you remember which group -- which part of the revolutionary

11

1 forces captured the ship?

2 Which group was it that capture the Mayaguez?

3 A. I am telling the truth to the Chamber that, in 1975, the
4 infantry <based on the islands> had no ships <. There were ships
5 from infantry on land.> And there was an order to send boats and
6 ships <from the mainland> to capture the Mayaguez at that time.

7 [09.37.10]

8 Q. But do you remember which group it was that captured the
9 Mayaguez boat's men? Who was it that arrested those people?

10 A. I did not know which group did capture the Mayaguez. <But the>
11 order came from the division to capture the Mayaguez. People on
12 the island noticed the presence of the Mayaguez and at that time,
13 we, people on the island, reported to the superior or upper
14 echelon. That order came back <to send two speed boats> to go and
15 capture the Mayaguez. <I did not know from which unit these two
16 boats came from, but all vessels belonged to the divisional level
17 at the time.>

18 The boats or ships that we used were seized during the time that
19 we want -- we won the fighting with the American soldiers last
20 time. <Thus, these vessels were under the command of the
21 division.> In fact, there was an order from the division. The
22 order <was> to capture the ship, or Mayaguez. <But I had no idea
23 what group or unit conducted such operation.>

24 [09.38.40]

25 Q. You speak about "we", but was it another group that actually

12

1 captured the American ship? Was it some group called the PCF
2 group?

3 A. No. PCF was not used at that time, since PCF was a slow boat.
4 Actually, we used the minesweeper <vessels> to arrest the
5 Mayaguez since minesweeper was fast enough. And at that time,
6 there were two minesweepers <used to go and capture the
7 Mayaguez>.

8 Q. In your statement to the investigators of the Co-Investigating
9 Judge, E3/9092, English ERN, 00978569; and Khmer, 00955497; no
10 French; you said that the PCF group captured the Mayaguez. At
11 that time, they did not use the small vessels to capture it
12 because the navy did not yet have the smaller ships. Is that
13 correct?

14 A. I may have forgotten about that point when I was interviewed
15 at that time. I did not mean to change my statements. There were
16 six PCF ships at that time, but PCF ships were too slow to chase
17 and capture the ship of Mayaguez.

18 Actually, we did use the PCF to chase and capture the Mayaguez,
19 but since PCF were too slow, we then decided to use minesweepers
20 instead. I may have forgotten that point when I was interviewed
21 at that time. <But I can recall it now.>

22 [09.41.20]

23 Q. But when you say "we", you don't mean your unit itself;
24 correct? You mean the division that you were part of. Is my
25 understanding correct, that whenever you speak about "we", it

13

1 doesn't mean your unit itself? Correct?

2 A. I cannot get what you said, Counsel. Could you repeat it?

3 Q. Of course. No problem. Sometimes -- and maybe that is a
4 language issue, Mr. Witness; I'm not sure -- you speak about
5 "we". "We" captured the Mayaguez ship.

6 But when you say "we", it doesn't mean that your artillery unit
7 did it, but rather, other members of the revolutionary forces of
8 the Southwest Zone. Is that correct?

9 A. <No, it was not the Southwest Zone. Talking about the use of
10 the word "we", I did not pay much attention to it. I did not know
11 if they used that word "we" to refer to something else.> I am not
12 quite sure what you said, so I am a bit confused with what you
13 said.

14 [09.42.59]

15 MR. PRESIDENT:

16 You have the floor now, Judge Fenz.

17 JUDGE FENZ:

18 Let's try our luck with an open question. If you say "we", whom
19 do you mean?

20 <MR. PAK SOK:>

21 The word "we" is not meant to refer to any specific individual or
22 specific unit or division. We, refers to -- I mean to the general
23 meaning of "we". It means that unless we receive an order, we
24 could <not> perform the task. Otherwise, we were not allowed to
25 perform the task. I had a general meaning when I used the word

14

1 "we". <I do not use "we" to specify any regiments or any
2 battalions. No, I don't mean that.>

3 JUDGE FENZ:

4 I still don't understand who "we" is. Sorry. I'm trying to
5 clarify the point. If you say, "we received orders", who do you
6 mean?

7 [09.44.29]

8 <MR. PAK SOK:>

9 We who were the subordinates were under the leadership of the
10 front of the Democratic Kampuchea. I did not have the intention
11 to refer to any specific individual.

12 Unless there was an order, the tasks could <not> be performed,
13 and usually the order came through specific individual or
14 persons. The tasks were not able to <be> performed unless there
15 were orders referred to specific individual or units. <At the
16 time, no unit was independent.>

17 [09.45.40]

18 BY MR. KOPPE:

19 Q. Let me read to you a little excerpt -- small excerpt, Mr.
20 Witness, from your statement, which was, by the way, not to the
21 investigators of the OCIJ, but rather, to DC-Cam. That's, again,
22 E3/9092. Again, the same ERNs. I will read the whole excerpt:
23 "Were you in the training when they, Khmer Rouge, capture the
24 Mayaguez ship?"

25 You answered: "It happened before I studied technical skills.

15

1 After the fall of Phnom Penh, I was sent to join the navy forces
2 and, one week later, they capture the Mayaguez."

3 Question: "Why did they capture the Mayaguez?"

4 And then you answer: "I did not know, but we were like the wild
5 bandits because we captured it illegally."

6 Question; literally: "Were we did it illegally?"

7 Answer: "We captured it illegally. That ship was travelling in
8 the international water about 10 kilometres off the coast of Kaoh
9 Poulo Wai Island."

10 Question: "Which group went to capture the Mayaguez?"

11 [09.47.10]

12 And then you answer: "The PCF squadron group did it. At the time,
13 they did not use the small vessels to capture it because the navy
14 did not yet have the smaller ships."

15 Question: "Did you join them to capture it?"

16 "No, I did not. I was on Kaoh Tang Island."

17 "What happened after that?"

18 And then you answer: "After they had captured it, they assigned
19 my group to board the ship to guard it. Not long after that,
20 there were aircrafts coming to bomb us, so I left the ship and
21 went back to the island." End of -- end of quote.

22 [09.47.55]

23 Now, Mr. Witness, you referred to different groups. Sometimes you
24 refer to your own unit, and sometimes you refer to other units.

25 Is what I read to you something that you said to DC-Cam? Do you

16

1 remember saying this?

2 <MR. PAK SOK:>

3 A. Yes, that is true. The statements I made to DC-Cam, it was my
4 true statements to DC-Cam.

5 Q. So it was your unit that was tasked with guarding the ship on
6 Kaoh Tang Island. Is that correct?

7 [09.48.58]

8 A. Yes, that is true. My unit was tasked with guarding <on> the
9 ships, and my unit was ordered to arrest people on the ship in
10 order to send them to Kampong Som <by boat>. I may have forgotten
11 some points, and I may not have been detailed on some points I
12 made.

13 Q. So the crew of the Mayaguez ship was sent to Kampong Som. Your
14 unit was tasked with guarding the ship. Can you explain to us
15 what happened next?

16 A. At that time, crew members on the Mayaguez were arrested and
17 sent to Kampong Som <>. And at about 10.00 p.m. we were told to
18 leave the Mayaguez to our location <on the island to prepare
19 ourselves to fight> since we were told that the situation was
20 intensive <because American troops would come to fight us in
21 reply. The increasing numbers of U.S. helicopters became more
22 active in the area. But they did not drop any bombs on us yet.
23 They just flew their recon aircraft around the area to check on
24 their ship.>

25 And as I said, the American crew members had been <> sent on

17

1 land, and we were told <> to come back to our island <to prepare
2 ourselves for fighting>.

3 [09.51.07]

4 Q. So you were on Kaoh Tang Island when American aircrafts or
5 helicopters came. Is that correct?

6 A. Yes, that is correct.

7 Q. Do you remember what happened when those American helicopters
8 approached Kaoh Tang Island?

9 A. The next morning, the aircrafts or helicopters landed <to
10 unload their troops ;> and <then,> fighting <erupted. In the
11 fight, some helicopters could take off safely but some could not.
12 They were fired and downed.> At that time, fires was shot at each
13 other. There were only two <or three> aircrafts or helicopters
14 landing at that time, <they then took off> and <when those>
15 aircrafts or helicopters were about to land <again>, we fired at
16 those aircrafts or helicopter. <Two> aircrafts or helicopters
17 were shot, and fell <into the sea and another one fell on the
18 beach on that island>.

19 And after that incident, there was an intensive bombing on the
20 island <>.

21 At that time as well, the <battleships> were firing at <the Khmer
22 Rouge soldiers based on the> island, and <ground soldiers engaged
23 in the intensified combat which took the whole day>. That
24 happened until 7 p.m.

25 [09.53.30]

18

1 Q. And who was it that shot down one or two of those American
2 helicopters?

3 MR. PRESIDENT:

4 Please hold on, Mr. Witness.

5 You have the floor now, Lead Co-Lawyer for civil parties, Pich
6 Ang.

7 MR. PICH ANG:

8 Thank you, Mr. President. Thank you. Good morning, Your Honours,
9 Parties, civil parties, everyone in and around the courtroom.

10 I observe that Counsel Koppe put many questions relating to
11 American ship. I am not sure whether the questions are within the
12 scope of our trial, so Mr. President, please instruct Counsel for
13 Mr. Nuon Chea whether the questions he has put are relevant to
14 the facts before us.

15 [09.54.48]

16 MR. KOPPE:

17 To respond, Mr. President, well, timewise, it certainly does fall
18 within the scope. The Mayaguez incident is on around the 7th of
19 May 1975.

20 The reason why I'm focusing on this particular incident is of
21 general interest on the one hand, but also to try to establish
22 what, exactly, his position was within the revolutionary forces.

23 I'm just trying to see if his earlier statement to DC-Cam is
24 consistent, so I'm trying to figure out exactly what his role is.
25 Mainly, I'm trying to establish when he speaks about "we" whether

19

1 he means the royal "we", we of the revolutionary forces, or his
2 particular unit.

3 So that's why I'm focusing on this incident which, again, falls,
4 at least from a chronology perspective, within the scope of the
5 trial.

6 (Judges deliberate)

7 [09.58.06]

8 JUDGE FENZ:

9 Counsel, before we make a decision, is testing the credibility
10 your only reason to focus on ---

11 MR. KOPPE:

12 No.

13 JUDGE FENZ:

14 -- this incident? Well, then, perhaps you want to tell us.

15 MR. KOPPE:

16 The real reason? Yes, I'd be happy to, Judge Fenz.

17 Let me quote to you an excerpt from Elizabeth Becker's book.

18 That's, Mr. President, E3/20, English ERN, 00237902; French,

19 00638463; Khmer, 00232262.

20 She describes in her book a cable from the United States Embassy

21 in Bangkok. And let me read to you the whole excerpt so that you

22 know, hopefully, what I'm trying to establish.

23 [09.59.15]

24 So she writes as follows:

25 "When the fighting was over, 38 American servicemen lost their

20

1 lives to save 39 crew members of the Mayaguez, and most of them
2 died after the crew members had been released. Those dead
3 veterans were counted as the last American casualties in the U.S.
4 war in Indo-China."

5 And now it comes:

6 "Washington declared a victory. The U.S. Embassy in Bangkok,
7 however, saw the crisis in a considerably different light. 'Local
8 Cambodian commanders apparently have considerable autonomy and
9 have freely exercised their authority, sometimes to the national
10 embarrassment', the Embassy wrote in a classified cable
11 referring, in part, to the Mayaguez incident."

12 Now, if you put the Mayaguez incident in a bigger context, it is
13 obvious that whatever happened in that region of Cambodia on
14 those islands was done in a substantial autonomous manner, and
15 I'm trying to establish what this witness knows about the
16 commanding chain up -- the commanding chain up and whether his
17 Southwest Zone forces were, in fact, acting independently and
18 autonomously. And in that light, we should see also the other two
19 incidents that he describes.

20 Also, through the Mayaguez incident, I can have him maybe focus
21 more in chronology when it comes to those two events. So that is
22 the reason the -- okay. Yes.

23 (Judges deliberate)

24 [10.02.02]

25 MR. PRESIDENT:

1 Counsel, you may proceed by using that reference to put questions
2 to this witness.

3 BY MR. KOPPE:

4 Q. So let me get back to my question. Can you tell us exactly
5 what happened when those American helicopters arrived and who it
6 was, which unit it was that shot those helicopters down?

7 <MR. PAK SOK:>

8 A. Thank you, and I'm going to tell you the truth. During the
9 intensive fighting, my unit was on the island, and I refer to my
10 battalion. It's the battalion 410, and there were only about 100
11 of us there on the island.

12 The fighting actually became intensified on the island. There was
13 an engagement by helicopters and by ships. And I, myself,
14 actually shot down a helicopter. <At that time, I could not flee
15 and> I was severely wounded in the fighting, and I, myself,
16 <alone> was with a 12.7 millimetre machine gun <while others were
17 fleeing>. And I used that gun to shoot <down that helicopter. It
18 was hit at the rear, and> the helicopter's <tail rotor.> That
19 helicopter <fell on the ground in front of me. This is the
20 truth>.

21 [10.04.03]

22 Q. And you used that 12.7 millimetre gun which we discussed
23 earlier, that machine gun which was not on a ship, because you
24 said in the beginning that that machine gun was only on ships,
25 installed on ships. But you used it on the island to shoot down

1 those helicopters. Correct?

2 A. Yes, that is correct.

3 Q. Now, I'm trying to now establish who was it that gave you the
4 orders to shoot back at those helicopters. Who was it? How did
5 the command -- the chain of command go? Who gave you the orders
6 to do what, exactly?

7 [10.05.12]

8 A. During the fighting in a battlefield, the orders within the
9 military rank, we focused only on eliminating the enemy by that
10 time, so there was no order during the heat of the battlefield.
11 Our focus was to kill the enemy, and we were autonomous. And we
12 had to defeat our opponent.

13 Q. What do you mean when you said, "we were autonomous"?

14 A. At that time, the situation was rather tense and we knew that
15 we were <under> attack, so we had to prepare ourselves and, of
16 course, during the heat of the battle, we only focused on
17 fighting back.

18 And you had to remember that that was in 1975, that is, the
19 country had just been liberated. <And then there was fighting
20 against the Americans, so there were casualties on the island.>
21 And of course our spirit was to engage in the battlefield and be
22 self-mastery. <So there was fighting against each other without
23 any orders from any regiments or battalions.> Of course, if we
24 were not self-mastery then we would be defeated by our enemy. And
25 that is the spirit for all the soldiers within their respective

1 units.

2 [10.07.27]

3 Q. I can understand that very well, Mr. Witness, but surely the
4 capture of the Mayaguez and the guarding of the Mayaguez wasn't
5 done in an immediate war situation.

6 Who ordered the capture of the Mayaguez? Who ordered the guarding
7 of the Mayaguez? Can you tell us how that went?

8 A. The order for the capture of the Mayaguez came from the
9 division to the regiment, then down to the battalion and to the
10 soldiers on the ground. None of the battalion or regiment was
11 autonomous. The order had to come from the upper echelon <> for
12 the capture of that ship.

13 And at that time, there was no proper regulations for the
14 soldiers on the ground <to capture the ship because the war just
15 ended, there was no proper rules or regulations>, and we had to
16 be vigilant and all ships, all boats within the territorial
17 waters of Cambodia had to be captured. And that was the order
18 from the upper echelon, and we at the lower chain of command had
19 to implement those orders. And that was our role, to capture
20 those ships or boats. <Otherwise, it would be against the
21 policy.>

22 [10.09.17]

23 Q. And now I have arrived exactly at the point where I wanted to
24 arrive, Mr. Witness. You have described the situation as follows.
25 You were a member of an artillery unit on a remote island, and

1 other forces captured the Mayaguez.

2 How do you know that the order to capture and guard the Mayaguez
3 and to arrest the crew members came from the upper echelon? How
4 did you know?

5 MR. PRESIDENT:

6 Judge Lavergne, you have the floor.

7 JUDGE LAVERGNE:

8 I am asking myself if the question put by Counsel Koppe shouldn't
9 be rephrased. I believe I heard this witness <say that he> had
10 been detached from an artillery unit, so he was no longer
11 depending on <an> artillery unit when he was on the island,
12 unless I'm mistaken. So I don't know why you're referring to this
13 artillery unit in particular.

14 [10.10.39]

15 MR. KOPPE:

16 I presume he was still a member of the artillery unit, having the
17 control of a 12.7 millimetre machine gun with which he
18 singlehandedly gunned down that helicopter. So, I presume he was
19 still within the artillery unit. But I will -- I will happy --
20 I'm happy to ask.

21 JUDGE LAVERGNE:

22 Counsel Koppe, I believe that the witness was <relatively> clear
23 about this. He explained that the 12.7 millimetre machine guns
24 had been grouped together to be given to the navy, and he said
25 himself that he was no longer part of the artillery and that he

1 had been detached from his unit to be assigned to that island.

2 [10.11.14]

3 BY MR. KOPPE:

4 Well, to be honest, Judge Lavergne, I don't think there was a
5 navy yet in May '75. I think the Division 164 wasn't formed until
6 end of '75. I presumed this witness was still a member of his
7 artillery unit or at least part of the Southwest Zone force. But
8 again, I'm happy to ask it. I'm happy to ask.

9 Q. Mr. Witness, were you -- when you were stationed at Kaoh Tang
10 Island, were you a member of the same Southwest Zone forces, and
11 were you still a member of an artillery unit or of a different
12 unit?

13 <MR. PAK SOK:>

14 A. After I left the Southwest Zone, I was assigned to Kampong
15 Som<, that was the combat zone>. And later on, Division 164 was
16 formed and it was part of the <Central> Zone. By that time, I was
17 no longer with the Southwest Zone, but I was with the <Central>
18 Zone, <Division 164>. And that's what happened.

19 And by that time, I was no longer involved with the artillery
20 unit. And when the attack was -- when the attack occurred, I was
21 part of the infantry unit. And these machine guns, namely 12.7
22 and 12.8, <and mortars were used. Again, I> was not with the
23 artillery unit.

24 And usually, we had to follow the instructions from Angkar. And
25 if we had to maintain the machine guns that we had earlier, for

1 example, the 12.7 <mm and B-40>, we were to be responsible for
2 the maintenance and for holding of that machine gun. <We however
3 were not tasked to maintain artillery. The Division 164 was under
4 the Centre Zone. There, we used various kinds of weapons.>

5 [10.13.39]

6 Q. Very well. Going back to the 7th of May, you were not any more
7 a member of the Southwest Zone forces, but the West Zone forces.
8 You were not any more a member of an artillery unit, but of
9 another unit within the West Zone forces.

10 Now, my question is, how did you know that the commander of the
11 Kaoh Tang forces belonging to the West Zone, had, in fact,
12 receive an order from the upper echelon? How did you know that at
13 the time?

14 A. I was certain because I was a member and a combatant in the
15 respective unit, and we knew the cadres within the area either at
16 the battalion or regimental levels. I knew cadres within the
17 battalions or the regiments or even with the division levels.

18 [10.15.00]

19 I knew those cadres. I even knew their names, and which unit or
20 battalion or regiment they were attached to. For that reason, I
21 knew the orders came from the upper echelon to capture that ship.
22 And the unit was assigned to capture the ship and a separate unit
23 would be deployed to hold that ship.

24 As I said, my unit was sent to station in Tang Island. And then
25 we would be responsible for various duties, namely, our unit was

27

1 tasked to guard <the ship on> the Tang Island and, for that
2 reason, I knew that the orders came through the chain of the
3 military command. Or you can say, <as a combatant,> I knew all
4 those from the battalion up to the regimental or to the
5 divisional level.

6 [10.16.12]

7 And the Division 164 actually had seven regiments, and I also
8 knew cadres within those seven regiments. <I was not a leader
9 myself, but> as a rule of thumb, combatants <under the division>
10 had to know their cadres or their superiors within the
11 <regiments>. And of course, there's usually a communication
12 within the regimental level. For example, we had to know who was
13 the commander for regimental -- for Regiment 61 or Regiment 62,
14 <or Regiment 63,> for example, Nhan, was military commander for
15 Regiment 61, etc.

16 So I knew most of those commanders. And as I said, most of the
17 combatants knew <almost all the> superiors or cadres <of each
18 unit>.

19 And I thank you for asking these questions, and allow me to
20 clarify this point. Of course, as a soldier, we needed to know
21 our superiors or commanders. <But the superiors or commanders on
22 the other hand did not know many of their subordinates.> And of
23 course, as a subordinate, you had to know your commander because,
24 usually, the words came from your commander or your superiors.

25 [10.17.42]

1 MR. PRESIDENT:

2 Thank you. The time is appropriate for a short break. We'll take
3 a break now, and return at 10.35.

4 Court officer, please assist the witness at the waiting room
5 reserved for witnesses and civil parties and invite him as well
6 as his duty counsel back into the courtroom at 10.35.

7 (Court recesses from 1018H to 1037H)

8 MR. PRESIDENT:

9 Please be seated. The Court is now back in session. And the floor
10 is once again given to the Defence Counsel for the accused. You
11 have the floor now.

12 BY MR. KOPPE:

13 Thank you, Mr. President.

14 Q. Mr. Witness, I'm returning to the incident with the American
15 ship. And again, I'm asking you questions about this incident
16 because we know for a fact that this is something that really
17 happened.

18 Let me focus on one particular aspect. I will ask you to explain
19 to me the chain of command.

20 Who was it, which person was it, that ordered the arrest of the
21 crew of the Mayaguez? Who gave the order to whom?

22 <MR. PAK SOK:>

23 A. I was <one of the> former combatants or soldiers <based> on
24 the island. At the time, I received an order from the upper
25 echelon in a meeting. The order was for soldiers to comply or

1 respect the upper echelon. Whenever the order or circular was
2 issued, that order or circular had to be adhered to. And the --
3 we had to respect the hierarchical order. <Battalions had to
4 respect regiments; regiments had to respect the division. So it
5 was the division that gave the order.>

6 [10.39.47]

7 MR. PRESIDENT:

8 Mr. Witness, please listen carefully to the question and please
9 give your response specifically to the question asked. You may --
10 please <do> not go beyond the question asked by counsel.

11 Please put the question again, Counsel.

12 BY MR. KOPPE:

13 Thank you very much, Mr. President.

14 Q. Mr. Witness, I'm not asking you to talk in general terms. I'm
15 asking you one specific incident.

16 Who ordered the arrest of the crew of the USS Mayaguez? Who was
17 it that gave the order to whom, and how do you know?

18 [10.40.40]

19 <MR. PAK SOK:>

20 A. The order came from Ta Muth in charge of the division. And he
21 gave the order to members of the navy to go and arrest the ship
22 or vessel. When the order came down to the battalion, then the
23 battalion would relay that order to its subordinates <in the
24 units>.

25 Q. Again, Mr. Witness, you order only in generic terms. Meas Muth

30

1 was the highest commander.

2 How do you know, while you were stationed at Kaoh Tang, that Meas

3 Muth gave an order to whomever? How do you know? Did you hear it?

4 Did you see it? Did people talk about it?

5 Tell me exactly how you know that he was the one who gave that

6 order.

7 [10.41.55]

8 A. Back then, the Mayaguez was captured. <In the operation, there

9 were vessels and naval squad who captured that ship.>. Actually,

10 the naval soldiers listened to the order, and the order must have

11 been from the division. Otherwise, the naval soldiers did not

12 dare to seize and capture the vessel.

13 During that time, no one wanted the war again, and I believe that

14 the order may have been from <> the upper echelon <to the unit>.

15 And there was a discussion that unless there was an order <to

16 capture it>, the tasks could <not> be performed <even though it

17 was a rather big ship>. No one <at the battalion or regimental

18 level dared> perform any tasks unless there was an order <from

19 the division>.

20 Q. Mr. Witness, isn't it true that you have no idea who gave the

21 order in May 1975, to stop the Mayaguez? That you make a general

22 conclusion that it must have been Meas Muth, and that it must

23 have been going through the chain of -- the normal chain of

24 command but, in fact, you don't know?

25 [10.43.41]

31

1 A. Upon our -- based on our experience and study, as long as we
2 received any instructions and orders from the division, we <dared
3 to> perform the task and duty. I could make an objective
4 conclusion that there must have been an order from the
5 <division;> otherwise, we were not able to perform the task.

6 Q. I think that is enough, Mr. Witness. Let me now move in time
7 to '76, when Division 164, the navy, existed. Would you be able
8 to give us an estimate as to how many members there were, how
9 many combatants and how many non-combatants there were in
10 Division 164, in approximately October 1976?

11 A. I do not know about that matter. This matter had something to
12 do with the senior cadres, about the soldiers or the fighting
13 troops, <or> soldiers who were ready to be on attacks, and I --
14 as I said, I do not know that kind of thing you described. I was
15 aware only what happened in my <regiment>. <There were only
16 combatants there. I could not grasp the whole situation in the
17 entire division.>

18 Q. Let me be -- let me go a little down in the hierarchy. Do you
19 know how many combatants and non-combatants there were in
20 Regiment 62, respectively Regiment 140, of which you were a
21 member?

22 [10.46.09]

23 A. There were four battalions within my regiment. They were
24 guards on the island. Regiment 62 were those who were combatants
25 stationed on the island. We were not stationed on land.

1 Q. If I were to tell you that Regiment 62, in or around 27th of
2 October 1976, consisted of about 1,062 combatant forces, would
3 that be accurate?

4 Do you recall while being a member of Regiment 62 that there were
5 about 1,060 other combatants?

6 A. I cannot tell you the exact numbers of combatants. One
7 regiment consisted of <four battalions and each battalion had>
8 400 members.

9 JUDGE FENZ:

10 Counsel, with questions that specific, I think a reference would
11 help for the record.

12 BY MR. KOPPE:

13 Yes, of course. I'm referring to E319/23.3.45.1. It is a document
14 which is titled, "The daily list of forces 27th October '76". It
15 is about Division 164, apparently done by Meas Muth himself.

16 And in this document, one can read that Division 164 consisted of
17 a total number of 8,611 members, and his own regiment, including
18 non-combatant forces, about 1,700 something.

19 [10.48.43]

20 Q. I will ask a question that I think I know the answer to. Do
21 you know all 1,062 combatant forces of your regiment, Regiment
22 62, at the time?

23 A. Yes, the -- it is the exact number.

24 Q. But my question was, do you -- did you know them all? Did you
25 know them all by name? Did you know who they were? Did you know

1 who the platoon commanders were or the group commanders or the
2 sub-group commanders or the squad commanders? Did you know at the
3 time?

4 A. I was a part of Regiment 62. I knew only some senior cadres,
5 and Yeang was my <regimental> commander. Frankly speaking, I knew
6 only commanders of battalions and regiment. And as for <chiefs of
7 companies or platoons under my regiment,> I do not know all of
8 them. <I can recall only senior cadres, like different regimental
9 commanders.>

10 [10.50.30]

11 Q. Can you describe to us which instructions or commands have you
12 ever witnessed yourself?

13 Have you ever seen the superior to your unit officer give or
14 receive an instruction from his superior, and that superior
15 receiving an instruction from his superior? Have you ever
16 witnessed that for yourself?

17 A. I was a combatant or soldier. I, in fact, <had> received an
18 order or orders from the upper echelon. Upper echelon, here I am
19 referring to the battalion. So usually, a battalion was not able
20 to perform the tasks independently. We were invited to the
21 training sessions and we were informed that unless there were
22 instructions from the upper echelon, we could <not> perform the
23 tasks.

24 As I said, I received an order or instruction from battalion and
25 perhaps a battalion may have received an order from the regiment,

1 <and regiments would receive orders from the division.>

2 Q. Fine. Let's now move to the two incidents that you described

3 in the testimony a month -- a few weeks ago. The first incident

4 that you described presumably happened in late '76 or early '77,

5 the killing by soldiers of a Vietnamese couple with an infant.

6 And you said that they were killed by soldiers from Regiment 62

7 on Kaoh Poulo Wai Island. Now, can you tell us who these soldiers

8 were? What were their names?

9 [10.53.06]

10 A. I did not recall the names at the time. <They were> part of

11 <my> battalion, <in that battalion, but they were in a different

12 company. Although we were under the same battalion, they were in

13 a special squad of the battalion. They were the one who did the

14 killing.> At the time, I was stationed close to that place. <I

15 witnessed the incident, but I do not recall the names now.

16 However,> most of them may have died already.

17 Q. I can understand that you don't know the names from those

18 soldiers, but do you know who their commanding officers were and

19 do you know who were the commanding officers of those commanding

20 officers?

21 A. Yoeun was a commander of that battalion. Yoeun. Han (phonetic)

22 was the head of the special units -- the so-called special

23 <squad>. The special <squad> would perform certain tasks.

24 And I was part of a <different> company <within that battalion>.

25 [10.54.50]

1 Q. Again, Mr. Witness, you're giving very general answers. My
2 question was, within Regiment 62, which consisted of about 1,500
3 members, do you know specifically the direct commanding officers
4 of those soldiers that killed that Vietnamese couple?

5 A. We adhered to the law or orders. The order came down -- came
6 down, and <soldiers must> implement the orders. And the order
7 came through hierarchical order. We did not perform the tasks on
8 our own initiative <at the battalion level>. Unless there was an
9 order or instruction <from the upper echelon>, we <would not>
10 performed the task. And if we did not receive the order, we sent
11 those people on land.

12 Q. Again, Mr. Witness, you described an incident that had taken
13 place on Kaoh Poulou Wai, an island, and that the killing was done
14 by soldiers from Regiment 62.

15 Now, my question is whether you can tell us whether these
16 soldiers did this by themselves without any instructions or were
17 they instructed to do this and, and if yes, by whom?

18 [10.56.57]

19 A. The battalion had received an order or instruction from the
20 regiment, and after receiving the order, the battalion would
21 relay that order to the special unit.

22 Q. Fine. But who within the battalion had ordered -- had received
23 an order from whom within the regiment? Who was giving whom an
24 order, and how do you know? Did you hear it, did you see it? Can
25 you tell us, please?

36

1 A. Since we were trained to adhere to the order, we had to adhere
2 to the order. Yoeun gave the order through the soldiers. Yoeun
3 was the commander of the battalion, and he was the one who
4 relayed the instruction or order <from the upper level> to the
5 special units to perform that specific tasks. So he was the one
6 who gave direct order.

7 Whenever the soldiers are required -- were required to perform
8 specific tasks, they would be invited into the meetings about the
9 task to be performed.

10 [10.58.50]

11 Q. I'm going to interrupt you again, Mr. Witness. The incident --
12 the first incident that you described took place on an island
13 very far from the main coast. Maybe, I would estimate, six or
14 seven hours in a boat.

15 Who and how did the order -- was the order conveyed? Who gave the
16 order to have that family killed? Tell us exactly how it went.
17 Did you hear this? Did you witness the commander? What happened
18 on that very specific day?

19 A. During that time, the order came through via the telegram. And
20 it went through the channels command or hierarchy order. And that
21 task was performed immediately after receiving that order.

22 Q. And were you in a position to read that telegram?

23 A. No.

24 [11.00.22]

25 Q. Was it even possible to receive telegrams on Kaoh Pulo Wai

1 Island?

2 A. The messengers were in charge of receiving the telegrams.

3 Afterwards, they conveyed the order in the telegrams to

4 commanders. <I knew about that because> I sometimes went to the

5 messengers' office.

6 Q. Where was the office on Kaoh Poulo Wai Island? It was a very

7 remote island. Where was the office? Can you describe that for

8 me?

9 A. At the time, <I> was part of Company 53. The headquarters of

10 the battalion was about 500 metres away from the Company 53, so

11 our headquarters was close to one another.

12 <Poulo Wai Island is not big>, and there were around four

13 companies <based on that island. This island is> three kilometres

14 in length and <one> kilometre <> wide. So the offices or

15 headquarters were close to one another.

16 Q. Do you know when Vietnam recaptured Kaoh Poulo Wai?

17 [11.02.45]

18 A. That happened in 1975. However, I cannot recall the month or

19 the day. And my battalion was there, and we were attacked by the

20 Vietnamese. And the Vietnamese captured the island in 1975.

21 Here, I refer to the Poulo Wai Island. A battalion -- soldiers in

22 one battalion were captured by the Vietnamese troops, and they

23 were transferred to Trol Island.

24 Q. Unless I'm mistaken, but the incident that -- the first

25 incident that you described happened in early '76 -- or late '76,

1 early '77. Was this incident on Kaoh Poulo Wai Island that you
2 describe?

3 A. What I described is the incident that the Vietnamese troops
4 captured Poulo Wai Island, and that happened in late 1976 or
5 early 1977. By that time, I was hospitalized at Tang Island, and
6 I heard about the capture of that island by the Vietnamese troops
7 in late 1975. Many soldiers <from my unit> lost their lives, and
8 <about 300> soldiers were captured by the Vietnamese.

9 [11.04.54]

10 Q. I'm confused, Mr. Witness. You described two incidents in your
11 last testimony, a Vietnamese couple with an infant about one year
12 old was travelling on a boat and they were killed by soldiers
13 from Regiment 62 on Kaoh Poulo Wai. Their bodies were chopped in
14 half and subsequently buried on -- under coconut trees. This
15 incident, did that take place on Kaoh Poulo Wai Island?

16 A. Yes, that is correct. It happened on Poulo Wai Island.

17 Q. But you also said that Vietnam recaptured Kaoh Poulo Island
18 already in '75. Is that correct?

19 A. Yes, that is correct.

20 Q. So it could not have happened in, as you said, late '76 or
21 early '77. Is that correct?

22 A. Allow me to clarify. Before the killing of those Vietnamese,
23 the Vietnamese troops did not yet capture the island, and I
24 recall that when the Vietnamese troops actually captured the
25 island and, later on, it was returned to Kampuchea, my unit was

39

1 assigned to station on that island, that is, Kaoh Pulo Wai
2 Island, o by that time, I was reassigned from Tang Island to
3 Pulo Wai Island after the Vietnamese troops had withdrawn from
4 that island.

5 And the <chasing and> killing <act against> the Vietnamese
6 family, <included> the father, the mother and the child, took
7 place when my unit was reassigned to station on that island.

8 [11.07.48]

9 Q. Let me read something to you from a book from an American
10 journalist.

11 Mr. President, that is again E3/20, Elizabeth Becker. English,
12 page 00237902 and 03; Khmer, 00232263; and French, 00638464. It
13 says as follows:

14 "Cambodians apologized for the island's incidents, saying the
15 local commanders had a poor sense of geography. Vietnam then
16 recaptured Paolo Wai."

17 My question -- my first question is, do you know if it's correct
18 that local commanders had a poor sense of geography when it come
19 to -- when it came to islands in -- at the coast of Cambodia?

20 MR. KOUMJIAN:

21 I apologize. I just would request the ERN. I didn't get the ERN
22 from the Becker book, or the page number. If I could have that.

23 Thank you.

24 [11.09.18]

25 BY MR. KOPPE:

1 Page 198.

2 Q. There's two questions, Mr. Witness. Is it correct what this
3 author seems to suggest, that the local commanders had a poor
4 sense of geography, or at least that's what the official
5 documents said?

6 A. I cannot answer that question. <I did not know about it.>

7 Q. And the recapturing of Poulo Wai, '75? Is that what you said?

8 MR. KOUMJIAN:

9 It might be a bit confusing, but I understood the island was
10 captured by the Vietnamese in '75 and then evacuated by the
11 Vietnamese in '75.

12 MR. KOPPE:

13 The problem, Mr. President, is that I'm rushing through my
14 questions because I'm actually already over time. I'm just trying
15 to establish when, exactly, the incident happened that he
16 described in his previous testimony and when, according to his
17 experience or his memory, the Vietnamese had left the island.
18 That is what I'm trying to get at.

19 [11.11.20]

20 <MR. PAK SOK:>

21 A. I cannot recall that. A month after the incident involving
22 <the conflict against> the Americans <in 1975>, then the
23 Vietnamese troops engaged in fighting to capture Poulo Wai
24 Island. And about a fortnight after, all Kampuchean soldiers <on
25 the island> were arrested by the Vietnamese.

41

1 And three months later, the Vietnamese returned the island to
2 Kampuchea, and that was the time that my unit was assigned to
3 station on that island.

4 MR. KOPPE:

5 Q. And when, exactly, did this incident that you described take
6 place? Was it after the recapturing by the DK forces?

7 [11.12.12]

8 A. At that time, there was no longer fighting. The 300 soldiers
9 from my battalion who were captured by the Vietnamese were sent
10 to Trol Island, and after the negotiations taking place between
11 the upper echelon with the Vietnamese authority, those soldiers
12 were returned.

13 And initially, I was stationed in <Tang> Island <but>, later on,
14 I was assigned to station in that island.

15 MR. KOPPE:

16 Mr. President, is it all right with the Chamber if I now hand the
17 floor to the Khieu Samphan defence team and, when they still have
18 time left, that I will use again the time available to all the
19 Defence? Because I still have many questions to this witness, but
20 the Khieu Samphan team also needs its time.

21 MR. PRESIDENT:

22 Yes, you may do that.

23 And I'd like now to hand the floor to the defence team for Khieu
24 Samphan.

25 [11.13.42]

1 QUESTIONING BY MR. KONG SAM ONN:

2 Thank you, Mr. President. Good morning, 2-TCW-1000. My name is
3 Kong Sam Onn, National Counsel for Khieu Samphan, and I have some
4 questions to put to you. My first line of questions in relation
5 to your duties on Poulo Wai Island.

6 Q. You have testified that you were wounded during the fighting
7 with the Americans on Tang Island, and a fortnight later, there
8 was a separate fighting on Poulo Wai Island with the Vietnamese
9 troops and that three months after the fighting with the
10 Vietnamese troops, the Vietnamese authority returned to --
11 returned the island to the authority of the Kampuchea. Am I
12 correct in stating these events?

13 [11.14.49]

14 <MR. PAK SOK:>

15 A. Yes, that is correct.

16 MR. PRESIDENT:

17 Counsel, please, you are reminded once again not to use the
18 actual name of this witness and please refer to his pseudonym,
19 that is, 2-TCW-1000.

20 BY MR. KONG SAM ONN:

21 Thank you, Mr. President, for reminding me.

22 Q. Mr. Witness, when you were assigned to station on Poulo Wai
23 Island, who was your superior commander?

24 <MR. PAK SOK:>

25 A. Ta Samnang was my <new> commander. And before that, it was

1 Yoeun. However, Yoeun was replaced by Ta Samnang, who was the
2 commander of my battalion, <Battalion 622>.

3 Q. How long were you -- how long did you stay on Poulo Wai
4 Island?

5 A. After the fighting with the Americans and the Vietnamese
6 troops in 1975 and also, it was in 1975 when I was assigned to be
7 stationed in that island. And I remained on that island until
8 1977, when I was assigned to the navy.

9 Q. Can you be more specific? Which part of 1977, you remained on
10 the island?

11 [11.17.10]

12 A. In about mid-1977, that is, around April or May when I was
13 assigned to the navy. That is, after I was removed from Poulo Wai
14 Island to the navy.

15 Q. For you and for your unit, what were your daily duties at the
16 time?

17 A. In 1975, when I was on Poulo Wai Island, after they did not
18 have confidence in me, I tried to refashion myself in order to
19 gain trust from Angkar. And I tried to refashion myself and,
20 later on, I gained the trust and I was reassigned to the navy. <I
21 held no function there.>

22 Q. Thank you. Mr. President, and I'd like to give document
23 <E319/23.3.12> to the witness.

24 [11.18.54]

25 MR. PRESIDENT:

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1 Yes, you may proceed.

2 BY MR. KONG SAM ONN:

3 Q. Mr. Witness, please refer to the documents that I give to you.

4 However, do not reveal the name of this witness. Do you know the
5 person whose name I highlight on the document?

6 <MR. PAK SOK:>

7 A. No, I do not know the names of those people on this document.

8 Q. Mr. Witness, can you read the names on the document? And if
9 you have difficulty in reading the names, you may ask your duty
10 counsel to do it for you.

11 A. I do not know this person, [REDACTED].

12 Q. Mr. Witness, please do not read out the name. In fact the name
13 that you pronounce is not correct, and duty counsel, please
14 assist your client.

15 A. I do not know this person.

16 Q. Thank you. In the statement of this witness, he states about
17 the presence of the Vietnamese troops on the Poulo Wai Island.

18 <In reality,> in question-answer number 10 -- and allow me to
19 read it, Mr. President:

20 "My unit was in charge of defending the treasury in Kampong Som.

21 My unit was Battalion 450, which consisted of about 500 personnel

22 <-- 450 to 500 personnel>."

23 [11.22.31]

24 And in question-answer number 11, the person states:

25 "Battalion 450 was called the special unit. Later, my special

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1 unit was divided to stand guard at the port, and more than 200
2 personnel were sent to defend Kaoh Pulo Wai Island because, at
3 that time, the Vietnamese had control of the island. Back then,
4 my position was Deputy Chairman of Company 4, Battalion 450,
5 Division 164."

6 And Mr. Witness, you testified about soldiers being sent to Poulo
7 Wai Island to recapture the island from the Vietnamese. Were you
8 a member of those soldiers who were sent from Kampong Som, or
9 were you sent from elsewhere?

10 [11.23.44]

11 MR. PRESIDENT:

12 Witness, please hold on.

13 And the International Co-Prosecutor, you have the floor.

14 MR. KOUMJIAN:

15 Your Honour, I'm just afraid the record -- the question will
16 confuse the record.

17 What I heard the witness say is that Vietnam captured the island
18 shortly after the Khmer Rouge took Phnom Penh and then withdrew a
19 few months later. There wasn't -- he didn't say anything about
20 Khmer Rouge retaking the island, so that may be confusing.
21 He said the Vietnamese withdrew a few months after capturing the
22 island.

23 MR. KONG SAM ONN:

24 Thank you, Mr. President. Due to these confusing situations, I'd
25 like to put those series of questions to the witness for

1 clarification.

2 [11.24.44]

3 MR. PRESIDENT:

4 Yes, you may proceed, however, please try to refresh your
5 question and repeat the last part.

6 BY MR. KONG SAM ONN:

7 Thank you. Mr. Witness, can you respond to my last question?

8 <MR. PAK SOK:>

9 A. Yes, that's what happened because I, myself, was involved in
10 the activities <when I was in my regiment since 1975>. I left
11 <Tang> Island and the Vietnamese troops actually vacated <the
12 island, then I went to> Poulo Wai Island. <I was not from 450.
13 Battalion 450, 480 or Regiment 410 were different. It was
14 Regiment 622 that was responsible for defending Tang Island,
15 Poulo Wai Chas and Poulo Wai Thmei Islands. So I would like to
16 clarify that my regiment was responsible for three islands. I am
17 not saying that we were from a port or land.>

18 [11.26.00]

19 As I stated, three months after the Vietnamese vacated the
20 island, <a company from Regiment 62 was> assigned to station in
21 <Poulo Wai Island>.

22 And then <those> soldiers who were captured by the Vietnamese
23 were returned and then they were sent first to Kampong Som and
24 then they were sent back to their respective units on <Poulo Wai>
25 Island.

1 Q. I'd like to ask you more questions about the timeline. You
2 <just> stated that the Vietnamese vacated the island for three
3 months before your unit was assigned to stationed on that island.
4 However, previously you said that the Vietnamese troops actually
5 took control of the island for a period of three months.
6 Could you clarify whether the Vietnamese troops remained on the
7 island for three months or whether they vacated and three months
8 later your unit was assigned to station on that Poulo Wai Island;
9 which is correct?

10 A. I left Tang Island <to be stationed> in Poulo Wai Island. I
11 was sent to Poulo Wai Island immediately after the withdrawal by
12 the Vietnamese troops.

13 [11.27.52]

14 Q. So this does not mean that your unit was sent there three
15 months after the withdrawal by the Vietnamese troops?

16 A. No, it was not three months after the withdrawal of the
17 Vietnamese troops. The Vietnamese troops took control of the
18 island for three months; then they vacated the island and my unit
19 was immediately assigned to be -- to stationed on that island.

20 Q. And upon your arrival in Poulo Wai Islands, did you see any
21 Vietnamese troops or Vietnamese civilians remained on the island?

22 A. No, no, I did not see any Vietnamese upon my arrival; however,
23 there were houses that they built and the houses remains there.

24 [11.29.04]

25 Q. I'd like to ask you about the arrest of the Vietnamese. In

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1 fact you spoke about the arrest of the Vietnamese and you spoke
2 about different measures taken again the arrest of the Vietnamese
3 civilians and Vietnamese soldiers.

4 My question to you is the following: Were there instructions in
5 regards to the arrest of Vietnamese civilians and Vietnamese
6 soldiers who trespassed the territorial waters of Kampuchea, in
7 particular, in the area where you stationed?

8 A. We were assigned to guard the territorial waters
9 <including>Tang Island, the Poulo Wai Chas and Poulo Wai Thmei
10 Islands. Our duties were to guard the areas and we would arrest
11 anyone who trespassed the area. <It was the resolute order>.

12 Q. I will refer to this matter later and I'd like to put you
13 another question <regarding a witness>. Mr. President, I'd like
14 to give a document to the witness so that the witness can refer
15 to the name of the person who made a statement.

16 MR. PRESIDENT:

17 Yes, you can do so.

18 [11.31.20]

19 BY MR. KONG SAM ONN:

20 Q. The document E319/23.3.21. Mr. Witness, please refer to this
21 document and do not read out the name of the person. And Duty
22 Counsel, please assist your client.

23 <MR. PAK SOK:>

24 A. I do not know this person.

25 Q. Thank you. This witness spoke about the fighting between the

1 forces of Democratic Kampuchea and the Vietnamese troops at
2 Krachak Seh and Poulo Wai Islands. Do you recall these incidents,
3 particularly the incident that took place at Krachak Seh Island?
4 [11.32.51]

5 A. Allow me to respond and I'm <wholeheartedly> going to tell you
6 the truth. In 1975, Angkar issued me an instruction to go to
7 Krachak Seh Island and that was after the liberation of Phnom
8 Penh. In fact, Krachak Seh Island belonged to Vietnam and it was
9 known as Poulo Pan Song and it belonged to the Vietnamese.
10 When I was there, I saw Vietnamese residing on that island and I
11 made that report; then I was assigned to go <back> to Tang Island
12 -- <Poulo Wai Island>. <I did not go there to engage in any
13 fighting at the time. In fact, I never went to engage in any
14 fighting there.>

15 Q. In your capacity, did you ever engage in any military fighting
16 <or was there no fighting> on Krachak Seh Island <between the
17 Kampuchean troops and> the Vietnamese troops?

18 A. No, there was no fighting incident on Krachak Seh Island.
19 However, I was sent there to see what happened and I saw the
20 Vietnamese there and I returned. There was no military engagement
21 on the island and the island was situated rather far from Poulo
22 Wai Island and it would -- it took us three to five hours on a
23 boat to reach that island.

24 MR. PRESIDENT:

25 The International Lead Co-Lawyer for civil parties, you have the

1 floor.

2 [11.34.56]

3 MS. GUIRAUD:

4 <Thank you,> Mr. President, <I just have a brief remark.> If I
5 took proper note of the document <number> shown to the witness,
6 that document has not <yet> been admitted into evidence as part
7 of the motion filed by the Khieu Samphan defence team <that was
8 to be discussed tomorrow. It seems no one has the translation.
9 Shall I continue while it's being fixed? Can you hear me? I was
10 saying that document - not yet?>

11 Document E319/23.3.21, which was cited by our colleague and
12 handed to the witness is <part of the new documents that have>
13 been disclosed, <which are> included in the motion that the Khieu
14 Samphan team presented and that <was> to be discussed this
15 morning. <Still nothing?>

16 (Judge deliberates)

17 [11.36.17]

18 MR. PRESIDENT:

19 <This morning,> the Chamber issued our oral -- oral ruling on the
20 request by the defence team <for Khieu Samphan> to use these four
21 documents from Case 003. It means that the documents <are>
22 allowed to be used. <The Chamber stated this clearly because> the
23 defence team <were> to put questions to this 2-TCW-1000 <this
24 morning>. For that reason, we actually issued our oral ruling
25 before the floor is given to the defence team and we issued that

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1 oral ruling already.

2 As for the other <two> requests by the Co-Prosecutors and
3 <another request by> the defence team for Nuon Chea, we defer it
4 to a later stage.

5 And, of course, the four documents<, the WRI,> requested by the
6 defence team for Khieu Samphan were granted by the Chamber and
7 there were no objections raised by the Parties -- any other
8 Parties.

9 It is now appropriate for a short -- for a lunch break. We take a
10 break now and resumed at 1.30 this afternoon.

11 Court Officer, please assist the witness during the lunch break
12 at the waiting room reserved for witnesses and civil parties and
13 invite him also as his duty counsel back into the courtroom at
14 1.30 this afternoon.

15 Security personnel, you are instructed to take Khieu Samphan to
16 the waiting room downstairs and have him returned to attends the
17 proceedings this afternoon before 1.30.

18 The Court is now in recess.

19 (Court recesses from 1138H to 1333H)

20 MR. PRESIDENT:

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

22 And the Chamber gives the floor to the Defence Counsel for Mr.
23 Khieu Samphan, to resume his questioning. You may now have the
24 floor.

25 BY MR. KONG SAM ONN:

1 Q. Thank you, Mr. President. Mr. Witness, before the lunch break
2 we were discussing about the fighting between Khmer Rouge and the
3 Vietnamese troops on Poulo Wai Island.

4 I have a few further questions, particularly concerning the
5 instructions from your upper echelon. Were you or were combatants
6 instructed to make trouble with the Vietnamese troops when you
7 were part of the naval forces?

8 [13.35.04]

9 <MR. PAK SOK:>

10 A. After the liberation in 1975, the soldiers were obliged to
11 protect the territory of borders at sea. We were not educated or
12 instructed to attack the Vietnamese troops. We were told to
13 defend the maritime territory instead and we were told that we
14 needed to <prevent> the Vietnamese <and others> from entering
15 into the maritime territory of Cambodia.

16 Q. Thank you. Concerning the travelling of Vietnamese boats or
17 other foreign ships into maritime territory of Cambodia <at the
18 time, did you ever encounter any Vietnamese fishing boats
19 accompanied by armed groups on board defending those fishing
20 boats?>

21 A. Concerning the maritime border which we needed to protect when
22 <Thai> fishing <ships> came into maritime territory of Cambodia,
23 those fishing ships were -- had no guns or weapons.

24 Q. My question, rather, concerns the fishing boats of Vietnam.
25 Were they equipped with weapons?

1 [13.37.29]

2 A. In that year when Vietnamese <boats> entered the maritime
3 territory of Cambodia, some of those fishing boats were equipped
4 with weapons, but some did not have weapons and I noticed that
5 some fishing boats had one or two <AK assault rifles or> M16
6 weapons.

7 Q. How did you know about that?

8 A. I learned this through the tasks that we had performed. When
9 the Thai or Vietnamese fishing boats came into maritime territory
10 of Cambodia, we <had to chase and> to capture those ships and if
11 those ships were equipped with weapons, we needed to attack and
12 fire at them <and sink them>.

13 [13.38.47]

14 Q. Thank you. I would like to read WRI, E319/23.3.21, question 21
15 -- answer 21, rather.

16 "For us, the first important matter was the defence of the
17 country. The second matter was the construction of the country.
18 The instructions to defend the country meant we had to stay on
19 the island permanently and not abandoning the island under any
20 circumstances. When we saw warships entering our territorial
21 waters, we had to report to the division so that they could
22 intervene. As the commander on the island, I was responsible for
23 making decision to counter small motorboats with 20 horsepower to
24 400 horsepower engines. My boat was armed with both DK 82
25 millimetre guns and 30 millimetre machine guns. The Vietnamese

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1 motorboats which entered our territorial waters were armed with
2 B40 rockets and so on. Sometimes 10 boats or more than 10
3 motorboats entered our territorial waters and some ships among
4 them were responsible for protecting their fishing boats."

5 Mr. Witness, listening to the extract of WRI of a witness, what
6 is your reaction to that extract of WRI?

7 [13.40.52]

8 A. Yes. I was aware of that. However, <it was the responsibility
9 of each regiment>. My regiment which was stationed on Poulo Wai
10 island never encountered such an incident. Actually, the other
11 regiment used to encounter such incident. And, as I said, we were
12 in different regiments and we were faced -- we faced <> different
13 situations at that time. <But we all had to report to the same
14 upper level.>

15 Q. Thank you. Concerning your testimony you gave on 16 December,
16 you stated at around 10.39.04 that: "In 1977, I once or twice saw
17 the incident. Later on there were no incidents <inflicted> at the
18 harbour and <when people arrived there,> most of the time there
19 were trucks coming to take those people to Kampong Som."

20 And then there was a further question to your answer in document
21 E319/23.3.46, question and answer 10. You stated that, "There
22 were thousands of people arrested and people were sent through Ou
23 Chheu Teal port <more than> four or five times a month."

24 I want to ask you about the arrest of Vietnamese people on the
25 boats. So how many people -- Vietnamese people, were arrested on

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1 boat and how many <cases> did you witness those arrests <with
2 your own eyes>?

3 [13.44.05]

4 A. It is true that I witnessed <each> arrest as I have made
5 mention already. I did not tell lies to the Court. This actually
6 happened at that time and people -- Vietnamese people were sent
7 to Ou Chheu Teal harbour or port <to board vehicles> and
8 afterwards they were transported to Kampong Som or Otres or
9 Chamkar DOUNG.

10 People were arrested, sir, on a monthly basis in <1977,> 1978
11 which was an intensive <time> of arrest.

12 Q. Thank you, Mr. Witness. You appeared to provided inconsistent
13 statements. One statement is that <you witnessed> two or three
14 arrests a <year> and there was another statement you made mention
15 that thousands of people were arrested <three or> four times a
16 month. So which version is correct? <Here, I am asking about what
17 you had witnessed with your own eyes. Can you clarify this?>

18 A. Let me clarify this point. In fact, at the time I was
19 stationed at Ou Chheu Teal port, <Damnak Sdech> and two or three
20 times the arrest and transportation of Vietnamese people
21 happened. It was a true incident at that time. <I did witness
22 that because I was operating a fishing ship as well. I saw>
23 Vietnamese people had been arrested and they were sent through
24 <the> port at that time <>.

25 [13.46.19]

1 Q. Thank you. Can you specify the exact date when you said you
2 were <fishing>? And you also said that you were injured during
3 the fighting with American troops on Tang island and at the time
4 you received treatments. And how long were you being treated at
5 that time and <when> were <you> reinstated in your unit?

6 A. During the fighting on the island, I got injury on my hip and
7 I was hospitalized for half a month and afterwards, I came back
8 to work in my unit.

9 Q. Thank you. After you were attached at Ou Chheu Teal port --
10 can you tell the Court when did you arrive at Ou Chheu Teal port?

11 A. It was in 1977. Perhaps it was in April or May 1977, when I
12 arrived at Ou Chheu Teal port, but I cannot guarantee the exact
13 month or year that I arrived at Ou Chheu Teal port, <where I
14 participated in the technical training>.

15 [13.48.36]

16 Q. Can you tell the Court how long you stayed at Ou Chheu Teal
17 port?

18 A. I was trained at Ou Chheu Teal port for one month and the
19 following month I was sent to study technical skills at Rong
20 Island. Upon my arrival at Rong Island and after my training
21 <concluded> on Rong Island, I went to Damnak Sdech and also I was
22 stationed at Sokha Hotel. I was on a mobile basis and at that
23 time, as I was a messenger <for the naval regiment>, I went this
24 and there transporting <logistical> supplies to ports.

25 Q. Thank you. In the hearing on 16 December last year, at time

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1 mark 10.57.55, you testified before the Chamber that:

2 "Those who had no weapons were sent to Ou Chheu Teal port so that
3 they could be put in division's office. However, in 1976, <I
4 referred to> when I was not yet part of <Regiment> 140, it was
5 <when I was part of the division.>"

6 So concerning the arrest of <people, especially foreigners,> and
7 they were sent to Ou Chheu Teal port, did this happen during a
8 time that you were trained at Ou Chheu Teal port <or when did it
9 happen>?

10 A. The training was already concluded and at that time I was part
11 of the messengers unit in the <regiment>. I was tasked with <>
12 transporting <logistics to islands by ships>. And I worked in
13 that messenger unit until the entry of Vietnamese in 1979.

14 [13.51.51]

15 Q. So does this mean that you witnessed the transfer of <> people
16 through Ou Chheu Teal port frequently; is that true?

17 A. Yes. People were sent to Ou Chheu Teal port in 1977 and '78,
18 <but> I no longer saw the transfers of <> people <in the middle
19 of the year. A few months before I witnessed the subsequent
20 transfers. When the situation became unstable in the country, I
21 no longer saw such transfer. It was close to the time that> the
22 Vietnamese troops came into the country, there were no further
23 transfers.

24 Q. Document -- in document <E319/23.3.12>, question and answer
25 number 66, <that witness> stated:

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1 "Sometimes Khmer Rouge soldiers stationed at the islands captured
2 boats and sent them to Ream instead of Kampong Som port. I would
3 like to clarify that Chinese experts provided training to the
4 Khmer Rouge <marines> at Ou Chheu Teal port so ordinary ships
5 were not allowed to anchor there. The port at Ream was an
6 international port where general ships could anchor."

7 [13.53.50]

8 So this is a WRI of a witness. So I want to know your reaction
9 concerning the training which was provided by Chinese first at
10 that place and ordinary ships were not allowed to anchor there.
11 So what is your reaction to this statement?

12 A. Concerning this matter, Ream port was a place where <several>
13 people, including Thai people and Vietnamese people, were sent to
14 that Ream port. Ou Chheu Teal was also the same case. I witnessed
15 that Thai or Vietnamese people were sent to Ream or Ou Chheu Teal
16 and torture also happened on -- at the port.

17 [13.54.59]

18 Q. But my question is different. I want to know your reaction to
19 that statement that that witness stated that ordinary ships were
20 not allowed to anchor <at Ou Chheu Teal port> since <it> was the
21 place where Khmer Rouge <marines> were trained by Chinese
22 experts. So I want to know your reaction about that statement.

23 THE PRESIDENT:

24 Please hold on, Mr. Witness.

25 You have the floor now, International Co-Prosecutor.

1 MR. KOUMJIAN:

2 Your Honours, Mr. President. It could be a translation issue
3 because I think Counsel is speaking quite quickly. But the way it
4 was translated his question reversed what the witness, in that
5 statement he is quoting from, said. Perhaps he could read again
6 to the witness what it is, but he said that the Chinese were at
7 Ou Chheu Teal and he said in fact that just that Ream was an
8 international port.

9 Not the additional information that Counsel had on the question.
10 I forget now. I couldn't quote this question but it was different
11 than what I was reading in the answer.

12 [13.56.26]

13 BY MR. KONG SAM ONN:

14 Q. Yes, I can summarize what I had read. Ou Chheu Teal port was
15 the place where Khmer Rouge soldiers were trained, particularly
16 the naval soldiers were trained, and Ream was an international
17 port. So what is your reaction to the statement I have just
18 quoted?

19 A. I have no objection to that statement. Ou Chheu Teal port was
20 not considered an international port. It was an ordinary port and
21 no Chinese experts were working or living at Damnak Sdech
22 (phonetic) port. Chinese people were staying or living in <town,
23 and also at> Sokha Hotel.

24 And once again, there were no Chinese at Ream or Ou Chhou Teal
25 ports. Warships did not anchor there. And, as I said, I did not

1 disagree to the statement of that witness <that the military port
2 was an international port etc., actually, there was no such
3 announcement made at the time>.

4 [13.58.01]

5 Q. Thank you. In relation to the fate of the arrestees, I want to
6 ask you about a statement you provided to the Lead Co-Lawyers.
7 <You talked about orders.> You stated that <in case there were> a
8 few people, <the order was for those people to be> killed. Did
9 you receive the order to kill those few people? <For instance, to
10 capture the few Vietnamese and execute them on the island.> Who
11 did you receive the order from to kill those few <> people?

12 A. I told the Court already that as a combatant or soldier under
13 the leadership of our upper echelon, I did not dare to violate
14 rules or regulations unless there was an order from my battalion
15 from regiment and unless we received an order through a
16 hierarchical order we could <not> perform the tasks.

17 Q. Could you tell the Court exactly who gave the order? What was
18 his name or her name and what was his or her role and function at
19 the time?

20 A. I want to clarify this point to the Court that the order came
21 from the upper echelon and it went down to the battalion and
22 afterwards soldiers had to perform the task to kill a few people
23 right away <after capturing them. Without an order, we would not
24 dare do it.> Bong Samnang, for example, was a commander of a
25 battalion, when he issued an order, soldiers under him had to

1 execute the order.

2 [14.00.38]

3 Q. Thank you. Samnang -- was Samnang your direct commander of a
4 battalion?

5 A. Yes. Samnang or Bong Samnang was the commander of my
6 battalion. It is true.

7 Q. Did he issue the order to you to kill the arrestees on the
8 island when there were not many of them; is that true?

9 A. I myself did not carry out the execution but my unit did the
10 killings. And, as I said, when we received the order from him, we
11 had to execute it. We had to execute the order. When we arrested
12 <one or two>, we had to kill them on the spot on the island <or
13 at sea>. Thank you.

14 Q. And Samnang, who was your former superior, do you know whether
15 he is still living and if so, where?

16 A. We departed from one another since 1977, when I was assigned
17 to work on a ship and I have never seen him since. So I cannot
18 tell you whether he is still living or not.

19 [14.02.41]

20 Q. Can you tell the Chamber under what circumstances Samnang
21 issued an order to your group to smash those who were arrested on
22 the island when the number was small?

23 A. Based on the instructions the battalion received from the
24 regiment --

25 Q. Mr. Witness, what I want to know is the circumstances or the

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1 circumstances that you received such instructions, whether the
2 instructions were conveyed through a meeting and, if so, where
3 and when? <Can you elaborate this to the Chamber?>

4 A. At that time there were such instructions which were conveyed
5 through meetings. For a small group of people who were arrested,
6 the instruction was to execute them <because it would be a waste
7 to transport them>. And that was the clear instructions that we
8 received, for the small number of arrestees, we had to execute
9 them <on the island or at sea> and there was no need to bring
10 them on shore.

11 [14.04.42]

12 Q. Yes, we understand that. However, what we want to know as
13 under which circumstance the orders were relayed and if the
14 orders were relayed during a meeting or meetings where those
15 meetings were held and who participated in those meetings.

16 A. At that time the orders were very strict. We could only
17 implement the orders when the orders were relayed during meetings
18 and if we failed to implement an order, for example, an execution
19 order, then we ourselves would be executed. If we were to receive
20 orders through meetings, those orders had to be implemented and
21 usually those orders were conveyed through meetings at the
22 battalion level <>.

23 Q. Mr. Witness, I would like to get further clarification from
24 you. When you said that orders were relayed to you through
25 meetings to execute a small number of arrestees <on spot>, can

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1 you tell us whether those meetings were held per group or per the
2 entire battalion?

3 [14.06.30]

4 A. The meetings were convened at the battalion level<, that was
5 the common plan of the battalion.> We were informed that
6 instructions that were relayed to us were from the <upper> level.
7 That was clear to us and that's what we learned in the meetings.

8 Q. Did you participate in any meeting chaired by the regimental
9 level on this particular issue?

10 A. No, I did not. I never attended their meetings at the
11 regimental level. Usually I attended meetings within my
12 <battalion>.

13 Q. What about the meetings held at the divisional level; did you
14 ever attend meetings at those levels on the issues that we are
15 discussing now?

16 A. In my capacity as a combatant I never attended a meeting at
17 the divisional level. I did not even attend any meetings held at
18 the regimental level.

19 [14.08.22]

20 Q. You stated in your interview that Vietnamese were hereditary
21 enemies of Kampuchea. <Where> did you learn that? Did you learn
22 it through your training or through your education?

23 A. Allow me to clarify this issue once and for all. On the issue
24 of the Vietnamese as hereditary enemies, in fact I learned of
25 this information through study sessions which lasted for a day or

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1 two and we were told that Kampuchea and Vietnam were hereditary
2 enemies. And I can recall that very clearly.

3 Q. Yes, thank you. However, my point is as to when and where did
4 you learn about this through your study sessions? Please respond
5 briefly as I am running out of time.

6 A. It was one of those study sessions held at the island. <They>
7 received the study plan and then it was conveyed to us on an
8 island. <So I learned that in a study session at a school on the
9 island, within my battalion.>

10 Q. Which island are you referring to?

11 A. It was Poulo Wai island.

12 Q. Is it Potti Wai or Poulo Wai? Through your statements you
13 mentioned the island of Potti Wai and on some other instances you
14 mentioned Poulo Wai. Is it one and the same or are they two
15 different islands?

16 [14.10.58]

17 A. I refer to one and same island. Sometimes it is known as Potti
18 Wai, Poulo Wai or <just Wai Island> or sometimes they refer to
19 old and new Poulo Wai Island when in fact they are referring to
20 the same island.

21 Q. When you refer to the study sessions on Poulo Wai Island, are
22 you referring to the time that you were assigned to stationed
23 there after the withdrawal of the Vietnamese troops from the
24 island?

25 A. I have already stated that we were assigned to a station on

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1 the island after the withdrawal of the Vietnamese troops.

2 Q. Were there any further clashes after that between the
3 Vietnamese and the Kampuchean troops; that is, after you were
4 given information that Kampuchea and Vietnam were hereditary
5 enemies through your study sessions?

6 [14.12.27]

7 A. There were no further clashes during that year, although we
8 learned in the study sessions that Kampuchea and Vietnam were
9 hereditary enemies. Of course there were clashes on land but not
10 on the island.

11 Q. Who can you recall -- do you recall who was your superior? Who
12 actually gave you a lecture that Kampuchea and Vietnam were
13 hereditary enemies?

14 A. On the issue of hereditary enemies through my understanding,
15 the information was given to us at the battalion. But it is my
16 understanding that this information was conveyed from the
17 division level and it was given in the study sessions throughout
18 the country.

19 Q. My question to you is who was the person who actually conveyed
20 this information whether the person was your superior or
21 commander and what is his name if that is the case?

22 [14.14.05]

23 A. It was my battalion commander who relayed such information to
24 us that Vietnamese were our number one hereditary enemies.

25 Q. Who?

1 A. It was Samnang.

2 Q. Did you attend such study sessions personally or did you hear
3 it from other soldiers?

4 A. I personally attended <> the study sessions<.> I received such
5 instruction from my commander.

6 Q. My question to you is that whether Samnang, who was your
7 superior commander, actually gave instructions to you or whether
8 he appointed another cadre to provide instructions to you.

9 A. I received trainings -- these political, educational trainings
10 at my battalion -- from representatives of the regiment. So there
11 were representatives from the regiment who came to <disseminate
12 the> information at our battalion study sessions.

13 [14.16.24]

14 Q. My question to you is in relation to the time you spent on
15 Poulo Wai Island. How long did you spend on that island? And also
16 on the study sessions that you attended on the island that when
17 you learned the instructions that Vietnamese were our -- were
18 Kampuchean hereditary enemies, did you attend these study
19 sessions at the beginning of your stay on the island or whether
20 it was towards the end of your stay on <that Poulo Wai> Island?

21 A. I was on Potti Wai Island after my engagement <in relation to>
22 the American <activities> and I remained there until 1977, that
23 is, until about April or May of 1977, when I was reassigned to
24 work on a ship.

25 Q. The second part of my previous question is about when you

1 attended the study sessions where information about Vietnamese as
2 hereditary enemies <was conveyed>. When was that study session
3 held?

4 A. It was in early 1977, when that study session was <fully>
5 organized for my unit.

6 Q. Could you please repeat again the real or the actual position
7 of Samnang? Maybe I did not get it from your previous response.

8 A. Bong Samnang was the political commissar<,> in charge of
9 political> dissemination information <> to us <after he receive
10 the information conveyed to him>.

11 [14.19.00]

12 Q. He was a political commissar and which level was he attached
13 to? Was it at the battalion or regimental level?

14 A. Samnang was a commander of a battalion and that was his role.

15 Q. Did you attend any other similar trainings at the upper level,
16 for example, at the regimental level or at the divisional level?

17 A. I did not attend any study session at any higher level than
18 the battalion level.

19 Q. I'd like now to refer to a conflict with the Americans. This
20 morning at around 9.35 minutes you stated that crew of the
21 Mayaguez were arrested and <> they were <not sent back yet when
22 you were under attack> by American troops. In one of your WRI,
23 that is, E3/9092, at ERN in Khmer, 00955499; French, 00980438;
24 English, 00978570; and allow me to quote -- you stated that, "We
25 let <them> go. However, when they boarded their ship, they

1 attacked us by war plane."

2 Could you please tell the Chamber which statement is correct?

3 [14.22.19]

4 A. The American crew <were transported to land and then were sent
5 back> and they were sent to board the ship, <> the Mayaguez ship.

6 <All members of the crew boarded the ship, and the ship>

7 departed. After the departure of that ship, the island was

8 attacked and <heavily> bombarded by warplanes and it became so

9 intensified and it lasted until seven o'clock in the evening. And

10 after that the Americans completely withdrew themselves

11 <including small and big boats,> from the territorial waters and

12 the air space of Kampuchea. <They did not continue the offensive

13 actions.>

14 Q. <My question is rather short and it is relative to the release

15 of the crew.> Did the Kampuchean authority release the crew of

16 the Mayaguez ship and then there was an <offensive operation from

17 the> American <side> or were the crew not yet released when the

18 attack occurred?

19 A. We allowed them to leave and the attack came <shortly> after

20 the Mayaguez ship departed.

21 Q. I have some smaller questions in relation to your study

22 sessions. Did you attend any study session besides those that you

23 stated in the Court? For instance, did you attend any other study

24 sessions at the divisional level?

25 [14.24.47]

1 A. Later on I did not attend any study sessions at any other
2 level because by that time the situation became calm and there
3 were no further study sessions.

4 Q. You mentioned earlier that Meas Muth was commander of Division
5 164 and my question to you is the following; do you know who was
6 <the commander-in-chief,> in charge of the entire army of
7 Kampuchea?

8 A. After the war ended in 1975, and with the announcement of the
9 Communist Party of Kampuchea <and who the top leaders were> --
10 and I would like to mention the following facts. The Communist
11 Party of Kampuchea was announced after the war ended in 1975. By
12 that time I only learned of names of those at the leadership
13 level. The names that I heard of included Khieu Samphan. I learned
14 of Khieu Samphan's name before the war ended in '75, and after
15 the war ended in 1975 I learned of Pol Pot's name who was the
16 <great> leader <of Cambodian people. It was through a study
17 session>. And Meas Muth was the commander in charge of the
18 division in Kampong Som and I learned of this information in
19 1975. I recall that information clearly and of course I remember
20 it until 1993 when <I left> Samlout <battlefield, until today>.
21 [14.27.27]

22 Q. My question to you is who was the commander-in-chief of the
23 arm of the entire army in Kampuchea? I do not refer to the
24 <guiding leadership> of the regime. Do you know who was the
25 military commander-in-chief at the time?

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1 A. I cannot recall that. I cannot recall who was the military
2 commander-in-chief or who was in charge of politics.

3 Q. Does the name Son Sen ring a bell to you?

4 A. I know the name, but I never saw the person and I did not
5 receive any information whether he was the commander-in-chief or
6 not or maybe I cannot recall it well.

7 Q. Did you ever meet him?

8 A. No, I did not.

9 [14.29.11]

10 Q. In document E319/23.3.12, at question and answer <75>, the
11 witness speaks about instructions from Son Sen. He said that:

12 "In late '77, I attended a meeting in Phnom Penh for the work of
13 Division 164. I heard Meas Muth made a report about the
14 Vietnamese boats <> entered the Kampuchean maritime waters and
15 Son Sen said if those Vietnamese were refugees going to Thailand,
16 they should not be arrested and that we should allow them to
17 pass."

18 Did you ever hear such an instruction that Vietnamese refugees
19 should not be arrested?

20 A. No, I did not hear any instruction of not arresting those
21 people. I only heard of instructions to arrest them.

22 Q. One of my last questions to you is the following. Did you know
23 <when> the establishment of the Armed Forces of Democratic of
24 Kampuchea <was>; that is, after the <national> administrative
25 structure <> was organized?

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1 [14.31.22]

2 A. No, I did not. I was a combatant so I did not have that
3 knowledge <about how the plan was made>.

4 MR. KONG SAM ONN:

5 Thank you, Mr. Witness, and Mr. President. I don't have any
6 further questions for this witness.

7 THE PRESIDENT:

8 Thank you. As we still have some time left I would like to hand
9 the floor again to the Defence Counsel for Nuon Chea, since you
10 still have some further questions to put to this witness.

11 You may proceed, Counsel.

12 QUESTIONING BY MR. KOPPE RESUMES:

13 Thank you, Mr. President.

14 Q. Let me turn to your direct commander, Bong Samnang. Was he the
15 one who was always your commander when you were stationed at
16 Poulo Wai?

17 <MR. PAK SOK:>

18 A. Samnang was my commander.

19 Q. Was he also the commander when you were fighting the American
20 forces at Kaoh Tang?

21 [14.32.50]

22 A. In 1975, when I participated in the attack at Tang Island
23 there were two <companies> under <my battalion> and one company
24 was stationed at Poulo Wai, another company was on <Tang> Island.
25 Samnang did not join me in the fighting. However, at the time --

1 and there was a member under Samnang, that member <was in my
2 company. In 1975, I> participated in the fighting <against the
3 Americans. The member> was Bong Neth (phonetic), <who was
4 Samnang's deputy>.

5 Q. But when you were at Poulo Wai, Bong Samnang was always your
6 direct commander; is that correct?

7 A. Yes, that is correct. He is -- he was my direct commander.

8 Q. Now, is my understanding correct that only in two instances
9 did you see a killing of an alleged Vietnamese person? One
10 incident that we discussed this morning which took place on Poulo
11 Wai itself and a second -- a second incident was on sea, on open
12 sea; is that correct?

13 [14.34.39]

14 A. Yes, that is true and correct.

15 Q. And is the second incident that you had described earlier when
16 a soldier threw a baby into the sea, was that at the open sea
17 between the island Kaoh Poulo Wai and the mainland, somewhere in
18 between those two places?

19 A. At that time I was sent to work on the land near the port
20 where I saw the incident during which a baby who was crying so
21 loudly was thrown into the sea.

22 Q. But it was not at sea when this incident happened or was it on
23 the shore? Where exactly did this happen?

24 A. The baby was thrown into the sea.

25 Q. But it was thrown into the sea from a ship that had just come

1 from the island or was it very close to the shore?

2 [14.36.38]

3 A. I witnessed that incident <with my own eyes>. The baby was
4 thrown into the sea from the Vietnamese boat or ship. The
5 soldiers went up onto the ship or boat of the Vietnamese people
6 and at that time the baby was crying so loudly and they threw the
7 baby into the sea.

8 Q. So it was done by forces from Poulo Wai on open sea; is that
9 correct?

10 A. Yes, that is true. That was carried out by <members of the>
11 battalion under Regiment 62 and they did throw the baby into the
12 sea and I witnessed that.

13 Q. Just to be sure, these were the only two incidents that you
14 saw? And is my conclusion correct that both incidents were done
15 ultimately under the supervision possibly of Bong Samnang; is
16 that correct?

17 [14.38.16]

18 A. We, the subordinates, had to respect the superiors and I did
19 not know whether my immediate superior respected the other higher
20 categories. <But the general policy for combatants was that> when
21 there was an order, we had to carry it out.

22 Q. But when this incident happened when you saw this soldier
23 throwing this child into the sea, was this a spontaneous action
24 from him or did he confer first with Bong Samnang?

25 A. Bong Samnang was the commander of battalion and it was his

1 decision that allowed the subordinates to carry out that action
2 <>.

3 Q. Well, let me read something else to you from someone who is
4 also a member of Division 164.

5 Mr. President, it's E3/9113, English ERN, 00974222; and Khmer,
6 00926399; and he's being asked a question about what to do when
7 boats were spotted. And he says the following:

8 "We were instructed not to arrest the civilians. We could arrest
9 them for detailed investigation to check whether they were really
10 refugees or not. If they wanted to leave safely we could let them
11 go and we were sometimes willing to send food supplies to them.
12 They headed to the west by boat, but we asked them not to come
13 into these areas again. However, such people would not return.
14 Each small boat carried around eight persons. The travelling was
15 adventurous. Having seen them travelling on small boats, we
16 pitied them very much."

17 And then a question: "Regarding the intelligence agents coming to
18 our island, was there any instruction from the division?"

19 Answer: "We were instructed to arrest them and send them to
20 S-21".

21 [14.41.09]

22 Now, Mr. Witness, this seems to be a witness who is giving a
23 different description as to what to do when people were spotted
24 in boats. If they were refugees then most of them would be
25 allowed to pass on. If there was a suspicion that they were not

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1 refugees they were questioned and then sent for further
2 interrogation. So that seems to be contrary to the instructions
3 or orders from Bong Samnang. Can you please respond to that?

4 A. I do not know how to respond. To comply with the rules and
5 regulations of <Revolutionary Democratic> Kampuchea <>, no
6 release after the arrests <because we learned that Vietnamese
7 were our hereditary enemy>. If people were arrested they were
8 sent for interrogation and confession would be broadcasted on the
9 radio, over the radio, and I did not know whether such matters
10 happened in other regiments. For the tasks that we did in my
11 Regiment 62, it happened like I described.

12 [14.42.57]

13 Q. You described your unit or the people involved in the Mayaguez
14 incident as, "wild bandits". Was your unit<, under> the
15 leadership of Bong Samnang, including yourself, a group of wild
16 bandits?

17 A. Let me address the matter you asked. It is an important matter
18 I need to address.

19 I was one of <the> combatants under Division 164, and I was also
20 under <Battalion> 622, Regiment 62. <My unit> was not a wild
21 bandit. <We were under the leadership of Democratic Kampuchea.>
22 We had <proper> chains of command from 1972 to 1975, and
23 afterwards, after 1975<, that was after the liberation>. And also
24 until the fall of -- the <dismantling of the> Khmer Rouge.

25 Q. But what did you mean when you said when the Mayaguez was

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1 captured, "We were like the wild bandits because we captured it
2 illegally"? What does it mean when you say that your group were
3 wild bandits?

4 [14.45.02]

5 A. Let me make it clear. I used the term "wild bandits," <I
6 meant> the phrase <was> without <international> legal basis in
7 that time because -- it was because during the <war> time<, we
8 were not yet instilled with any political sessions. So> when we
9 spotted any ships or boats, we <had> to capture, regardless the
10 <fishing> boat or ship belonged to Thailand or America at the
11 time. <We were instructed to do so.> So we -- I compared soldiers
12 at that time to be like wild bandits since that they were not
13 aware of, you know, international <waters> or they were not aware
14 of laws and regulations at sea. <I saw the incident happening, I
15 saw it.>

16 THE PRESIDENT:

17 You have gone over time, Counsel. <It is time for the court to
18 adjourn.> So you can conclude your questioning now, Counsel.

19 [14.46.20]

20 BY MR. KOPPE:

21 I still have many questions, Mr. President, but I will end with a
22 final question.

23 Q. The two incidents that you described where alleged Vietnamese
24 were killed, were those actions from the same wild bandits who
25 arrested the Mayaguez? Was it a group of wild bandits who did

1 that?

2 <MR. PAK SOK:>

3 A. In that year, Regiment 62 was responsible for the capture. So
4 <the incident happened under the responsibility of that
5 regiment.> No other regiments were there to carry out the seizure
6 <>. Regiment 62, together with a few other battalions, 10 of them
7 perhaps, carried out -- carried it out. So no other regiments
8 besides Regiment 62 <carried out> the capture.

9 MR. KOPPE:

10 Like I said, Mr. President, I have many more questions but I
11 don't have time anymore, unfortunately.

12 [14.48.00]

13 THE PRESIDENT:

14 Thank you, Mr. Witness. The hearing of your testimony as a
15 witness has now come to an end and your testimony will contribute
16 to the truth. You may now be excused. You may return to your
17 residence or to any places you wish to go. I wish you good luck,
18 good health and prosperity in your life.

19 Court Officer, please work with WESU to send this witness back to
20 his residence or to any destination he wishes to go. Thank you as
21 well, Mr. Moeurn Sovan, the duty counsel, for accompanying the
22 witness. You may also be excused.

23 The Chamber will continue to hear 2-TCW-848, but now it is time
24 for a short break. The Chamber will take a short break from now
25 until 10 past 3.00.

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1 You have the floor, International Co-Prosecutor.

2 [14.49.23]

3 MR. KOUMJAN:

4 Thank you very much, Your Honour. I just was hoping to clarify a
5 couple quick scheduling matters so that we have the right lawyers
6 in Court.

7 Tomorrow, I know we are going to discuss the issue of the request
8 for additional witnesses of the Vietnamese. Would it be possible
9 sometime today for the Chamber to indicate whether that will be
10 in the morning or perhaps after the witness finishes tomorrow?

11 And also, it would be very helpful so we have the right lawyer in
12 Court to know whether you will have a reserve witness tomorrow or
13 Friday present in Court. Thank you very much.

14 [14.50.09]

15 THE PRESIDENT:

16 Thank you. The Chamber informed already this morning that first
17 thing in the morning tomorrow before we resume the questioning of
18 the witness, we start with the hearing of submission and
19 responses of Parties first, so first thing in the morning<, that
20 means before the resumption of the hearing tomorrow.>

21 The Court is now in recess.

22 (Court recesses from 1450H to 1513H)

23 THE PRESIDENT:

24 Please be seated. The Court is now back in session. We now hear
25 testimony of another witness, that is, 2-TCW-848.

1 Court Officer, please usher Witness 2-TCW-848 into the courtroom.

2 (Witness enters courtroom)

3 [15.15.06]

4 QUESTIONING BY THE PRESIDENT:

5 Good afternoon, Mr. Witness. What is your name?

6 MR. THANG PHAL:

7 A. My name is Thang Phal.

8 Q. Thank you, Mr. Thang Phal. Have you been interviewed by
9 investigators of the Office of the Co-Investigating Judges?

10 A. I have never been here, Mr. President.

11 Q. I meant not before this Chamber, but with investigators. Have
12 you been interviewed by investigators of the Office of the
13 Co-Investigating Judges of this Court?

14 A. I was interviewed.

15 [15.16.19]

16 Q. How many times?

17 A. I was interviewed twice.

18 Q. I have looked at the WRIs of your interviews with the
19 investigators and the name appear on the WRIs is Theng Huy. <And
20 you said here your name was Thang Phal.> Could you please clarify
21 <this>?

22 A. When I was interviewed for the first time, I did not work yet
23 and I was known as Huy. But in 1984, I worked for the agriculture
24 section and I changed to <> Thang Phal.

25 Q. However, the written record of your interview was not made in

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1 1984. It was made actually in 2008. Why do you use the word
2 "Theng Huy" in that written record of yours, and now you mention
3 that your name is Thang Phal?

4 A. I was interviewed at Svay Antor, that is for the first
5 interview, and I was an ordinary civilian. And my father is Theng
6 and my name is Huy. That's what I told them.

7 [15.18.22]

8 Q. Then what is your actual official name, in particular the name
9 that is -- that appears on your identification card <issued by
10 the current government>?

11 A. Currently I work -- I am a civil servant and my ID card
12 carries the name of Thang Phal.

13 Q. Thank you, Mr. Thang Phal. And do you recall your date of
14 birth?

15 A. Yes. I was born in 1951, on the 11th of November of 1950
16 (sic).

17 Q. Thank you. And where were you born?

18 A. I was born in Pou Chentam village, Svay Antor commune, Prey
19 Veaeng district.

20 Q. And where is your current address?

21 A. I came to work in Prey Veng province, so I relocated myself to
22 <Lot Number> 7 in Prey Veng province.

23 Q. So are you living in Lot Number 7 in Prey Veng provincial
24 town?

25 A. Yes, I lived in Lot Number 7.

1 [15.20.30]

2 Q. What is your occupation?

3 A. Currently, <> I am a contractor <staff> at the Department of
4 Agriculture.

5 Q. What is your father's <and mother's> names?

6 A. My father is Theng and my real mother passed away, and my
7 stepmother is Sann.

8 Q. What is the name of your real mother?

9 A. My real mother's name is Kim.

10 Q. What is the name of your wife and how many children do you
11 have?

12 A. My wife is Reth Uk. We have three children, two daughters and
13 one son.

14 Q. Thank you, Mr. Thang Phal. The greffier made an oral report
15 this morning that you are not related by blood or by law to any
16 of the two Accused, that is Nuon Chea and Khieu Samphan, or to
17 any of the civil parties admitted in this case. Is this
18 information accurate?

19 [15.22.10]

20 A. Yes, that is accurate. I am not related to any of them.

21 Q. Thank you. And have you taken an oath before the Iron Club
22 Statue before your appearance?

23 A. Yes, I took an oath before the Iron Club Statue.

24 Q. Thank you. And we would like now to inform you of your rights
25 and obligations as a witness.

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1 Mr. Thang Phal, as a witness in the proceedings before the
2 Chamber, you may refuse to respond to any question or to make any
3 comment which may incriminate you. That is your right against
4 self-incrimination. As for your obligations, as a witness in the
5 proceedings before the Chamber you must respond to any questions
6 by the Bench or relevant Parties except where your response or
7 comment to those questions may incriminate you.

8 As the Chamber has just informed you of your rights as a witness,
9 you must tell the truth that you have known, heard, seen,
10 remembered, experienced or observed directly about an event or
11 occurrence relevant to the questions by the Bench or Parties pose
12 to you.

13 And you have stated that you were interviewed twice by the OCIJ
14 investigators. Have you reviewed or read the written records of
15 your interviews that you provided to the investigators in order
16 to refresh your memory?

17 [15.24.20]

18 A. I have read the statements and they reflect the statements
19 that I made.

20 MR. PRESIDENT:

21 Thank you. Pursuant to Rule 91 bis of ECCC Internal Rules, the
22 Chamber gives the floor first to the Co-Prosecutors. The combined
23 time for the Co-Prosecutors and the Lead Co-Lawyers for civil
24 parties is two <court> sessions. You may proceed, Co-Prosecutor.

25 QUESTIONING BY MR. SENG LEANG:

1 Thank you, Mr. President. Allow me to say good afternoon to, Your
2 Honours, and everyone in and around the courtroom. Good
3 afternoon, Mr. Witness. My name is Seng Leang. I am a National
4 Deputy Co-Prosecutor. I have some questions to put to you <to
5 shed some light for the Chamber>, and my questions relate to some
6 historical background and the administrative structure. And after
7 that my international colleague will put further questions to you
8 in relation to the treatment of the Vietnamese.

9 Q. Mr. Witness, can you tell the Chamber where you lived and
10 <what you did> before 1975?

11 [15.26.02]

12 A. Before 1975, I lived in Pou Chentam village, Svay Antor
13 commune, Prey Veang district, Prey Veng province.

14 Q. When did the Khmer Rouge enter and take control of your
15 village?

16 A. The Khmer Rouge took control in <1970>. However, it was a
17 small scale and there were quite a number of Vietnamese troops in
18 the area.

19 Q. Were you living in that village at the time?

20 A. Yes, I remained living in that village.

21 Q. You said that <a small number of> Khmer Rouge troops took
22 control of the village. Can you be a bit more specific?

23 [15.27.31]

24 A. The Khmer Rouge troops were less than the Vietnamese troops.
25 For example, there were about 70 Vietnamese troops, 70 per cent,

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1 while the Khmer Rouge troops were only 30 per cent.

2 Q. Was the village administration under the control of the Khmer
3 Rouge?

4 A. At that time there were still experts. I refer to the
5 Vietnamese experts who administered the area.

6 Q. You referred to the Vietnamese troops and Vietnamese experts.
7 How long did they remain in your village?

8 A. I did not know when they actually left the village.

9 Q. There is a WRI of a villager, Ieng On, that is from your
10 village, that is document <E3/9352>, ERN of English is, 00231661;
11 French is, 00226264; Khmer ERN is, 00225361. This villager stated
12 that in Pou Chentam village the Khmer Rouge took control in 1972
13 or 1973. What is your reaction to this statement?

14 A. Yes, Ieng On is correct. The Khmer Rouge took control of the
15 village in 1972 or '73.

16 Q. And what were you doing at that time?

17 [15.30.24]

18 A. I was simply a villager. I did not have any position. I was
19 accused of <being> a son of a capitalist <or the son of an
20 upper-class peasant>.

21 Q. When the Khmer Rouge came to control your village, did they
22 assign their own people to engage in the administration of the
23 village?

24 A. <Initially,> the administration <existed in that> village, the
25 village chief maintained his position.

1 Q. And from 1975 onwards, who was your village chief?

2 A. By 1975, the village chief was replaced by someone from
3 outside. Seng and Horn were people from the outside who came to
4 control the village.

5 Q. Amongst the two, Seng and Horn, which one was the actual chief
6 of the village?

7 A. Horn was the village chief.

8 [15.32.28]

9 Q. What about Seng?

10 A. Seng was his deputy.

11 Q. Besides the <village> chief, did you know any of the
12 militiamen <in your village>?

13 A. I do not know the militiamen and I did not dare to ask about
14 the presence of militia men.

15 Q. I, a while ago, made mention of a person by the name Ieng On
16 who was from Pou Chentam as well. Did you know this person?

17 A. Yes.

18 Q. How did you know this person?

19 A. We were friends when we were young and we went to the same
20 school. <We are still friends.>

21 Q. What did Ieng On do in Pol Pot's time?

22 A. He was simply an ordinary citizen <just like me>. We were
23 colleagues going around digging the canals and working the
24 fields.

25 Q. Did you know another person by the name Eng besides Ieng On?

1 A. Sorry, Counsel. Could you repeat the name again? What is the
2 name?

3 [15.34.43]

4 Q. The name is Eng.

5 A. I do not know this person by the name Eng.

6 Q. Based on the WRI of Ieng On, document E3/9352, ERN in Khmer,
7 00225355; English, 00231660; and French, 00226263; in the WRI,
8 Ieng On made mention that Eng was the militiaman in Pou Chentam
9 <village>, and the younger brother of Eng, named En, who is
10 living now, and is about 55 years -- is about 50 years old, or
11 over 50 years old.

12 And in the same document, in the same page and ERN numbers, Ieng
13 On said -- ERN in Khmer, 00225356; English ERN, 00231661; French,
14 00226264; On stated that, "I was a militiaman for a period of two
15 months."

16 Does this refresh your memory, Witness?

17 [15.37.33]

18 A. I recall it now. Eng actually was a militiaman in the village.

19 Q. What about Ieng On? What was his role and function at the
20 time?

21 A. I did not pay attention to that matter, and it happened long
22 time ago, about 30 years already. I cannot recall it.

23 Q. Besides Eng and Ieng On, do you another person by the name of
24 Try or Ta Try?

25 A. He is quite old -- he was quite old, and he passed away a long

1 time ago.

2 Q. What did this person do in Pol Pot's time?

3 MR. PRESIDENT:

4 Please observe the microphone before you answer, Mr. Witness.

5 MR. THANG PHAL:

6 A. As I said, <I may not pay much attention because> I was
7 working in the field digging the soil, carrying the earth and
8 working the field, so I did not focus on who did what at the
9 time.

10 [15.39.18]

11 BY MR. SENG LEANG:

12 Q. In the same WRI of Ieng On, in the same ERN in Khmer with the
13 ending in Khmer 55, Ieng On stated that Ta Try was the owner of
14 the horse cart -- of a horse cart.

15 Does this refresh your memory, Mr. Witness?

16 A. I knew at the time Ta Try was the driver of the horse cart,
17 and I did not know his specific function at the time, and I was
18 <rarely at the village>.

19 Q. Now I am asking you about the village administrative
20 <structure>. Do you know the name of the Svay Antor <commune>
21 chief?

22 A. Mut was the commune chief, and Chhem -- there was another
23 person by the name Chhem.

24 [15.40.58]

25 Q. You made mention of the names Mut and Chhem. Who were they?

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1 A. Mut was part of the commune committee in Pol Pot's regime, and
2 Chhem was part of the committee as well.

3 Q. Could you clarify for the Court who was the chief and who was
4 the deputy of that commune?

5 A. Chhem was first the chief of the commune, and Mut was the
6 deputy.

7 Q. Do you know another person by the name Moeun (phonetic)?

8 A. Yes, I do.

9 Q. Who was he and what was his function at the time?

10 A. <In the Pol Pot regime,> he was a group chief. I -- what I
11 knew is that he was a group chief in charge of leading the force
12 to transplant the rice plants <and to dig soils>.

13 Q. Was he a group chief or the cooperative chief?

14 MR. PRESIDENT:

15 Please observe the microphone, Mr. Witness, before you speak.

16 MR. THANG PHAL:

17 A. I didn't know for sure at the time. I can say he was a group
18 chief at the time, and group chief was widely known as the
19 cooperative chief as well.

20 [15.43.31]

21 BY MR. SENG LEANG:

22 Q. Do you know the name of the militia chief in the commune at
23 the time?

24 A. Ngoy was the militia chief, and he was also considered the
25 security chief.

1 Q. Thank you. What about the district committee? Who were part of
2 the district committee?

3 A. I recall -- I actually recall that the person who was part of
4 the committee and, to my recollection, Ta Changkaum Prambei was
5 the --- part of the committee.

6 Q. I still have a few other questions to ask you. After 1975,
7 when you were living in Pou Chentam, what were you assigned to
8 do?

9 [15.45.20]

10 A. After 1975, I was simply an ordinary citizen.

11 Q. What did you do, specifically, as an ordinary citizen at the
12 time?

13 A. After 1975, I was assigned to dig a canal, build the
14 embankment -- first I was assigned to build the embankment at
15 various places. I rarely stayed in the <village> at the time.

16 Q. Were you required to perform the tasks, or did you voluntarily
17 go to work?

18 A. We were forced under the Khmer Rouge leadership. No one had
19 the wish to say whether we liked the job or not.

20 Q. Can you tell the court how many people were living in your
21 village <in 1975>, and do you know how many Vietnamese were
22 living within your village <> at the time?

23 A. To my knowledge, there were married Vietnamese living <there
24 in 1975>. There were only three families of Vietnamese people
25 <that I knew well>.

1 MR. PRESIDENT:

2 Please turn on your microphone <>.

3 [15.47.36]

4 BY MR. SENG LEANG:

5 Q. I want you to tell the <entire> statistic of people <> in your
6 village <>. Do you recall how many <> people were living in your
7 village <>?

8 MR. THANG PHAL:

9 A. I cannot tell you the specific number of <> people living in
10 my village.

11 MR. SENG LEANG:

12 Thank you, Mr. President. I would like to cede the floor for my
13 international colleague. I have no further questions.

14 MR. PRESIDENT:

15 You have the floor now, International Deputy Co-Prosecutor.

16 [15.48.28]

17 QUESTIONING BY MR. BOYLE:

18 Thank you, Mr. President. Good afternoon, Your Honours. Good
19 afternoon, Counsel.

20 Q. Good afternoon, Witness. My name is Andrew Boyle. I'm going to
21 ask you a few questions on behalf of the Office of the
22 Co-Prosecutors.

23 I have one brief follow-up question. You mentioned that there
24 were some Vietnamese advisors and soldiers in your area, and that
25 you weren't sure when they left.

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1 Can you tell us, in relation to when Seng and Horn were appointed
2 as the deputy and the chief of your village, were the Vietnamese
3 advisors -- had they left by the time that Seng and Horn were
4 appointed the deputy and the chief of your village?

5 [15.49.33]

6 MR. THANG PHAL:

7 A. I do not get your question, Counsel. Could you repeat it,
8 please?

9 Q. Absolutely. No problem.

10 You mentioned earlier that there were some Vietnamese advisors in
11 your village or in your district and that you weren't sure
12 exactly when they left. And I'm wondering if you're able to say
13 if they had left by the time that Horn was appointed the chief of
14 your village.

15 A. In fact, at the beginning, Seng and Horn were not the deputy
16 and the chief in the village.

17 Q. I understand. And I believe you said that they were appointed
18 the chief and the deputy in 1975. And I'm wondering if you're
19 able to tell us in relation to that event if the Vietnamese
20 advisors that you had mentioned had left the village already at
21 the time that they became the -- at the time that Horn became the
22 village chief. Had the Vietnamese advisors left at that point?

23 [15.51.11]

24 A. When they were appointed chief and deputy chief of the
25 village, the Vietnamese had already left the area <for a while>.

1 Q. Thank you very much.

2 You mentioned that there were three couples in your village where
3 -- that were of mixed Khmer-Vietnamese. Are you able to name the
4 three individuals in those couples that were Vietnamese, the
5 three people in your village who were Vietnamese?

6 A. Yes, I can tell you the Vietnamese couples. <For the first
7 couple,> Lach Ny had the Vietnamese wife, and the second family,
8 Oeung, had the Vietnamese husband, Chuy. And I cannot tell you
9 the name of Lach Ny's wife. And Ngang was the husband (sic) of
10 <Tuol (phonetic) Tech>.

11 Q. You mentioned that you weren't able to identify the name of
12 the Vietnamese wife of Lach Ny. If I say the name Sum San, does
13 that refresh your memory?

14 A. As I said, I did not focus on the specific name of those
15 couples. Frankly speaking, I only knew clearly the names of the
16 husbands.

17 [15.53.52]

18 MR. BOYLE:

19 Mr. President, with your permission, I would like to give to the
20 witness the first page of a DC-Cam document, that is, E3/7562.
21 That's the DC-Cam statement of 2-TCCP-869 in order to ascertain
22 if -- if the witness knows the individual whose name is listed
23 there.

24 MR. PRESIDENT:

25 Yes, you can proceed.

1 (Short pause)

2 [15.55.33]

3 BY MR. BOYLE:

4 Q. Mr. -- Mr. Witness, without saying the person's name that you
5 see written there, can you please tell us whether you recognize
6 that name?

7 MR. THANG PHAL:

8 A. I have never known this person or this -- I do not recognize
9 this name.

10 (Short pause)

11 [15.56.28]

12 MR. BOYLE:

13 I'm going to try with another individual. This is the -- Mr.
14 President, with your permission, this is the first page of
15 document E3/7594; that's a DC- Cam statement of 2-TCW-957, and
16 I'd like to ascertain if the individual who's named here if -- if
17 the witness knows that individual.

18 MR. PRESIDENT:

19 Yes, you can do so.

20 (Short pause)

21 [15.57.50]

22 MR. THANG PHAL:

23 A. I cannot recognize this person, <or> the name.

24 Q. Thank you, Mr. Witness

25 Mr. President, I'm going to try to proceed regardless of the

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1 witness's inability to identify these individuals, but I do want
2 to note for the record that in the witness's -- one of the
3 witness's written records of interview, that's E3/5244, English
4 ERN, 00233299; Khmer, 00224794; and French, 00231948; he
5 identifies by name each of these individuals who I have tried to
6 have him identify and using only their pseudonyms. So I want to
7 put that on the record and I'm -- I'm going to proceed hopefully
8 without having to -- without having to use their names.
9 So just, Mr. Witness, to recap the individuals that you
10 identified, could you tell us again the -- to the extent that you
11 remember, the three individuals of Vietnamese ethnicity and their
12 spouses' names from Pou Chentam village?

13 [15.59.57]

14 A. Regarding the three Vietnamese couples, there was an
15 individual by the name Ngoy (phonetic), Ta Chuy, whose wife's
16 name was Oeung, and Ngoy's (phonetic) wife's name Tech. For Lach
17 Ny, I cannot tell you the name of his wife.

18 Q. And the people that you named who were -- who were Vietnamese,
19 how did you know that these people were Vietnamese?

20 A. Tech was a citizen in the old regime and she married the
21 Vietnamese man and Ny was also a Cambodian citizen and married to
22 a Vietnamese wife <in Phnom Penh in the previous regime,> and
23 Oeung married the Vietnamese husband after 1975, <she was also a
24 citizen in the old regime,> and the three <people> were living in
25 Pou Chentam village.

1 Q. Thank you, Mr. Witness. That wasn't quite what I was asking
2 and I ask that you pay closer attention to what my questions
3 concern just because we have very limited time.

4 My -- my question was: The individuals that you named that were
5 -- that were Vietnamese, that is, the wife of Lach Ny, whose name
6 you don't remember; Ngang, is how I heard you pronounce the name,
7 and Chuy; how did you know that they were Vietnamese?

8 [16.02.43]

9 A. The husband of the female Tech came to conduct a business in
10 the country, <they met> and then they got married. Chuy was in
11 the same case, he came to do <> business and afterward married
12 the wife. <They met during the old regime.> Ny <> married a
13 Vietnamese woman <in Phnom Penh, she> was a waitress in a
14 restaurant. <That's all I know.>

15 Q. I'm going to try a somewhat more pointed question. Did you
16 know that they were Vietnamese, for example, because they spoke
17 differently from Khmer people or because they had different
18 traditions from Khmer people or they looked different from Khmer
19 people; how did you know that these three people were Vietnamese
20 or of Vietnamese ethnicity?

21 A. Let me enlighten the matter. I can recognize and tell that
22 Tech was <> Vietnamese since she spoke Khmer with accent. The
23 same applies to Chuy and Ngoy (phonetic). I cannot tell you for
24 sure how I can -- could recognize Lach Ny<'s wife> who was
25 Vietnamese, but I knew that she was a Vietnamese. <I rarely

1 talked to them because our houses were quite far from each
2 other.>

3 [16.05.00]

4 Q. Would you or others in your village make assumptions about who
5 was Vietnamese based on how people looked; their facial features
6 or the colour of their skin or anything like that?

7 A. I could recognize that they were Vietnamese since they did not
8 speak Khmer very well and, clearly, they spoke with accent. I
9 knew for sure that they were Vietnamese since they came to do
10 business in the country. They were vendors and, later on, they
11 fell in love with the woman or the man and they got married at
12 the end.

13 MR. PRESIDENT:

14 Thank you, International Deputy Co-Prosecutor. Thank you, Mr.
15 Witness. It is now time for the adjournment. The hearing will
16 resume tomorrow, Wednesday, 6 of January 2016, at 9 a.m.
17 Tomorrow the Chamber will continue hearing the witness, Thang
18 Phal, to its conclusion and there is a reserve witness,
19 2-TCW-904, to <testify> about the treatment of the target group,
20 that is, Cham people. And in -- first thing in the morning, the
21 Chamber will start to hear the <oral> submission of Parties and
22 the responses of the Defence.

23 [16.06.56]

24 There was request to admit some documents as evidence into Case
25 002/02 so please be informed and be on time.

1 Thank you, Mr. Thang Phal. The hearing of your testimony as a
2 witness has not come to an end yet. You are, therefore, invited
3 to be here once again before the Chamber at 9 a.m.
4 Court officers, please help work with the WESU unit to send Mr.
5 Thang Phal to the place where he is staying at the moment and
6 please invite him back into the witness stand to testify at 9
7 a.m. However, since we are hearing <oral> submission and
8 responses of party first thing in the morning, Court Officer,
9 please find a proper room for the witness during the morning and
10 afterwards the Chamber will order to bring in the witness after
11 the submission of Parties and the responses.
12 Court -- security personnel are instructed to bring the accused
13 back to ECCC detention facility <and have them returned tomorrow
14 before 9 a.m.>
15 The Court is now adjourned.
16 (Court adjourns at 1608H)
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