



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

14 September 2009, 0905H

Trial Day 70

Before the Judges:

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INDEX

MR. RICHARD J. GOLDSTONE

Questioning by Mr. President commences	page 3
Questioning by Judge Cartwright commences	page 4
Questioning by Mr. Tan Senarong commences	page 17
Questioning by Mr. Ahmed commences	page 18
Questioning by Mr. Werner commences	page 27
Questioning by Mr. Kong Pisey commences	page 30
Questioning by Ms. Martineau commences	page 33
Questioning by Mr. Roux commences	page 35

MR. RAOUL MARC JENNAR

Questioning by Mr. President commences	page 45
Questioning by Judge Lavergne commences	page 46
Questioning by Mr. Tan Senarong commences	page 86
Questioning by Mr. de Wilde D'Estmael commences	page 91
Questioning by Ms. Martineau commences	page 105
Questioning by Mr. Kong Pisey commences	page 107
Questioning by Mr. Werner commences	page 110
Questioning by Mr. Kar Savuth commences	page 118
Questioning by Mr. Roux commences	page 124

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANEES AHMED	English
JUDGE CARTWRIGHT	English
MR. DE WILDE D'ESTMAEL	French
MR. RICHARD GOLDSTONE	English
MR. RAOUL MARC JENNAR	French
MR. KAR SAVUTH	Khmer
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MS. MARTINEAU	French
MS. SE KOLVUTHY, GREFFIER	Khmer
MR. TAN SENARONG	Khmer
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	French
MS. WEXELS-RISER, GREFFIER	French

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

2 (Judges enter courtroom)

3 [09.05.13]

4 MR. PRESIDENT:

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

6 During this morning's session, as scheduled, the Trial Chamber is
7 going to hear the testimony of the expert, Justice Richard
8 Goldstone, in relation to the character of the accused. This
9 testimony is going to be heard through videoconference, and we're
10 going to hear his expertise and complete his testimony such a
11 videoconference. And we're going to take the whole morning for
12 the purpose of this testimony.

13 Before we start our proceedings, the Greffier is now instructed
14 to report the attendance of the parties to the proceedings.

15 THE GREFFIER:

16 Mr. President, the parties to the proceedings today are all
17 present. The expert who is going to testify in a moment, Justice
18 Richard Goldstone, is ready in the United States and Mr. Raoul
19 Jennar is also available. These two witnesses will be taking an
20 oath through the remote participation.

21 MR. PRESIDENT:

22 Mr. Alain Werner, you proceed. Could you please be brief because
23 we want to hear the expert as scheduled and we're going to hear
24 him just one whole morning.

25 MR. WERNER:

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1 Good morning, Mr. President, distinguished members of the Court,

2 I'll be very brief.

3 Simply to recall that two weeks ago on 31 August, I spoke to this

4 Chamber and specifically asked whether I could, as quickly as

5 possible, receive the written motivation of your 27 August

6 finding because it's very difficult for us to explain to our

7 clients the decision that was made.

8 It's been two weeks now, we don't have a written decision, and I

9 believe I speak on behalf of all counsel for civil parties,

10 simply to ask whether you might give counsel for civil parties

11 when you intend to give us a written version of the decision.

12 Thank you.

13 [09.09.38]

14 MR. PRESIDENT:

15 The Trial Chamber has not taken it for granted and we have paid

16 great attention to the decision, and we already rendered our

17 decision and that the reason written decision will be made in due

18 course. And due to the commitment in the last plenary session

19 that our Judges were opposed to take part to debating the

20 proposed amendments and it was for the smooth operation of the

21 Court if there is a case file 003 -- if it should be -- then the

22 Judges had to meet to discuss this matter in advance.

23 At the same time, we do not forget to make a decision on the

24 matter and the decision has been translating, and we believe that

25 tomorrow we will have verified all the three versions of the

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1 decision and will be included into the case file in due course.

2 So it is the obligation of the Court to produce the written

3 reason decision accordingly.

4 The AV Unit is now instructed to link the videoconference to the

5 expert, please.

6 QUESTIONING BY THE BENCH

7 BY MR. PRESIDENT:

8 Q.Good morning, Mr. Expert. Could you please tell the Court

9 your full name?

10 A.Mr. President, my names are Richard Joseph Goldstone.

11 Q. Thank you. Justice Richard Goldstone, how old are you this

12 year?

13 A.I'm 70 years old.

14 [09.12.49]

15 Q.Where do you live now?

16 A. My permanent home is in Johannesburg, South Africa, but I'm

17 presently living for four-and-a-half months in New York where I'm

18 teaching at Fordham Law School.

19 Q.Justice Richard Goldstone, what is your occupation?

20 A.My occupation is (inaudible) a visiting professor of law, and

21 I'm a retired justice of the South African Constitutional Court.

22 Q.What religion are you a follower of?

23 A.I'm a follower of the Hebrew religion.

24 Q.According to the report of the Greffiers of the Trial Chamber,

25 indicates that you have no affiliation or relationship with the

4

1 parties to the proceedings. Is that correct?

2 A.That is correct, Mr. President.

3 MR. PRESIDENT:

4 Natacha, could you please co-ordinate with Justice Richard

5 Goldstone so that he can take an oath before the Chamber?

6 (Witness, Richard Joseph Goldstone, affirmed)

7 MR. PRESIDENT:

8 I would like to give the floor to Judge Silvia Cartwright to

9 proceed with some questions.

10 [09.16.06]

11 JUDGE CARTWRIGHT:

12 Thank you, Mr. President.

13 BY JUDGE CARTWRIGHT:

14 Q.Good morning, Justice Goldstone. I will first ask you some

15 questions that explain to the Court and the people of Cambodia

16 what your qualifications to give this testimony are.

17 Can you hear me clearly?

18 A.Yes, thank you, Your Honour. Good morning.

19 Q.As we have already heard, you have been a judge in South

20 Africa and in 1980, as I understand it, you were made a judge of

21 the Transvaal Supreme Court, later a judge of the Appellate

22 Division of the Supreme Court, and from 1994 until 2003, you were

23 a justice of the Constitutional Court of South Africa. Is that

24 all correct?

25 A.That is all correct, Your Honour.

5

1 [09.17.13]

2 Q.Thank you. From 1993 until 2007, you were also Chancellor of
3 the University of Witwatersrand in Johannesburg and, as we have
4 already heard, you are a visiting Professor of Law currently, at
5 Fordham Law School in the United States of America. Is that
6 correct?

7 A.That is also correct.

8 Q.You have also been a visiting Professor of Law at Harvard Law
9 School, NYU Law School and Georgetown Law School. Is that
10 correct, too?

11 A.That's correct, Your Honour.

12 Q.Well, you have had a very distinguished judicial career, but
13 there are other parts to your career that are of particular
14 interest to this Court insofar as it relates to the matters that
15 we would like to hear about from you today. You have been a
16 member of boards broadly concerned with human rights, justice,
17 and reconciliation. Is that right?

18 A.That is correct.

19 Q.And this includes chairing the Advisory Boards for the
20 Institute for Historical Justice and Reconciliation, and the
21 Brandeis University Centre for Ethics, Justice and Public Life.
22 I believe that you are also Co-Chair of the Human Rights
23 Institute of the International Bar Association and that you have
24 chaired a United Nations committee to advise the UN on
25 appropriate steps to preserve the archives and legacy of the

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1 international criminal tribunals for the former Yugoslavia and
2 for Rwanda. Is that all correct too?

3 A.That is all correct, Your Honour.

4 [09.19.24]

5 Q.Thank you. Most recently, you have a very challenging
6 appointment to lead the United Nations fact-finding mission on
7 Gaza, which was established by the President of United Nations
8 Human Rights Council. Is that correct as well?

9 A.That is also correct, Your Honour.

10 Q.Thank you. From the 15th of August 1994 until September of
11 1996, I believe you served as the chief prosecutor of the United
12 Nations International Criminal Tribunals for the former
13 Yugoslavia and Rwanda, so you have had extensive experience in
14 international criminal tribunals. Is that the case?

15 A.Correct, Your Honour. Just one slight correction (inaudible)
16 tribunal began at the end of November 1994, so my term of office
17 as prosecutor (inaudible) and in respect to the former Yugoslavia
18 tribunal.

19 JUDGE CARTWRIGHT:

20 Thank you. Can I just pause here for a moment and inquire about
21 the sound interruptions from Justice Goldstone's end? Is the IT
22 Unit able to assist here?

23 Just to inform you, Justice Goldstone, we are getting some
24 interruptions. I'm not sure if you're getting them from this end
25 or not. We're just pausing while a bit of a discussion goes on

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1 concerning that.

2 [09.22.45]

3 Thank you. I've been told, Justice Goldstone, that we can keep
4 going and the IT people are working to improve the link.

5 BY JUDGE CARTWRIGHT:

6 Q.Now, in 1998, you chaired a high-level group of international
7 experts that met in Valencia, Spain and drafted a Declaration of
8 Human Duties and Responsibilities. That was done for the
9 Director General of UNESCO. Is that the case?

10 A.That is correct.

11 Q.And from late 1999 until December 2001, you chaired the
12 International Independent Inquiry on Kosovo and in December of
13 2001, you were appointed as the Co-Chair of the International
14 Task Force on Terrorism established by the IBA, the International
15 Bar Association. Is that correct as well?

16 A.That is correct, Your Honour.

17 Q.Thank you. You are a director of the American Arbitration
18 Association, and from 1999 to 2003 you also served as a member of
19 the International Group of Advisors of the International
20 Committee of the Red Cross. From 1985 until 2000, you were
21 National President of the National Institute of Crime Prevention
22 and the Rehabilitation of Offenders. Is that correct as well?

23 A.That is all correct, Your Honour.

24 [09.23.11]

25 Q.Thank you. Not surprisingly, you have received many awards

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1 and honours for your work in the fields of law and human rights
2 and I hope you will forgive me if I don't list those today. You
3 are also the author of books including "For Humanity: Reflections
4 of a War Crimes Investigator", 2001 Yale University Press; and
5 the co-author of "International Justice Institutions: The
6 Architecture of International Justice at Home and Abroad",
7 published just last year.

8 Now, is there anything that you would like to add that you
9 consider is relevant to the testimony that you are being asked to
10 give today which concerns the importance of acknowledging guilt
11 in an international criminal tribunal?

12 A.Your Honour, all I would add is (inaudible) I have
13 investigated serious violations of human rights and violence in
14 my home country, South Africa, between 1991 and 1994 (inaudible)
15 laid the foundation for the Truth (inaudible) Commission that
16 followed in 1995.

17 Q.Yes. We got a bit of an interruption then, but I gathered you
18 said that that work laid the foundation for the Truth and
19 Reconciliation Commission which followed in 1995. Is that what
20 you said to us?

21 A.That's correct, yes.

22 Q.Thank you. Now, just to lay the groundwork for you before I
23 let you have a chance to speak, I'm going to set out the
24 situation here.

25 The accused in this trial, Kaing Guek Eav, is known more commonly

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1 as Duch, which was the name he assumed before the Khmer Rouge
2 period and which was used by him during that period and until
3 today. So it may be easier to use that name, Duch.

4 [09.25.47]

5 The accused has admitted his culpability in relation to the
6 charges he faces which are, of course, extremely serious ones.
7 He's admitted his culpability broadly while, on occasions,
8 stating that he does not accept particular facts or particular
9 individualized allegations.

10 In addition to that, he has co-operated at all phases of the
11 trial and, as the trial is operating in the civil law system that
12 includes an extensive judicial investigation followed by the
13 trial, which is now nearing its end.

14 In addition, from time-to-time he has helped the Court in
15 clarifying factual issues, and I think it's fair to say that one
16 of his two counsel, Maître François Roux, has said that if this
17 were the common law system he would have pleaded guilty to
18 certain of the offences. I'm sure Maître Roux will clarify that
19 in due course.

20 He has admitted in writing, or not opposed, a very large number
21 of the factual allegations made against him; which factual
22 allegations are taken from the case file and the indictment.

23 So that is very briefly -- and I'm sure the defence will want to
24 expand on that significantly -- the measure of the co-operation
25 of Duch in this trial. It needs to be said, of course, that I'm

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1 sure the prosecution -- but certainly the victims, who in this
2 system are called civil parties, as you will be well aware -- do
3 not always accept that he has been co-operative or that he has
4 been entirely truthful. But I think that, that gives you a broad
5 outline of the current situation as it pertains to this accused.

6 [09.28.21]

7 So we would be very grateful to hear from you on what you can say
8 in relation to this admission of responsibility in terms of
9 international justice, and what importance his attitude and
10 co-operation might make in reconciliation in the Royal Kingdom of
11 Cambodia.

12 Does that give you sufficient background to provide a basis for
13 your comments?

14 A.Yes, it certainly does, Your Honour. Thank you very much.

15 Q.Well, Justice Goldstone, I'll now give you a chance to speak
16 and we'd be very grateful to hear from you now. Thank you.

17 A.Thank you very much. Well, if I might just start with a
18 general statement that in my experience in the South African
19 courts in which I've sat and also in the international courts for
20 the former Yugoslavia and Rwanda, I would suggest that there are
21 three important aspects that must be taken into account in regard
22 to sentencing.

23 The first is clearly the nature of the crimes and, as you have
24 stated, Your Honour, the crimes here are of an extremely serious
25 nature. The second is the interests of the victims and that

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1 obviously must be reflected in any sentence by a criminal court.
2 And, thirdly, the more general interests of society. And, of
3 course, the difficulty for a sentencing court is that these three
4 factors often come into conflict with each other and one has to
5 find some proportionality between the three of them.

6 [09.30.29]

7 The interests of society, I would suggest, dictate that due
8 attention must be given to the importance of an open and sincere
9 admission of guilt, and especially so if it's accompanied by a
10 genuine apology to the victims and expressions of remorse. If I
11 might turn particularly -- because I understand that is really
12 the main point of my evidence -- is the effect and importance of
13 an admission of guilt, to use the common law experience, but I
14 don't think in this regard that there's any difference in
15 principle from a moral or jurisprudential point of view between
16 common law and civil law systems.

17 I would submit that there are three important aspects of an
18 acceptance of guilt and an apology. The first obviously is the
19 importance for the victims. It's certainly been my experience,
20 particularly in South Africa, that victims know what happened to
21 them. They don't need any criminal courts to establish for them
22 what they personally experienced. But what is important, and
23 what justice and what courts or truth and reconciliation
24 commissions for that matter may provide to victims, is a public
25 acknowledgment from an official source, and especially it's

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1 important that it's a court; that there is this public
2 acknowledgment of what happened to them.

3 It's again been my experience, and it's difficult to generalize,
4 but in many cases victims have been able to begin their closure
5 and their healing in consequence of a public acknowledgment of
6 what happened. It's important for what they know happened to
7 them to have this public acknowledgment.

8 The second -- and from a societal point-of-view -- very important
9 advantage and a benefit from an admission of guilt and an
10 acceptance of guilt, is that it is crucial to put a stop to
11 fabricated denials that usually accompany all serious human
12 rights violations. If I might give one example from my own
13 experience in the Yugoslavia tribunal -- and I hope it will be of
14 assistance and not irrelevant -- was the case of a man called
15 Erdemovic.

16 [09.33.18]

17 Erdemovic was member of the Bosnian Serb army and he, acting
18 under what the tribunal for the former Yugoslavia accepted by the
19 trial chamber and the appeals chamber accepted, was huge duress.
20 He joined a firing squad that shot and killed scores of innocent
21 Bosnian men and boys outside the city of Srebrenica in 1995.
22 Erdemovic, sometime later, decided that he wanted to confess
23 guilt and he did it, strangely enough in the first instance, to a
24 television company -- to an American television company. A team
25 interviewed him in Serbia and he eventually was -- to my surprise

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1 because I requested an order from the Trial Chamber against
2 Serbia to have him transferred to The Hague.
3 He was indeed and he was charged with serious crimes against
4 humanity, murder and other serious charges within the
5 jurisdiction of the Yugoslavia Tribunal. He pleaded guilty. He
6 made a full confession. He apologized to the victims and he was
7 treated fairly leniently by the Court.
8 If my memory serves me correctly the ultimate sentence on appeal
9 was in the vicinity of seven years and this was after an
10 admission that he had shot and killed at least 70 people.
11 According to his evidence he lost count after he got to 70.
12 [09.35.13]
13 Now, what was important was that before his evidence was given
14 and before his admission and confession the Bosnia Serb
15 government in Pillai and the Bosnia Serb army denied the massacre
16 in Srebrenica happened. They said this was a fabrication on the
17 part of some Western nations to put guilt incorrectly and
18 unfairly on the Bosnia Serb army. They said that if indeed --
19 and Erdemovic incidentally was able to pinpoint the masquerade
20 where his victims were buried.
21 The Bosnian Serb spokesperson made a statement to the effect that
22 if there was a masquerade where he pointed it out, which they
23 denied -- they said that it would-- if the bodies were exhumed it
24 would demonstrate that the bodies buried in that grave were
25 killed on the battlefield during armed insurrection many years

14

1 before.

2 Well, the mass grave was exhumed at my request by experts,
3 forensic people, and it was proven beyond any question that the
4 people in question had been killed by a single bullet wound to
5 the back of the head that their arms had been tied behind their
6 backs, not the situation that would arise where people are killed
7 in the heat of battle. It was also established that they died at
8 or about the time of the massacre at Srebrenica.

9 The effect of Erdemovic's evidence and the mass grave exhumation
10 and other corroboration clearly put an end to the denial by the
11 Bosnian Serbs of what happened in Srebrenica and of course it was
12 important to the victims especially to have the acknowledgement
13 of what happened. But it was also important to help many of them
14 to bring closure to their hope that in fact this was fabricated,
15 that their loved ones were -- somehow hadn't been killed and were
16 being kept in some Bosnian Serb army camp in some prison
17 somewhere in the former Yugoslavia.

18 [09.37.50]

19 So this was important in both respects; in respect of the
20 acknowledgement and in respect of the stopping of the denials.
21 And it was Erdemovic's confession and of course his assistance to
22 the Court that was relevant.

23 I might add that he went on to give evidence against a number of
24 other defendants including Slobodan Milosevic and others who were
25 found guilty and sentenced.

15

1 Your Honours, if I might conclude with --

2 BY JUSTICE CARTWRIGHT:

3 Q.Can I just interrupt you there, Justice Goldstone? I hope
4 that you can hear us but we seem to have lost connection. So
5 we'll just pause for a moment if you would and we'll see what we
6 can achieve.

7 Can you hear me?

8 MR. PRESIDENT:

9 The Chamber would like to inform all the parties that due to the
10 technical problems the Chamber will adjourn for a short time
11 until the IT issue is resolved. Probably it's going to take only
12 a couple of minutes.

13 Thank you.

14 (Court recesses from 0939H to 0940H)

15 BY JUSTICE CARTWRIGHT:

16 Q.Yes, I'm sorry about that, Justice Goldstone.

17 [09.40.02]

18 Can you hear me now?

19 A.Yes, I can. Thank you.

20 Q.The connection --

21 A.Hopefully, we're not dealing with a third --

22 Q.The connection was interrupted when you were about to say in
23 conclusion, I think, in relation to your first point. You had
24 just finished saying that Erdemovic had given -- went on to give
25 evidence against others at the ICTY and you were about to make

16

1 some other comments.

2 Would you mind resuming from there?

3 A.I think that's the end of the second -- the second point I was
4 making.

5 And the third was very shortly that an acknowledgement of guilt,
6 a confession and assisting the Court could well influence other
7 persons coming before the Tribunal at a later time to similarly
8 admit their guilt and responsibility. It does create an example
9 that hopefully others will follow.

10 [09.41.21]

11 I think those are the main points that I wanted to bring to the
12 attention of the Court.

13 Q.Yes, thank you very much, Justice Goldstone. I'm going to
14 hand over now to the President again and there may be some other
15 questions from members of the Trial Chamber.

16 And after that there will be questions from the prosecutor, the
17 lawyers for the civil parties, and of course for the defence.

18 MR. PRESIDENT:

19 Judges of the Bench, do you have questions to be put to this
20 expert?

21 The Bench do not have questions to be put to this expert. We
22 would like now to give the floor to the Co-Prosecutors to put
23 questions to this expert if you so wish. You have 20 minutes for
24 your question time.

25 MR. TAN SENARONG:

17

1 Thank you, Mr. President.

2 The national Co-Prosecutor only has one question for Justice

3 Goldstone. With your leave I would speak in English for Justice

4 Goldstone. Thank you.

5 MR. PRESIDENT:

6 Yes, you may proceed.

7 QUESTIONING BY THE CO-PROSECUTORS

8 [09.43.20]

9 BY MR. TAN SENARONG:

10 Q.(speaking in English) Good morning, Justice Goldstone.

11 A.Good morning.

12 Q.(speaking in English) I now have one question for you related
13 to your testimony today. And the first question to you, how much
14 reliance do international tribunals place on the national laws of
15 the countries where crimes were committed like the former
16 Yugoslavia and Rwanda?

17 A.Well, Mr. Prosecutor, the status of the ad-hoc tribunals, both
18 for the former Yugoslavia and Rwanda, provided that the chambers,
19 that the trial chamber in particular, was obliged to take into
20 account the national laws of the former Yugoslavia states where
21 the crimes were committed or, in the case of Rwanda, in respect
22 of sentencing. It was in that and in respect of sentence in
23 particular, that there was this reference to the court of
24 national law.

25 Q.(speaking in English) Thank you, Justice Goldstone.

18

1 [09.45.19]

2 MR. TAN SENARONG:

3 (speaking in English) I give my next floor to my colleague,
4 international Co-Prosecutor.

5 BY MR. AHMED:

6 Q.Mr. Justice Goldstone, my name is Anees Ahmed and I am the
7 international prosecutor and I shall, with the leave of the
8 Court, submit to you certain observations, and elicit your
9 responses to that, so as to help this Court arrive at a judicious
10 determination of issues relating to sentence of this accused.
11 Just a prefatory remark that I cut my teeth in international law
12 at the Office of the Prosecutor of the ICTY, which you very ably
13 established, and it's my privilege to put these observations to
14 you.

15 As a continuation to my learned national colleague's question, I
16 would request your opinion as to the decision that a court should
17 take when the national practice clearly differs in respect of
18 sentencing of serious crimes; and I will just give an example.
19 The punishment for a crime of murder in Cambodia would be
20 anywhere between five years and life. The conviction rate in
21 this country is very high and usually we read in newspapers that
22 crimes of murder with malice aforethought get convicted for
23 sentences upwards of 20 years to life. And life in this country,
24 to my awareness, means life in prison unless the King of Cambodia
25 pardons the accused.

19

1 We heard from you about the lenient sentence of about seven years
2 granted by the ICTY to Erdemovi?.

3 [09.48.02]

4 What would be the reaction of victims and how would law see the
5 differences of approach in a tribunal established as a hybrid
6 tribunal, which would give a lenient sentence to an accused who
7 may admit guilt of crimes of murder of upwards of 14,000
8 individuals, helpless victims, and if he were to be given a
9 sentence less than the sentence that an ordinary criminal in
10 Cambodia would get for murder, which may be life?

11 I hope my observation was clear to you, Justice Goldstone.

12 A.Yes, indeed, and it clearly does go to the very heart of the
13 difficulty of sentencing for this sort of mass crime because it
14 (inaudible) impossible to have any (inaudible) between the number
15 of people of killed and the length of imprisonment. Human beings
16 don't live nearly long enough to really pay their debt to the
17 victims and to society.

18 And, clearly, courts dealing with massive crimes, with the
19 atrocity of crimes of this magnitude, have to reserve life
20 sentence as the ultimate sentence, as the most serious sentence,
21 the most difficult sentence for the worst offenders. So that's
22 where one begins and one has to scale down in respect of people
23 who are found guilty of lesser offences.

24 Let me immediately say that I wasn't for a minute suggesting that
25 the Erdemovi? sentence was relevant at all to the trial which you

20

1 are prosecuting and which is being heard in your Court. I was
2 using Erdemovi? only to illustrate the point I was making with
3 regard to stopping fabricated denials and how that is important
4 for society.

5 [09.50.24]

6 The reason for the leniency in the case of Erdemovi? was the huge
7 duress under which he acted, and that was accepted by the trial
8 court and the appeals chamber. His duress was to the effect that
9 if he didn't participate in the murders, he himself would be
10 forced to line up with the victims and be shot himself, and he
11 was also informed by his battalion commander that they knew where
12 his wife and family lived and they would suffer also because of
13 any insubordination on his part. So there was duress, which was
14 very important in reducing the period of imprisonment that was
15 meted out to Dražen Erdemovi?.

16 Having said that, it's not difficult to believe and accept that
17 many victims were reported -- and this is hearsay because I have
18 no personal involvement with them -- that there was general upset
19 on the part of many victims at what they regarded as an extremely
20 lenient sentence for a person who had admitted murdering their
21 loved ones.

22 So this I think demonstrates the difficulty which a court has in
23 this situation and, clearly, I would suggest one has to have
24 regard primarily to the victims. International criminal courts,
25 and indeed domestic criminal courts, are really there to bring

21

1 justice to victims, and that's an extremely important aspect.
2 Q.Thank you very much for your observations, Justice Goldstone.
3 My next comment for your opinion would be in respect of two words
4 that you used many times in your initial observations and they
5 were "remorse" and "guilt"; plea of guilt.
6 Clearly, as you observed, guilty plea should be accompanied by
7 remorse for the crimes that occurred. I would seek your
8 observations on the importance of a sincere remorse, a remorse
9 directed at victims, a remorse that tells the victims that, "I am
10 responsible for crimes that occurred to you or that were
11 committed on you", instead of a general remorse in general for
12 the crimes of the Khmer Rouge or the crimes that may have
13 happened under that regime.
14 [09.53.31]
15 How important it is for victims and, indeed, for the acceptance
16 of the plea of guilt of the accused, of the sincere remorse.
17 That's the first limb of my submission.
18 The second, Justice Goldstone, would be that the guilt that you
19 plea should be unqualified for the crimes that are charged
20 against you and the way they are charged in the indictment. If
21 there was to be, once again, an admission of a general guilt
22 that, "I may have been responsible for some crimes in the
23 indictment", and not a specific unqualified guilt of the crimes
24 charged in the indictment, how should the Court look at that
25 general qualified guilt? I hope I have been clear, Justice.

22

1 A.Well, I think -- you know, it's difficult for me to be
2 specific because I cannot obviously, on the scant (inaudible) I
3 have, give any opinion at all on the nature of the admission or
4 confession made by Duch. I obviously cannot comment on how any
5 confession he has made relates to the actual crimes with which he
6 has been charged. That I would submit, with great respect, is a
7 matter for the Court to determine.

8 But I agree, with respect, with the general approach of the
9 question you have put to me, that one clearly -- if he's get the
10 benefit of any admission or confession, it must relate to the --
11 obviously, as you said, to the genuineness of that confession,
12 and also the specificity of the confession would be a very
13 important consideration to take into account.

14 [09.55.40]

15 Q.Thank you very much and I may be running out of my time but it
16 may be my second-last question, Justice; hope you can bear with
17 me.

18 Just to add to the introduction given by Her Honour Judge
19 Cartwright, this accused is claiming duress and superior orders
20 to claim not complete responsibility for the crimes that
21 occurred, and at least that's the way the prosecution sees it and
22 the prosecution disagrees on the facts of this case.

23 In the light of this background I would like to request your
24 comments on guilty pleas that were clearly offered but not
25 accepted by tribunals of the former Yugoslavia and Rwanda. And

23

1 in particular reference I would make about Jelaši?, who was also
2 a camp commander who also pleaded guilty, yet he was granted 40
3 years in prison. The case of Kambanda, from Rwanda; a very
4 senior figure in the Rwandan government hierarchy -- pleaded
5 guilty. The Court imposed the highest punishment of life upon
6 him.

7 And this is my question in respect of these facts: can there be
8 a situation in which the aggravating factors be so overwhelming
9 that the mitigation of a guilty plea or some kind of remorse will
10 not make any impact on the sentence at all; just as it happened
11 in Kambanda and in Jelaši?.

12 A.Well, I certainly -- as you point out, that the (inaudible)
13 decisions of the court in those cases, and it seems to me though
14 that one has to deal with each case on its own merits. I think
15 it's very difficult to draw parallels and to draw analogies
16 between situations and situations. I think one has to look at
17 the facts of each case, at the nature of the crimes which have
18 been charged, at the nature of the crimes in respect of which
19 admissions are made, the terms of the admissions, the genuineness
20 of remorse. It seems to me that a sentencing court has to take
21 all of those factors into account.

22 [09.58.34]

23 But again I come back to the opening remarks I made and that is
24 that the -- any question of mitigation must be, I would suggest,
25 secondary to the seriousness of the crimes committed and the

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1 interest of the victims.

2 MR. AHMED:

3 And, with Mr. President's leave, this shall be my last question.

4 I hope I have your permission.

5 BY MR. AHMED:

6 Q. Justice Goldstone, my reading of the law of the international
7 tribunals, the sister tribunals of this Court, is that a larger
8 primary reliance of those tribunals in respect of sentencing has
9 been on deterrence and retribution. And the way those tribunals
10 have justified this reliance is the fact that the crimes are of
11 such magnitude and the nature of these tribunals is so special
12 that there has to be an exemplary impact on the societies in
13 which those crimes were committed, such that those crimes do not
14 get repeated.

15 However, lately there has been some discussion in respect of
16 impact on national reconciliation of these guilty pleas or some
17 kind of expression of remorse. I would request your opinion on
18 what would be the objective criteria to assess the impact of a
19 guilty plea on national reconciliation and justice in the
20 post-conflict society, and in this case Cambodia, and in
21 particular what would be the gauge from which this Chamber will
22 find the impact on national reconciliation over and above what
23 gets presented in this Court?

24 [10.00.48]

25 My submission on that account is that it shall be the acceptance

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1 of remorse by the victims and who, unlike other tribunals, are
2 present in this Court. What would be, according to you, the
3 criteria other than the observations of the victims and their
4 acceptance of the guilt and remorse of the accused that this
5 Court may use for assessing the impact on national
6 reconciliation? I hope that's not a very complicated question;
7 I'm sorry.

8 A.Right. Well, I'll do my best to respond to what is again a
9 complex question. Reconciliation, national reconciliation,
10 depends not only -- as important as it is -- but it depends not
11 only on the specific acceptance of the confession and the remorse
12 by the direct victims, but the effect of those expressions on
13 society as a whole.

14 Going back to the South African experience, there were many
15 victims who found it unpalatable, to put it at its lowest, that
16 some of the perpetrators were granted amnesty in return for full
17 confession. And incidentally, in the South African situation
18 apologies were not called for, so there was no requirement of
19 expressions of remorse, although frequently they were given.

20 But there can be little doubt in my view that, notwithstanding
21 the unhappiness on the part of many victims, the admissions by
22 perpetrators before the Truth and Reconciliation Commission, the
23 effect this had on our whole society in South Africa certainly
24 greatly assisted national reconciliation. There are still
25 obviously problems. It will take many generations to restore

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1 South Africa to a situation where the prejudices and the sorrows
2 and the horrors of racial oppression under apartheid have been
3 put to an end.

4 [10.03.11]

5 But the establishment of the truth, the fact that there's a
6 single history of what happened during the apartheid era, which
7 there wouldn't have been but for a quasi-judicial truth
8 commission system -- this wouldn't have come about.

9 So I think all of these things have to be taken into account in
10 answering the question as to the effect that a confession and
11 expressions of remorse can have on national reconciliation. It's
12 clearly a complex situation but it's certainly wider, I would
13 suggest -- and understanding as I am of the importance of having
14 regard to the views and feelings of victims, I think the effect
15 on society is a much wider one than that.

16 Q.Thank you very much, Justice Goldstone.

17 MR. AHMED:

18 And I thank Mr. President; I have no further questions.

19 MR. PRESIDENT:

20 Next, the Chamber would like to give the floor to the civil party
21 lawyers. You have 20 minutes to put questions to Justice
22 Goldstone.

23 Could you please also tell the Court of the arrangement of your
24 questions in the 20 minutes allocated? Would you prefer using
25 the time exclusively for one party representing all or else?

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1 MR. WERNER (speaking in English):

2 Mr. President, some different lawyers will ask questions. What I
3 can tell you that it will not take more than 20 minutes as a
4 whole. Can I proceed? Thank you, Your Honour.

5 Good morning, Justice Goldstone.

6 [10.05.21]

7 MR. GOLDSTONE:

8 Good morning.

9 QUESTIONING BY CIVIL PARTY COUNSEL

10 BY MR. WERNER :

11 Q.(Speaking in English) My name is Alain Werner. I am
12 representing civil parties in this case, and let me start very
13 briefly to give you a little bit of context from the victims --
14 the civil parties' point-of-view -- following the comment from
15 Her Honour, Judge Silvia Cartwright. As Judge Silvia Cartwright
16 said, "It is our submissions that the accused, Duch, does not
17 accept particular facts", and that will be our final submission.
18 These facts are important ones, and even some are crucial ones
19 for our clients, the civil parties, and last month -- in August
20 -- about 15 civil parties came to this Court and addressed the
21 Chamber, and almost all of them were very clear that they were
22 not ready at that point to forgive, but they wanted punishment;
23 they wanted retribution.

24 Now, let me simply read two portions of your articles in two
25 different reviews and let me ask you simply -- and you may feel

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1 that you said everything already, but let me simply ask you if
2 you have anything to add to that.

3 [10.07.09]

4 And the first one will be something you published in 2001 in the
5 "Washington University Journal of Law and Policy", page 121, and
6 the title of your article at that time was "The Role of the
7 United Nations in the Prosecution of International War
8 Criminals", and here is what you said about -- in particular
9 about retribution, and I quote:
10 "On the international level, however, the crucial link between
11 criminal prosecution and the preservation of peace and stability
12 shifts the focus away from pure retribution to notions of
13 restoring the role of law and justly establishing the truth,
14 thereby preventing denials and revisionism. However, clearly
15 punishing the perpetrators of international crimes and providing
16 the victimized population with a sense of retribution does play
17 an important role."

18 Would you have anything to add to that, Justice Goldstone?

19 A.No, not at all. I said (inaudible) the view (inaudible).

20 Q.(speaking in English) Very well. The second portion I would
21 like to put to you was an article you were commenting on the
22 writing of another scholar, Professor Drumbl and it can be found
23 in "The International Journal of Transitional Justice", page 457,
24 458, and here is what you said, again, commenting on -- there's a
25 review on the book of Professor Drumbl. Here's what you said:

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1 "Then there are the problems associated with plea and charge
2 bargaining. During my term as chief prosecutor of both the
3 Yugoslavia and the Rwanda tribunals, I was not prepared to
4 consider such procedures. In my view, the atrocities were too
5 heinous to submit to such a course."

6 Would it be possible for you just to elaborate on that point,
7 Justice Goldstone?

8 [10.09.43]

9 A.Yes, I would and here there was -- I think -- a difference in
10 approach between the (indistinct) I took and (indistinct) and
11 which I still adhere to (indistinct) of some of my successes as
12 chief prosecutor of the ICTY.

13 In particular, I refer to the plea bargain with Biljana Plavšić,
14 the successor to Radovan Karadžić as the head of the Bosnian-Serb
15 government. She was charged with genocide and other serious
16 crimes, and a plea bargain was entered into whereby the
17 prosecutor withdrew the most serious charge and was satisfied
18 with lesser charges that resulted in what many people regarded as
19 an extremely lenient sentence.

20 The view I took and the view I take is that one can't plea -- one
21 shouldn't plea bargain in respect of crimes of this magnitude. I
22 think there's a moral dimension that I found unacceptable to be a
23 party to, and the view I took was that if people accused -- if
24 defendant's are prepared to plead guilty and to assist the
25 prosecution in respect of investigations within respect of the

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1 pride of the person or on a wider basis, those are methods which
2 the prosecutor should bring to the attention of the trial chamber
3 and make an appropriate submission that if it's genuine, it
4 should be taken into account in mitigation of sentence.

5 But that's a very far cry from plea bargaining and I'm suggesting
6 -- I think in the evidence I gave earlier, this morning, I was
7 suggesting that it be taken into account in that respect and,
8 certainly, I was not suggesting at all that it should lead to a
9 founding of guilt on any lesser basis.

10 [10.12.13]

11 MR. WERNER (speaking in English):

12 Thank you very much, Justice Goldstone. I have no further
13 questions.

14 MR. PRESIDENT:

15 Civil party lawyer of other group, you may proceed.

16 MR. KONG PISEY:

17 Good morning, Mr. President, Your Honours.

18 And good morning, Justice Goldstone. My name is Kong Pisey, the
19 national counsel for civil party group 2 and group 4. I would
20 like to put two questions only to you.

21 BY MR. KONG PISEY:

22 Q.First question, it is about the remorse and the confession.

23 To me, only when he's received -- when they say more than 95
24 percent of the proof that he's guilty, that he is in the position
25 to express his remorse and accept such -- acknowledge such guilt,

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1 so -- and the word "apology", normally apology has to come all
2 the way from his heart, but according to our law -- and as the
3 arguments that you have already stated earlier that the person
4 who committed a crime -- who killed someone and then was
5 sentenced to only seven years. And I don't know how genuine an
6 apology is for the victims who have survived the regime feel
7 satisfied with such apology.

8 My second question is in relation to the civil parties'
9 reparation. Should there be civil party reparation for the
10 victims? If so, how could civil party reparation be granted and
11 in what form?

12 A.Well, thank you. As far as apology is concerned, I certainly
13 would suggest that that's at the lower end of the relevance of
14 the issues we're talking about. It's very easy for people who
15 admit guilt, who confess to guilt, to apologize. It's difficult,
16 very difficult to judge the genuineness of making an apology.

17 [10.15.40]

18 What I would suggest is more important are the terms of the
19 confession and the admission of guilt. That is really what I
20 would suggest is important to the victims -- an admission of what
21 happened to their loved ones or to them, if they are the victims
22 themselves.

23 It's very important for them to have that acknowledgement and
24 that confession from the person who was the author of their
25 victimization and terrible misfortune. So I wouldn't put apology

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1 anywhere near the top of the factors to take into account in --
2 certainly in mitigation of sentence.
3 Reparations clearly are important not only for the victims, but I
4 think for reconciliation. It's always a difficult issue because
5 reparations require funding, require money, and often there's no
6 source for the payment of those reparations. It's been a problem
7 in South Africa where the post-apartheid government, the first of
8 the democratic government of South Africa, initially under the
9 presidency of Nelson Mandela, had a problem because the
10 victimization of the majority of black South Africans by the
11 apartheid system -- in fact of all black South Africans by the
12 apartheid system -- couldn't be laid at their door.
13 They were victims themselves of that and the issue was whether
14 their government should have to pay reparations for the crimes
15 that were committed and the indignities that were visited upon
16 South Africans by the apartheid government.
17 And of course a lot of political agony when in the end
18 reparations were paid to victims identified by the Truth and
19 Reconciliation Commission, but at a level that the victims found
20 significantly inadequate. So it's always a difficulty.
21 [10.18.00]
22 I think it's very important though that there should be
23 reparations, whether it's to assist the survivors with education
24 or even memorializing the events that happened. I think these
25 are very, very important aspects and it obviously will depend on

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1 the situation in the country concerned. As I say, particularly
2 the financial resources that are available.

3 But to the extent that reparations are possible, I have no doubt
4 that they are extremely important and can be very helpful in
5 repairing society.

6 MR. PRESIDENT:

7 Civil party lawyers group 3, you may now proceed.

8 BY MS. MARTINEAU:

9 Q.Good morning, Justice Goldstone. Well, to quickly summarize
10 -- you have experience of ad-hoc tribunals and we agree that
11 confession and admission of guilt is very important for the
12 victims and parties.

13 Can you tell us if this has had an impact on reconciliation? As
14 we saw on a CD which was distributed to us, Serbs and Bosnian
15 Muslims -- is it possible for them to have a cup of coffee
16 together or is it the case that the events that have taken place
17 in Arusha have had an impact on national reconciliation?

18 A.Pardon? Does the question relate to Rwanda? I missed part of
19 it.

20 Q.No. The question has to do with the impact in countries where
21 tribunals such as ad-hoc tribunals were established for the
22 former Yugoslavia on the one hand and Rwanda as well, because the
23 court was in Arusha, but it had an impact on Rwanda.

24 [10.20.30]

25 So decisions that were taken where there were guilty pleas, did

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1 that make it possible to advance the cause of national
2 reconciliation?

3 A.Yes, I believe it did -- and again I don't want to repeat what
4 I have said earlier, but the most important area (inaudible) was
5 in putting an end to fabricated denial. You know, when the
6 Yugoslavia Tribunal began, all three major groups -- the Croats,
7 the Bosnians and the Serbs -- all believed and all certainly
8 proclaimed that they were victims and the others were
9 perpetrators.

10 I have little doubt that the work of the Yugoslavia Tribunal has
11 helped bring about the situation where all people in the former
12 Yugoslavia have had to accept that all of them were to a greater
13 or lesser extent both perpetrators and victims. And it's that
14 acknowledgement and the putting to an end of denial, I believe,
15 can play a very important role in bringing about reconciliation.
16 Having said that, of course the former Yugoslavia still has quite
17 a road to travel before true reconciliation and enduring peace
18 takes place.

19 In the case of Rwanda too, when the Rwanda tribunal was set up,
20 there were many people both in Rwanda and certainly in some
21 European countries who denied that there had been a genocide at
22 all. Many people put it down to -- alleged that this was some
23 sort of spontaneous combustion. It was what one -- and many
24 people were demeaning about it; this is what happens in Africa.
25 As an African, certainly I found that quite insulting, if not

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1 abhorrent. But that was a view that was put forward.

2 [10.23.09]

3 I think that the work of the Rwanda tribunal has also put an end
4 to those sorts of attitudes and those sorts of denials and
5 there's today an acceptance by all parties in Rwanda and outside
6 Rwanda that what happened in 1994 was a very carefully planned
7 and, unfortunately, brilliantly executed genocide that caused the
8 deaths in less than 100 days of some 800,000 people.

9 So I think the work of the tribunals in both cases has had a very
10 positive effect. I think too, in the case of Rwanda, they have
11 made possible the use of what's known as the Gacaca System, using
12 customary procedures in Rwanda to bring speedier justice to many
13 tens of thousands of people who are being kept in prison.

14 So I think the work of the tribunals have assisted in the ways to
15 which I have referred.

16 MR. PRESIDENT:

17 Next, we would like to give the floor to the defence counsel to
18 be able to put questions to Justice Goldstone.

19 MR. ROUX:

20 Thank you, Mr. President.

21 QUESTIONING BY DEFENCE COUNSEL

22 BY MR. ROUX:

23 Q. Good morning, Justice Goldstone. Thank you for being with us
24 this morning to take part in this important discussion. I
25 understand that the questions that are put to you can sometimes

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1 be of a sensitive nature because all sides will be trying to
2 bring you closer to the actual ground of the case we are dealing
3 with here, in spite of the fact of course that you don't have all
4 the elements at hand to form an opinion.

5 [10.25.29]

6 However, in order to bring clarity to the discussion and to set
7 out the more general questions I would like to put to you, I
8 would like it to be very clear for you that it is indeed the
9 case, as Judge Cartwright has recalled, that Duch did acknowledge
10 his responsibility for the entirety of facts that are held
11 against him, and I'm sure you've understood -- the Prosecutors
12 Office and civil parties still consider that he has not said
13 enough.

14 But in order for things to be very clear for you, again I wish to
15 confirm that the Investigating Judges who heard Duch for over a
16 year in the presence of prosecutors -- these Investigating Judges
17 who organized a re-enactment on the location where the crimes
18 were perpetrated, in the presence of the accused, of the
19 prosecutors, and of some of the survivors -- these Investigating
20 Judges concluded their investigations with what is called a
21 Closing Order in civil law, which states as follows in paragraph
22 167:

23 "Duch always acknowledged his responsibility as head of S-21 for
24 the crimes that were perpetrated there. He explained that he had
25 broken his silence in 1999..."

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1 For your information, prior to his arrest:

2 "...due to the fact that he felt that one could not refrain from
3 saying the truth about S-21 after having heard statements made by
4 Pol Pot, who denied the existence of S-21 and claimed that this
5 was a Vietnamese fabrication."

6 And the judges added:

7 [10.29.10]

8 "Duch on a regular basis has expressed remorse, both to the
9 victims and to their families but also to the former employees of
10 S-21 who were under his command."

11 In the following paragraph the Judges state:

12 "Furthermore, Duch has voluntarily co-operated during the
13 investigation and refused to implicate any of his subordinates
14 and placed the full responsibility on the top levels of the Party
15 in order to exonerate himself."

16 I would further add that appearing before this Chamber during
17 proceedings, as Judge Cartwright stated, Duch continued to
18 co-operate. Duch recognized 85 percent of the facts put before
19 him by the prosecutors. And lastly, the psychology and
20 psychiatry experts said the other day at the bar that Duch was a
21 person who had come out of denial and that he was now in a
22 process of self-accusation.

23 This is simply to give you adequate information, Justice
24 Goldstone, so that you may understand that the reason why the
25 defence has sought your testimony is clearly because it feels

38

1 that we find ourselves here in the presence of someone who is
2 genuinely pleading guilty, who is seeking forgiveness from the
3 victims, even if the Co-Prosecutors Office here in Phnom Penh
4 doesn't really understand this guilty plea, and even if they did
5 understand it the victims have not heard either the request for
6 forgiveness.

7 Now, this will call me to ask a few questions, very simple
8 questions, with regard to the jurisprudence of tribunals where
9 you were prosecutor. And you recalled, and I thank you, the
10 Erdemovic case. You recalled that Erdemovic did plead guilty in
11 the Srebrenica case and that he was being accused of the death of
12 70 persons. I wish also to recall the Obrenovic case.
13 Obrenovic, who had been accused of killing 6,000 people in one
14 week and who pleaded guilty from the outset, where the Chamber
15 indicated the following in its judgment, paragraph 115 for
16 instance:

17 [10.33.58]

18 "The Trial Chamber observes that by acknowledging his
19 responsibility and guilt, Dragan Obrenovic has never sought to
20 find excuses for himself nor did he attempt to convey the
21 responsibility for his acts on other persons."

22 Given these considerations the Trial Chamber concludes that the
23 guilty plea of Dragan Obrenovic represents an important
24 mitigating circumstance because it contributes to the
25 establishment of the truth. It favours reconciliation and

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1 because Dragan Obrenovic has accepted without reservation to take
2 on this individual criminal responsibility for the role that he
3 played in the persecutions.

4 Well, Justice Goldstone, from the side of the defence here, we
5 consider that Dragan Obrenovic and Duch are in the same
6 situation.

7 [10.35.40]

8 It seems to me -- and that is one of my first questions -- it
9 seems to me, Justice Goldstone, that the jurisprudence of
10 international criminal courts has looked into the issue of the
11 genuine nature of remorse that was expressed and that on several
12 occasions it has indicated that the best way to determine whether
13 remorse is genuine was in fact the degree of co-operation that
14 was given to the Office of the Prosecutors and justice in
15 general.

16 Are you in a position to confirm that the degree of co-operation
17 is one of the means available to verify the sincerity of the
18 remorse that has been expressed?

19 A.Well, indeed, I agree with the preamble to the question and I
20 agree too with the question. Obviously the question of facts
21 with the co-operation and the extent of the confession or matters
22 of facts to be determined I would (inaudible) by the trial
23 judges.

24 Q.I have personally submitted several plea agreements at the
25 Arusha tribunal too in fact, one which led to a film being made.

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1 Perhaps you've seen it, a film prepared by the services of the
2 Arusha tribunal which is called, in French, "On the Path of
3 Reconciliation". And that is the degree to which the government
4 of Rwanda in fact acquiesced to the fact that the guilty pleas in
5 Arusha were in fact helping reconciliation in Rwanda.

6 [10.38.24]

7 When I negotiated guilty pleas with your colleagues from the
8 Offices of the Co-Prosecutors we agreed that the prosecutor would
9 abandon certain of the charges, certain facts for which proof was
10 not necessarily obvious, but that this would be done to the
11 benefit of what he and what we consider to be essential; in other
12 words, the acknowledgement of responsibility concerning the major
13 charges.

14 In the two guilty pleas, the two guilty plea agreements, we
15 agreed with the prosecutor so that the latter would abandon
16 certain charges and let go of certain facts in order to focus on
17 what was essential, which was the acknowledgement of guilt.

18 Can you confirm to this Chamber that this is a practice that is
19 in no way scandalous insofar as it will make it possible for the
20 accused to admit to facts which he sincerely expresses guilt for
21 and enables the prosecutor to leave by the wayside facts of a
22 more secondary nature which they argue -- which are challenged
23 perhaps by the accused and about which the prosecution perhaps
24 does not have sufficient elements to achieve conviction?

25 A.I have difficulty in understanding the (inaudible) between

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1 plea bargaining on the one hand and co-operation and confession
2 and remorse on the other. I'm not suggesting they're
3 inconsistent. I accept -- I accept completely that a plea
4 bargain can result in co-operation and admission of guilt.
5 In other cases it may have the opposite effect where the effect
6 of the plea bargain is to (inaudible) or to put under the
7 (inaudible) and to put out of sight some of the more serious
8 offences and that of course can have a very negative effect on
9 victims.
10 But in all of these cases it's a matter for the trial judges to
11 determine questions of fact; namely the extent and genuineness of
12 the confession and the genuineness of expressions of remorse.
13 [10.41.48]
14 Q.Thank you, Justice, for recalling that in fact plea agreements
15 are always put to the Chamber and the Chamber always has to
16 decide whether a plea agreement is consistent with the aims of
17 justice.
18 Since this morning a number of questions have been put to you and
19 you have responded with reference to the victims. From your
20 experience as a judge and prosecutor, can it be said that in
21 general victims are always satisfied and mollified by the
22 decisions that are rendered? Is their suffering not so great
23 that in any event they will not be able to accept a sentence
24 whatever it is? Is this not generally speaking the situation we
25 are faced with now?

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1 A. Sorry, I had difficulty -- what is the -- (inaudible)

2 Q. I shall try to put my question again.

3 Based on your experience of tribunals, experience which I may lay
4 some claim to sharing, is it true to say that, generally
5 speaking, in light of the suffering that the victims have
6 endured, they are never really satisfied with determinations of
7 courts because they find that such decisions are always
8 insufficient. Do you share this view?

9 A. I think it's an over-generalization, with respect. I don't
10 believe one can generalize. I think some victims react in the
11 way you have suggested; other victims don't. I think there are
12 almost as many reactions as there are victims and it's certainly
13 been my experience in South Africa and also in Rwanda and the
14 former Yugoslavia that while many victims are dissatisfied with
15 the justice that they've seen or heard in these tribunals, others
16 have had a more positive reaction and have been enabled to begin
17 their healing process. So I think one shouldn't generalize.

18 [10.45.30]

19 Q. As you will have understood, my question is much more geared
20 towards what we are experiencing here in this Court. Whatever
21 the regret, the remorse, the apologies that the accused may
22 proffer, the victims cannot hear him. They cannot hear him
23 because their suffering is too great.

24 A. It's a question of fact. I just don't have sufficient
25 knowledge to make any serious contribution to that discussion.

43

1 Q.Thank you, Justice Goldstone. One last question.
2 You made the point earlier and I follow you, when you said that
3 the importance of an admission of guilt is that it puts an end to
4 denial. Do you think that a person who admits his guilt for the
5 first time in respect of the Khmer Rouge regime -- do you think
6 that when a Khmer Rouge acknowledges responsibility for the first
7 time, this might arouse the same impulse in other accused persons
8 and also bring more peace to a society?

9 A.Absolutely. If in fact the Court finds that the confession
10 and the remorse are as you put it to me, as I indicated in my
11 opening remarks, this would be a very important factor that would
12 have positive features. Some of them you've mentioned; others
13 you haven't. I think it's an important example that hopefully
14 would induce other people to come forward.

15 The fact that, if as you say, it is the first admission to come
16 in the decade since the Pol Pot regime, that would be important.
17 I don't believe justice can ever come too late for victims that
18 survive. And I would respectfully suggest that that would be an
19 important factor to take into account with regard to mitigating
20 sentence.

21 [10.49.34]

22 MR. ROUX:

23 Mr. President, I have no further questions.

24 Judge Goldstone, thank you for agreeing to participate in this
25 hearing in spite of your remote location and the time difference.

44

1 Thank you very much.

2 MR. PRESIDENT:

3 The Chamber would like to thank the expert, Justice Goldstone,
4 for your valuable time to respond to the invitation by the Trial
5 Chamber for your testimony as an expert as well as the content of
6 your testimony.

7 And the Chamber will take your testimony into consideration when
8 we make our judgment fairly on this case. And your contribution
9 is valuable to the proceedings before this Chamber in finding
10 justice for Cambodia and for its people.

11 The hearing of your testimony is now come to an end. Thank you.

12 The Chamber will take 20 minutes break and we will resume at 10
13 past 11. Parties to the proceedings and the public are reminded
14 that when the Chamber resumes, it will hear the testimony of the
15 expert Raoul Marc Jennar. The expert was scheduled for the
16 afternoon but due to the quicker time for the hearing of the
17 testimony of Justice Richard Goldstone, so we will hear the
18 testimony of the next expert after the Chamber resumes this
19 morning. And we will continue in the afternoon if it does not
20 finish this morning.

21 [10.52.19]

22 The hearing is now adjourned.

23 THE GREFFIER:

24 All rise.

25 (Judges exit courtroom)

45

1 (Court recesses from 1052H to 1114H)

2 (Judges enter courtroom)

3 MR. PRESIDENT:

4 Please be seated. The Chamber is back in session.

5 The remaining time of this morning's session will be used to hear

6 the testimony of the expert, Mr. Raoul Marc Jennar. The Court

7 officer is now instructed to call the witness.

8 (Witness enters courtroom)

9 [11.15.41]

10 QUESTIONING BY THE BENCH

11 BY MR. PRESIDENT:

12 Q. Good morning, the expert. Could you please give the Court

13 your full name, please?

14 A. My name is Raoul Marc Jennar, Mr. President.

15 Q. How old are you?

16 A. I am 63 years old, Mr. President.

17 Q. Where do you live?

18 A. I live in France, Mr. President.

19 Q. What is your occupation?

20 A. I am a consultant in international relations, Mr. President.

21 Q. Mr. Raoul Marc Jennar, what is your religion?

22 [11.17.40]

23 A. I am an atheist, Mr. President. I believe in no religion.

24 Q. According to the report of our Greffiers, indicate that you

25 are not related to any parties to the proceedings. Is that

46

1 correct?

2 A.That is totally accurate, Mr. President.

3 Q.As the expert before the Extraordinary Chambers in the Courts
4 of Cambodia, according to Rule 31(2) the expert is to take an
5 oath according to his or her own religion or belief. Would you
6 wish to take an oath before the Chamber now?

7 A.Yes, Mr. President.

8 MR. PRESIDENT:

9 Natacha, could you please arrange the oath for Mr. Raoul Marc
10 Jennar?

11 (Witness, Raoul Marc Jennar, affirmed)

12 [11.20.32]

13 MR. PRESIDENT:

14 Next, we would like to give the floor to Judge Lavergne to seek
15 further clarifications. The floor is yours.

16 QUESTIONING BY THE BENCH

17 BY JUDGE LAVERGNE:

18 Q.Good morning, Mr. Jennar. I am Judge Lavergne. I will be
19 asking a few questions of you.

20 It is customary before this Chamber, prior to giving you the
21 floor, to put a few questions to demonstrate that you have the
22 qualifications to act as an expert, so I will be looking into
23 your biography and you will confirm whether or not it is
24 accurate.

25 You have a doctorate in political science and you have degrees

47

1 from Belgian and French universities and, unless I am mistaken,
2 you are a doctor of Khmer science and Khmer studies; a diploma
3 which you obtained from INALCO. Is this accurate?
4 You have undertaken various professional activities -- a French
5 professor, journalist, advisor to the Belgian government, to the
6 Belgian Parliament, diplomatic advisor for the International
7 Forum of NGOs in Cambodia, consultant with the provisional United
8 Nations authority in Cambodia in charge of UNESCO's Culture of
9 Peace in Cambodia, consultant with the European Union on
10 Cambodian political issues.
11 You have also been an international observer during the
12 withdrawal from Cambodia of the Vietnamese Expeditionary Corps.
13 That was in September 1989. You were also an observer in the
14 elections of 1993, 1998 and 2003. You are a member -- I'll give
15 the English expression -- advisor of the Documentation Center of
16 Cambodia, member of the scientific committee of advisors for the
17 Cambodian documentation centre. Is this still the case?
18 [11.23.16]
19 A.As a matter of fact, this scientific council was created at
20 the initiative of Yale University in order to establish what has
21 become DC-Cam today, so this scientific council was disbanded.
22 Q.You've also been a researcher for Oxfam on issues dealing with
23 the World Trade Organization. You also worked as a consultant
24 with various parliamentary groups on issues of globalization. So
25 do you wish to add anything to this summary biography that I've

48

1 just listed?

2 I would also state that you've written various books on Cambodia;
3 one on the creation of combat; another called "Cambodia
4 Chronicles", another book called "The Keys to Cambodia" and the
5 last one which is called "Cambodia, a Media Under Pressure".

6 Do you see anything else that you would like to add to this
7 biography and perhaps you could also tell us whether you have at
8 any time been, or if you are still, an advisor to the Royal
9 Cambodian Government?

10 A.I have nothing to add to the biographical and bibliographical
11 data and I confirm that I am a consultant with the Royal
12 Cambodian government, more specifically on issues that deal with
13 foreign relations and border issues, and in fact I wrote a
14 doctoral thesis on the borders of temporary Cambodia.

15 [11.25.29]

16 Q.So we have in the file, a consultation -- that is the name
17 given to the document. A consultation which was sought by the
18 defence of the accused with reference D82 of the investigation
19 file. In this consultation the defence had sought to obtain
20 various information on the following points from you.

21 First of all, the ideological inspiration for Democratic
22 Kampuchea; the specific features of Cambodian Communism; the
23 practice of Angkar (Kampuchea Communist Party); secrecy and
24 terror; chain of command; security apparatus; the role of the
25 Peoples Republic of China; and the international legitimacy of

49

1 Democratic Kampuchea and Son Sen.

2 These were the questions around which the defence had asked you
3 to give some details. Well, I will first give you the floor and
4 then we will be asking some questions.

5 A.Well, thank you, Judge Lavergne, Mr. President, distinguished
6 members of this Trial Chamber.

7 It is with a great deal of emotion that I speak before you,
8 emotion because I am aware of the historical nature of this
9 trial; emotion because we are not here looking solely at
10 historical facts but because we are dealing with lives and mainly
11 deaths, incalculable suffering and in total the occurrence once
12 again of barbary while those of my generation were steeped in the
13 "never again", stated by Lord Shawcross, the British prosecutor,
14 in his final arguments before the Nuremberg Tribunal.

15 Please also allow me, before anything else, to pay tribute to the
16 victims of Democratic Kampuchea and to express my sympathy and
17 compassion to the survivors.

18 [11.28.11]

19 Right-wing totalitarianism was tried in Nuremberg and Tokyo.
20 Totalitarianism invoking left-wing values had until now never
21 been put to trial. And thus this is the first and probably the
22 only tribunal where the crimes of a form of totalitarianism
23 applied on behalf of the people has been applied.

24 Now I am not one who will confuse ideologies and puts them back
25 to back. The roots of Communism have nothing in common with

50

1 those of Fascism or militarism and when ideologies choose to
2 force and to compel rather than to convince, they find themselves
3 along similar lines and a common ability to destroy the lives of
4 individuals and the dignity that is contained in every human
5 being.

6 Therefore, what we are doing here and now is judging what I would
7 call Pol Pot-ism and to verify in what way the implementation of
8 this Cambodian variant of Communist ideology has led to a barbarity
9 that justifies the qualifications of crimes against humanity and
10 great violations of the Geneva Convention.

11 To judge first and foremost, but to judge -- is it not first to
12 understand it, to explain? Is it not the primary virtue of
13 justice, to explain behaviours in order to offer up to society
14 reasons and means in order to avoid that they be repeated? Never
15 has there been a better opportunity than today to see the
16 relevant application of the terrible sentence of Primo Levi, a
17 survivor from Auschwitz. Those who ignore the past are condemned
18 to re-experience it.

19 And as François Bizot stated here as well, we need to understand
20 and to try to understand, but trying to understand does not mean
21 to forgive. So this is my position.

22 [11.30.24]

23 Mr. President, I am being requested to bear testimony as an
24 expert from the defence, but I would like to specify that I am
25 not here to speak in defence of a system for which I have nothing

51

1 but horror. I am here -- and this is what I will try to do, I am
2 here to attempt to explain a system that leads to barbarity, a
3 system which I would like to explain according to the terms of
4 the ruling of your Chamber, a theoretical and practical
5 foundation of the regime established by the Democratic Kampuchea
6 regime and specified the measure in which the authorities of the
7 time made use of the terror that they had implemented in order to
8 justify the ideology, and to determine its impact on human
9 behaviour.

10 I agreed at the request of the defence to come before you on two
11 conditions: that I will be free to express myself as I wished
12 and that I could meet the accused. I do not think I need to say
13 that I speak freely, but it seems necessary for me to emphasize
14 the full co-operation of the accused who answered all the
15 questions I put to him when I had interviews with him over a span
16 of six months.

17 I hope my explanations will contribute to understand what Vann
18 Nat, one of the victims of Duch, acknowledged before you, that is
19 how an executioner is in a certain way also a victim of the
20 system that he serves. A system, because you will agree that the
21 idea is to judge the system and those who implemented it.

22 It is not possible not to know that in Cambodia we were faced of
23 a criminal conspiracy of a small group of men and women to
24 enslave a whole people to an organization which was determined to
25 impose the most total form of alienation that a human society has

52

1 ever suffered.

2 [11.32.48]

3 This conspiracy arose from the espousal by this small group which
4 provided the future leaders of Cambodia of an ideology which in
5 the name of emancipation of the people became one of the most
6 implacable forms of enslavement. With reference to ideology, it
7 must be said that this is the first point I wish to raise.

8 With regard to the ideological background which inspired Angkar
9 at the time, the major reference for the Communist Party of
10 Kampuchea was 1917 and the events that followed. Pol Pot, in his
11 famous article of 1952, entitled "Monarchy or Democracy" which
12 was published in *Khemera Nisset*, the Khmer Student, which is the
13 bulletin of the Khmer students in Paris, signed Original Khmer,
14 makes no reference to the Vietnamese revolution of 1945 or the
15 Chinese revolution of 1949. It mentions 1917.

16 I agree with Steve Heder in his conviction that the prime source
17 of Cambodian Communism à la Pol Pot was the Bolshevik Revolution
18 I do not ignore the role that Vietnamese communists played in the
19 ideological training and military training of the Cambodian
20 communists. I do not wish to minimize the importance of the
21 Chinese model in the agrarian policy of Kampuchea, apart from a
22 degree of collectivization and a dismantling of rural families,
23 which was never attained in China.

24 It is not -- it cannot be then said that with regard to the
25 political organization, and in particular the organization of the

53

1 Communist Party including its rules and practices in security,
2 the basis is Bolshevik.
3 The small group which later on formed the leaders of Democratic
4 Kampuchea were mostly people of the Marxist circles of the Khmer
5 students in Paris; a group -- a discussion group that was formed
6 in 1951. Several of them were at the time members of the
7 Communist -- French Communist Party, and we know it is common
8 knowledge of all the communist parties which were active in the
9 Western countries, the PCF, or the French Communist Party, was the
10 most unconditionally faithful to the policies that were decided
11 in Moscow. It was most faithful to Stalin and, at the time,
12 one-quarter of the French electorate trusted it.
13 [11.35.37]
14 The members of the circle were participants in university classes
15 of the new university of the PCF and faithful readers of
16 brochures of this party and the newspaper, "L'Humanité", which
17 was an organ of the PCF at the time.
18 There was a PCF cell in the Indo-China house of the university
19 residential area which was where students lived; it had nine
20 Cambodians. When the Maison D'Cambodge or Cambodia House was
21 established, a similar cell was organized. Cambodians who lived
22 in town, like Pol Pot, belonged to the communist cell of their
23 neighbourhood.
24 The training courses organized by the PCF contained the history
25 of the establishment of this party, which arose from the will of

54

1 a majority of Socialists to adhere to the Third International
2 Comintern; such adhesion or membership required the respect of
3 21 conditions set forth by Lenin himself.

4 Out of these 21 conditions, there was the obligation to apply
5 within the party iron discipline to submit the press and all
6 publishing services entirely to the central committee of the
7 party; to do away with reformists and centrists; to set-up the
8 clandestine organization with the practice of secrecy that is
9 required.

10 [11.37.15]

11 The 12th condition was:

12 "The Communist Party cannot fulfill its role if it is not
13 organized in the most centralized manner. If iron discipline,
14 which resembles military discipline, is admitted and if its
15 organization -- the central organization or central organ with
16 broad powers exercises unchallenged authority and receives the
17 trust of -- the unanimous trust of militants.

18 Condition number 13:

19 "Communist parties in countries where communists are active, are
20 legal militants, must carry out periodic purges of their
21 organizations so that the petit bourgeois elements can be
22 removed. It is therefore important to note that the Cambodian
23 students who joined the French Communist Party were trained to
24 believe that a communist party must have iron discipline and
25 eliminate opponents and people who were lukewarm."

55

1 Interviews of members who are still alive, that is members of
2 this Marxist circle of Khmer students in Paris, are full of
3 information with regard to the question that we have before us.
4 We learn of books within written by Marx, Lenin, Stalin and Mao,
5 two books were carefully studied and were the subject of lively
6 debate; Lenin's book "A State Under Revolution" and Stalin's book
7 "The Principles of Leninism".

8 In the first book, that is Lenin's book, Lenin says that it is
9 possible to carry out a revolution, even in the absence of a
10 proletariat, if the people as a majority are suffering from
11 exploitation and oppression and rise up violently to destroy the
12 old society and establish a new one.

13 [11.39.18]

14 This book also contains the idea which was echoed by Mao, that
15 once overthrown the exploiting classes remain stronger than the
16 class that has overthrown it for a long time, and that the
17 victory of popular forces does not mean that bourgeois forces
18 cease to be a threat.

19 The second book by Stalin stands out because, according to the
20 accused's words himself, as from 1970 all new members of the
21 Communist Party of Kampuchea had to read this brochure or this
22 publication.

23 In chapter 7 of the book -- which is devoted to the party -- the
24 well-known conditions of Lenin, the relationship between the USSR
25 and the communist parties had not changed. The description of

56

1 the role of the party deserves some further examination in order
2 to understand what was inculcated into the future leaders of
3 Democratic Kampuchea:
4 "The parties are the vanguard of the proletariat that it must
5 guide and conduct and lead. The party is an organized whole.
6 It's task is to organize and support the proletariat. It is the
7 instrument of the dictatorship of the proletariat. The party
8 must be as centralized as possible and it must be governed by
9 iron discipline, which must be close to military discipline."
10 And Stalin quoted Lenin when he said that:
11 "The centre of the party is one organ which has high authority
12 with broad powers."
13 [11.41.06]
14 Stalin, citing Lenin on several occasions:
15 "Iron discipline requires the refusal of internecine warfare
16 within the party, unflinching obedience, the purging of
17 opportunistic and reformist elements."
18 It is clearly stated that:
19 "The latter cannot be overcome through ideological debate so
20 they must be purged."
21 Lenin says they should even exclude excellent communists if they
22 are likely to hesitate.
23 This is the model of the communist party which was taught by the
24 PCF, the French Communist Party, to the members of the Marxist
25 circle of Khmer students. This circle included not only Pol Pot,

57

1 Ieng Sary, Ieng Thirith, Hou Yuon, Khieu Samphan, Mey Mann,
2 Thiounn Mumm, but, for the purposes of this trial, most important
3 there was Son Sen.

4 In 1954, Son Sen was a member of the PCF cell in the Maison
5 D'Cambodge. He became a member of the standing committee of the
6 Central Committee, Vice-Prime Minister and Minister of Defence of
7 Democratic Kampuchea, commandant and chief of the Chief of Staff
8 and, in this capacity, the commander of all the armed forces and
9 the political police, the Santebal.

10 [11.42.41]

11 Son Sen, who was a member of the supreme national council, which
12 institution was established by the peace agreements to represent
13 legitimacy and sovereignty of Cambodia during the transition
14 period, Son Sen was the mentor of the accused. He was the person
15 who trained him and protected him before 1975 and after 1979. He
16 was his immediate superior during the years for which the accused
17 is being tried today.

18 Son Sen was in France from 1950 to 1956. He participated in the
19 activities of the Marxist circle of Khmer students. As I said,
20 he was a member of the French Communist Party. Like his
21 comrades, he was involved in the debates that exercised the
22 communist world at the time.

23 It is useful for this Trial to remember what happened between
24 1950 and 1956 to the communist world. In the Soviet empire they
25 had the trials of 1936 to 1939 in Moscow, which had condemned to

58

1 death several famous architects of the 1917 Revolution and proved
2 that no one is beyond the reach of party justice.

3 And when Son Sen and the others were initiated into Soviet
4 communism, in Eastern Europe a series of well-publicized trials
5 involving authentic revolutionaries with heroic past.

6 At the end of 1949, there were trials in Budapest and Sofia where
7 dozens of Communist leaders were charged, tortured and condemned
8 to death.

9 In November 1952, there was a Prague trial of Rudolf Slansky, the
10 Secretary General of the Czech Communist Party from 1945 and
11 several other leaders and members of government including Artur
12 London who left his testimony in the form of a book called "The
13 Confession".

14 Many were heroes of the fight against partisan Fascism in
15 international brigades in Spain and in the Resistance during the
16 Second World War. This was the most important trial because of
17 the people who were being tried, but also because of the
18 reverberations that the Soviets wished to vest it with.

19 [11.45.21]

20 The idea was to prove that during this Cold War there was iron
21 discipline -- iron discipline was required, apologies were
22 required in the Party and that no one, regardless of his or her
23 past and merits, was free or was safe. This was the message that
24 was sent out to all communists in the world so that they could
25 close ranks and unfailingly follow the Soviet Party.

59

1 In France, "L'Humanitie" newspaper recorded or reported on all
2 stages of this trial and always called for revolutionary
3 vigilance.

4 In Paris, the French Communist Party did not want to be left
5 behind in respect of its Soviet model and from September to
6 December 1952, it organized its own trials. It tried two people,
7 Charles Tillon and André Marty.

8 In Paris, there was no torture or there was no execution, but
9 these people suffered or went through the same process of
10 degradation as that which was implemented in Eastern Europe. The
11 humiliation wasn't by the solitude in which the Party placed
12 these people by reporting them to the comrades. The negation of
13 the person presumed guilty whose militant life was challenged
14 calumny with accusations of spying, treason worked to undermine
15 the Party and the people; dialectic confinement which meant that
16 either the accused acknowledged his wrongs, denies years of
17 devotion, accused himself and served the Party or he refused and
18 he served the class enemy.

19 [11.47.23]

20 It is this process of degradation which was at the heart of the
21 methods that were employed in S-21. We realize that whilst they
22 were in France those who became the principal leaders of
23 Democratic Kampuchea received political education whose principal
24 characteristic was to be largely based on the Soviet model and
25 the practices of Stalinism. As has been already indicated,

60

1 however, one of those Cambodian students is one of those who
2 became the mentor, the protector and the immediate superior of
3 the accused.

4 While the Soviet model constitutes irrefutably the most important
5 ideological source of Democratic Kampuchea, we should bear in
6 mind the contribution of the Vietnamese Communists. The
7 theoretical work of Ho Chi Minh was added to other sources of
8 Marxism-Leninism, but we should bear in mind that Ho Chi Minh was
9 present in France in 1920 at the Congress of Tours where 21
10 conditions were examined and discussed for a long time.

11 The Vietnamese ideological inspiration is hardly distinguished
12 from Soviet inspiration. The Vietnamese source reproduces the
13 Soviet source. It is not original, but it is important to
14 mention it because it is to this Vietnamese source that, as from
15 1950, Nuon Chea will be trained.

16 Nuon Chea from 1977 in September would be the direct superior of
17 the defendant. From 1952 to 1955, Nuon Chea spent three years in
18 North Vietnam for intensive political training.

19 I would now like to examine the three sources of terror as a
20 method of government. In my view the first source of terror is a
21 culture of violence.

22 [11.49.41]

23 It was mentioned earlier that I was head of the UNESCO program
24 of Culture of Peace in Cambodia and I was led to study violence
25 in the Cambodian society as a product of the tragic years of the

61

1 '70s, but it must be admitted that this violence is not new. It
2 is an historical fact that political violence is part and parcel
3 of the Cambodian society's fabric. Even if they agree to limit
4 themselves -- even if we agree to limit ourselves to the period
5 which began with independence of the country in 1953, the study
6 is edifying.

7 First the Democratic Party and then the Communist Party were
8 successively the subject of systematic suppression. Political
9 leaders, opposition journalists were assassinated. Members of
10 the opposition were shot and the pictures of their execution were
11 introduced ad nauseam in film news.

12 At the beginning of the '50s, the accused was too young to
13 remember the violence against persons which contributed to the
14 destruction of the Democratic Party, but the killing of Nop
15 Bophann, the editor of the leftist newspaper, "Pracheachon"; the
16 attack and public humiliation of Khieu Samphan, who was then the
17 editor of the newspaper, "The Observer", in July 1960; the arrest
18 in the same year of all the writers of the left-wing press who
19 were tortured, as we learned after their liberation; the closing
20 down of opposition newspapers; the assassination of the Secretary
21 General of the Communist Party in February 1962; police -- these
22 victims of police brutality in 1963; the filmed execution with
23 details of Preap In in 1964 are acts of violence which marked
24 Cambodian youth of the '60s. At the time, the accused was 20
25 years old. Under Sihanouk, it was enough to publish a poem of

62

1 the 17th century inviting civil servants not to ill-treat people
2 in order to be imprisoned.
3 [11.52.17]
4 With the beginning of the American war in Vietnam, violence
5 became more widespread. It can from the outside, but also within
6 the country. The Cambodian villages of various provinces
7 bordering Vietnam were attacked by the South Vietnamese troops
8 supervised by American officers causing the death of hundreds of
9 persons. From February 1969, with the operation known as Menu,
10 B-52 bombers of the U.S. Air force caused thousands of civilian
11 victims to lose their lives.
12 The violence of the Cambodian authorities did not reduce over
13 time. The peasant revolt of Samlaut in 1967-1968 which was
14 adopted for political reasons by the Communist Party of Kampuchea
15 was the subject of unprecedented repression: villages bombed,
16 peasants massacred, prisoners and their wives tortured. They
17 were capital executions of a nameless barbarity.
18 Violence increased, if that way is still possible, with the
19 plunging of the country into war which followed the 1970
20 pro-American coup d'état. The protests of enemies of the
21 government of the coup d'état were savagely suppressed and there
22 were hundreds of dead in the four provinces where they took
23 place. Civilians were slaughtered on the sole basis of their
24 ethnic origin. It was a pogrom; a massacre of Vietnamese people
25 whose scale aroused international interest at one point. The

63

1 blind violence of American bombings of villages extended to the
2 entire country. It seems important to recall here that we know,
3 since President Clinton ordered the declassification of documents
4 pertaining to American bombings in Cambodia, that 2,759,941
5 tonnes of bombs were dropped on Cambodia from October the 4th,
6 1965 to August 15th, 1973 on 230,516 sorties.

7 In comparison, 160,000 of bombs were dropped on Japan from 1942
8 to 1945 and 1,350,000 tonnes were dropped on Germany from 1940 to
9 1945. In all the history of humanity no other country has been
10 bombed as much as Cambodia. Cities like Memot and Snuol were
11 razed. The University of Takeo-Kampot was reduced to rubble.
12 Thousands of kilometres of canals and rice fields were destroyed.
13 Defoliants dropped by the American Army poisoned 150,000 acres of
14 forests and rubber plantations.

15 [11.55.57]

16 During the 1970 to 1975 war the fighting was accompanied by
17 extreme acts of violence in both camps. There was systematic
18 torture, beheadings, livers being torn out, as if from now on
19 everything was allowed and there was a total denial of human
20 dignity. Cambodia plunged into violence and took flame, and the
21 behaviour of everyone concerned has been affected -- deeply
22 affected. The violent settlement of disputes became the rule and
23 physical liquidation became the only form of resolving conflict.
24 A second source of terrorist method of government was political
25 violence as applied under the leadership of Democratic Kampuchea.

64

1 As I stated before, several leaders of Democratic Kampuchea had
2 been trained, particularly in France, to the Bolshevik and
3 Stalinist practices of Communism. We've seen what the principles
4 of Lenin were with regard to Party functioning: iron discipline,
5 elimination of doubtful elements. To seek the enemy within the
6 Party is in fact the title of a common form resolution of
7 November 1949, a directive written by Rákosi, General Secretary
8 of the Hungarian Communist Party, who was one of the instigators
9 of trials in Eastern Europe, was translated into a formula but
10 which I wish to draw your attention:

11 "It is preferable to arrest innocents than to run the risk of
12 leaving guilty persons go free."

13 This is a sentence which was published by "L'Humanitie" and this
14 is a sentence which we found in the Democratic Kampuchea in two
15 slogans, "It is better to arrest 10 persons wrongly than to
16 liberate one by mistake", or, "It is better to kill an innocent
17 person than to keep an enemy alive."

18 [11.58.07]

19 You will have noted the semantic slip which makes it possible to
20 go from the deprivation of freedom to physical elimination
21 because, as Arthur Koestler recalled in his book "Zero and
22 Infinity", he who was a member of the German Communist Party from
23 '31 to '38 and one of the Comintern agents, he said, "To regulate
24 a divergence of opinion we know only one argument, death."

25 The leadership of the Democratic Kampuchea Communist Party

65

1 applied literally the Soviet concept of the Party as most of its
2 members had observed from Paris. One, the Communist Party of
3 Democratic Kampuchea is under the leadership of a Centre with
4 extensive or broad powers. It is the equivalent of a Central
5 Committee made up of seven persons and two substitutes. This is
6 the small group which concentrates the gist of power, and Son Sen
7 was a member of it. This Standing Committee -- which the members
8 carry out their functions in a building which has a code name of
9 870 -- carry out all the responsibility conferred by the Party
10 upon the Central Committee in all fields: organization of the
11 Party, administration, the economy, defence, security. The
12 Standing Committee exercises absolute authority on the apparatus
13 of state as well as on the apparatus of the Party, which in fact
14 are fully merged.

15 Two, the Party practices an iron discipline which is expressed
16 through the elimination of the internal enemies, an elimination
17 which is not only a political one but also a physical one, an
18 elimination which is expressed by one word, to "smash"; "smash"
19 which means, according to explanations supplied by the accused
20 himself, to secretly arrest a person, to question that person
21 using torture, then to secretly execute the person.

22 [12.00.25]

23 In one of the working logs of S-21 dated 1976, which some have
24 called a manual for torture regarding the technique of extracting
25 confessions, it is stated that the objective is to obtain

66

1 confessions that are as detailed as possible. Artur London, who
2 survived the Prague trial, recalls in his book "The Confession"
3 published in 1968, the statement of his torturer, "What counts is
4 the confession." In one of the interviews I had with the accused
5 regarding his training to be in charge of a security centre he
6 told me, and I quote:
7 "Pol Pot and Son Sen wanted us to apply the Soviet practice as in
8 Moscow, Bucharest, Budapest, or Prague. No-one was sheltered."
9 Highly empowered, the Communist Party of Kampuchea began to
10 eliminate some of its most prestigious militants -- Hou Youn,
11 former Sangkum deputy minister of GRUNK, minister of Democratic
12 Kampuchea until he was eliminated; Chhouk, veteran of the Issarak
13 movement; Keo Meas, who was a veteran of Pracheachon, one of the
14 founders of the Party; Keo Moni, who was an Issarak veteran; Mey
15 Pho, the most illustrious of veterans, who had taken part in the
16 coup in the royal palace on 9 August 1945; Non Suon, minister of
17 agriculture -- all were executed between April '75 and December
18 '76.
19 Koy Thuon, minister of trade, former collaborator of Khieu
20 Samphan in the paper "Observer"; Touch Peoun, a minister of
21 public works; Sien An, one of the founders of the Marxist Circle
22 of Paris; Phouk Chhay, left-wing intellectual whom Sihanouk had
23 sentenced to life imprisonment; Tiv Ol, former teacher and
24 left-wing intellectual forced into the underground from '67; and
25 Hu Nim, a former MP of Sangkum, minister of information, were all

67

1 executed in turn in the weeks that followed -- even Nat, the
2 first director of S-21, was incarcerated and executed on orders
3 of the Party.
4 [12.02.39]
5 Two members of the government, Vorn Vet and Kung Sophal, were
6 executed in 1978. To exercise the leadership of one of the 197
7 security centres did not at all shield you from this. The fact
8 that some are still alive today and have not been prosecuted,
9 nevertheless several score of them have been executed and for all
10 the cadres of the Party the message was clear: no-one was safe,
11 and the fact is that over 80 percent of S-21 victims in fact
12 exercised some function within Democratic Kampuchea. And one
13 must perforce observe that some of the victims of S-21 might, had
14 they survived, been prosecuted by the Extraordinary Chambers.
15 Three, the Communist Party of Kampuchea from 1963 operated in the
16 underground. It instituted a secret practice and a partitioning
17 method which became a mode of leadership and management of the
18 Party and from 1975 became a mode of government of the country.
19 In 1970 when FUNK was created, a secrecy conserved the dominant
20 political force within, as well as its leaders, who remained
21 anonymous. Throughout the war, apart from Prince Sihanouk, on
22 behalf of whom all of the FUNK forces claimed to be fighting the
23 personalities that were put forward were former progressives of
24 Sangkum: Hu Nim, Hou Yuon and Khieu Samphan. Tens of thousands
25 of people who went into the forest to join FUNK knew only of the

68

1 rather sympathetic program of the FUNK. They were unaware of the
2 fact that at the heart of the FUNK one found the Communist Party
3 of Kampuchea. They were totally unaware of the specific
4 orientations of the leadership of that party.
5 In 1975, when FUNK became victorious, few knew that since 1973 it
6 was entirely under the control of the Communist Party of
7 Kampuchea and, more specifically, by the faction in the party
8 which was most radical under the leadership of Pol Pot. When the
9 latter took control of the country in April 1975, it hid itself.
10 It cloaked itself behind a vague term which in Khmer means
11 "organization" and which was the Angkar. "It is absolutely
12 necessary to maintain secrecy" Son Sen said at the time.
13 [12.05.27]
14 "From liberation, it is secret work that is fundamental; secret
15 work is fundamental in all that we do" is what Nuon Chea repeated
16 endlessly. "To preserve secrecy and partition the organization
17 of the party, orders are always conveyed on behalf of Angkar.
18 All decisions are taken on behalf of Angkar. They are all
19 implemented in all layers of the country on behalf of Angkar."
20 And this anonymity made it possible to have particular strength.
21 It gave an impression of power and, at the same time, created and
22 sustained a feeling of uncertainty and fear in the population.
23 That impression and that feeling quickly spread because it was on
24 behalf of Angkar that the evacuation, the forced evacuation of
25 towns and cities, forced installation in peoples co-operatives,

69

1 elimination of currency and total reorganization of society, were
2 created under the authority of Angkar. Every aspect of everyday
3 life is undertaken under the authority of Angkar. Fear of Angkar
4 when people are called upon to go to a given place and never show
5 up again and, of course, when the murmurs about executions began
6 to occur.

7 The Angkar requires total and unconditional loyalty. Any failing
8 must be either confessed or must be reported and thus delation
9 became in fact a constant behaviour. Everyone is watching and
10 spying on everyone in a society that is exacerbated where
11 everyone is becoming the spy of all.

12 And so the circular instructions which were sent out to the cadre
13 of the Party, the army and security apparatus, total obedience to
14 Angkar was identical with that required from communist parties in
15 the Soviet empire. The comparison between certain slogans of
16 Democratic Kampuchea and formerly used during Stalinist show
17 trials is striking.

18 [12.07.45]

19 Artur London recalled that his torturers constantly repeated,
20 "You must trust the party and you must let the party guide you."
21 And an echo of this is heard amongst the torturers of S-21 when
22 they write in the manual that was already mentioned, and I quote:
23 "What is most important is to believe absolutely in the party or
24 further to believe in the party, to respect the instructions of
25 the party, absolutely and unconditionally."

70

1 Third and last source of terror as a method of government, the
2 specificity of Pol Pot's communism. The communism of Democratic
3 Kampuchea, which I would call Pol Pot-ism, has a series of
4 specific features which when they are brought together will
5 supply a unique interpretation of Marxist doctrine amongst all
6 the interpretations that we have known until that day. That
7 interpretation emphasizes state terrorism that is specific to any
8 totalitarian regime.

9 Pol Pot-ism is not internationalist; it is nationalist. The
10 leadership of Democratic Kampuchea vehiculated an expansionist
11 form of nationalism characterized by territorial claims and by
12 irredentist claims. Their statements evoked lost territories and
13 claimed that there is a need to re-conquer these territories as
14 far as one can find Khmer language writings.

15 And this is the origin of repeated attacks against Vietnam and
16 obsession with the Vietnamese enemy, an obsession which after the
17 breakdown of diplomatic relations at the end of 1977 and the
18 development of a state of war between the countries, was to lead
19 to the elimination of tens of thousands of persons with the
20 reasoning that they had a Vietnamese mind in a Khmer body.

21 [12.09.54]

22 Pol Pot-ism is not democratic; it is a completed oligarchic
23 model. The people of the regime of Democratic Kampuchea never
24 enjoyed popular support. The opposition to Lon Nol was in fact
25 incarnated by Sihanouk, to which the leadership of the Communist

71

1 Party seemed to be paying heed and even within the ranks of the
2 Communist Party of Kampuchea, the political line of Pol Pot and
3 of his assistants never was the object of fully expressed
4 support.

5 Prior to '75, as well as after 1975, Cambodian communists in
6 their majority escaped the characteristics of Pol Pot-ism. This
7 means that the leadership behaved as in a besieged fortress, with
8 the resulting instructions to chase after enemies of the inside
9 and using terror as a mode of government.

10 The directive of 30 March 1976 called the Decision of the Central
11 Committee on Various Issues, tackles at first a question and I
12 quote:

13 "...of the annihilation within the ranks and outside of the ranks
14 of the party."

15 Pol Pot-ism is autarchic. The will turned into a slogan to count
16 exclusively on your own forces led to a feeling that reinforced
17 the besieged fortress feeling and distrust of all. Pol Pot-ism
18 contains a racist dimension. "One must protect the purity of the
19 Khmer race" is one of the slogans most often repeated by the
20 highest leaders of Democratic Kampuchea.

21 [12.11.50]

22 This determination was expressed in the physical elimination of
23 various human groups that were oddly qualified as a Sino-Khmer,
24 Viet-Khmer, Cham-Khmer, et cetera.

25 It led also to radicalization of unprecedented radicalism. After

72

1 the forced evacuation of towns and successive deportation of
2 entire populations, collectivization of agricultural lands,
3 abolition of currency and of trade, no goods, no house, no land
4 belonged to a single individual any more. Dispossession was
5 total, to the extent even that it refused that persons could be
6 free to use their own identity, time, choice of relations, and
7 even, even, conferred upon cadres of the party, the choice of the
8 man and woman who become a couple, and the choice of the intimate
9 moments that they could enjoy together.

10 In the co-operatives where Cambodians are regrouped, in fact,
11 often it is the case that they don't even own the utensils which
12 they use in order to feed themselves. It has never ever been the
13 case in the history of humanity that collectivization has gone so
14 far as it did under Democratic Kampuchea.

15 Never in human history has the negation of human dignity been
16 carried so far. Never has it been the case that a political
17 regime had imposed such a disposition of self, not only upon a
18 given category of individual, but upon an entire population
19 including those serving the regime. Pol Pot-ism expresses the
20 determination to go to the new society in a single leap with no
21 transitional steps.

22 The basic purpose was to do better than Lenin and Stalin, to go
23 further than the Chinese and the Vietnamese in the creation of
24 the society that they want. The most radical transformations
25 were implemented with an intensity that knows no equal without

73

1 the slightest consideration for human cost.

2 [12.14.10]

3 Lastly, Pol Pot-ism expresses, as rarely has been the case in the
4 history of human kind, the most total scorn for human beings as
5 could be witnessed and testified to by slogans such as, "Our
6 heart bears neither feeling nor a spirit of tolerance," or,
7 "Whoever protests is an enemy," and, "Whoever opposes or resists
8 is a cadaver."

9 Mr. President, distinguished members of this Trial Chamber, the
10 accused states that he was both the helper and a prisoner of the
11 system. Upon analysis, I must say that the situation which he
12 describes is reality. A great anti-Fascist intellectual, one of
13 the great French writers of the twentieth century he was also a
14 resistant against Franco-ism and Nazism, stated, and I quote:
15 "We refused what the beast wanted of us and we want to return to
16 the human wherever we have found what crushes it, and we found at
17 the highest level of the leadership of Cambodia, men and women
18 who made it possible that the beast within us could have free
19 rein to express itself. They are the ones who opened the doors
20 of barbarity and it is they who should shoulder, first and
21 foremost, the greatest responsibility. Those who followed, those
22 who followed by the subservience or zeal nevertheless are not
23 innocent."

24 [12.15.57]

25 And I would like to conclude with this question Mr. President,

74

1 who can, in conscious, face with the dilemma of having to kill in
2 order to avoid being killed can assert and affirmed that he will
3 make the ultimate sacrifice?

4 Thank you.

5 MR. PRESIDENT:

6 The Chamber is very grateful to Mr. Raoul Marc Jennar for your
7 comprehensive testimony. However since it is already an
8 appropriate time to take the adjournment for lunch, although we
9 have not yet completely heard of the testimony of yours and that
10 the parties to the proceedings will be putting questions to you,
11 so the Chamber would like to request that you come back to the
12 courtroom after lunch break when the session resumes at 1:30 pm.
13 The court is now adjourned for lunch break. Court official is
14 now instructed to assist the expert and the security personnel
15 are advised to take the accused back to the waiting room.

16 THE GREFFIER:

17 All rise.

18 (Judges exits courtroom)

19 (Court recesses from 1217H to 1334H)

20 (Judges enter courtroom)

21 MR. PRESIDENT:

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

23 Judges of the Bench, would you wish to put questions to the
24 expert? You take the floor, Judge Lavergne.

25 [13.35.08]

75

1 BY JUDGE LAVERGNE:

2 Q.Mr. Jennar, what I heard this morning was that you had had the
3 opportunity to conduct a number of interviews with the accused.
4 You told us, amongst other things, of the sources of ideological
5 inspiration of the Communist Party of Kampuchea. I'd like to
6 know whether you discussed this part of your report with the
7 accused. In particular, you talked about the culture of violence
8 that pervaded this country.

9 We have had to put questions regarding the political violence
10 that the accused may have experienced. Did you deal with this
11 when you talked with the accused, and could you tell us what the
12 accused said about this?

13 A.Thank you, Your Honour. I talked with the accused at length
14 on the ideological sources of the Democratic Kampuchea regime but
15 I did not talk specifically about the issue of violence and
16 political violence. What I discussed this morning was the result
17 of my historical research of the period beginning with the
18 country's independence in 1953. I did not specifically discuss
19 the issue of political violence with the accused.

20 Q.So he never told you that political violence was something he
21 accepted as part of the struggle, as being inherent to the
22 policies of the Democratic Kampuchea Communist Party. All right.

23 A.Sorry, I cannot report what was not said to me. Even if it is
24 possible that one might have an opinion on the Communist
25 struggle, this was not mentioned specifically.

76

1 [13.37.56]

2 Q.This morning there was a discussion of sources. You talked
3 about French and Soviet sources. I would like you to develop the
4 issue of the Chinese source because it seems to me that there was
5 not a great deal of explanation in this regard, and yet it seems
6 to me that based on what the accused has said and his personal
7 history and what he said about his pride in seeing China being
8 the spearhead of a major revolution, this may have contributed to
9 restore the image of the Chinese. Did you discuss this with him?
10 For example, do you know what sort of books the accused may have
11 read or not?

12 A.It is true that we did discuss the role of China in the
13 ideological training of the accused. As you yourself have just
14 stated, however, I believe what the accused perceived was above
15 all else this restoration, as it were, of Chinese national pride;
16 the restoration of the pride of a country that had been pillaged
17 and partitioned by us Europeans, and which with the victory of
18 the Chinese Communist Party of Mao Tse Tung was regaining a sort
19 of national pride.

20 He mentioned works in that regard, particularly the works of Mao
21 Tse Tung himself and others, but I did not get the feeling that
22 this had informed his behaviour. In any event I did not feel
23 that his reading of Chinese works, if one may put it that way,
24 contributed in any way, apart from the adherence to Communism in
25 the broadest sense of the term. So it did not support his

77

1 specific role as somebody who carried out orders in Democratic
2 Kampuchea.

3 Q.With regard to the events described as the Chinese Cultural
4 Revolution, did he discuss this? Was this important? These are
5 fairly recent times we're discussing and it seems to me that
6 there could be some commonalities. Did you discuss this?

7 [13.41.02]

8 A.I'm sorry, there are some habits that are hard to adopt. The
9 Chinese Cultural Revolution was of great influence in Cambodia.
10 There was a Sino-Khmer solidarity association which included Hu
11 Nim, one of the future ministers of Pol Pot and one of the
12 victims of S-21. He was prosecuted by Sihanouk for distributing
13 Mao's "Little Red Book" during the Cultural Revolution.
14 But it is not my personal feeling that the events of the Cultural
15 Revolution, apart from the fact that they supported the
16 motivation and membership in Communist organizations -- supported
17 the Cambodian Communist struggle -- apart from that I do not
18 think that it was a decisive influence in what became Democratic
19 Kampuchea. Apart from, as I said with reservation, certain
20 aspects of agrarian collectivism or rural collectivism, I said
21 before that China never did go as far as Democratic Kampuchea in
22 terms of collectivization of rural farms, which is why I
23 emphasized that they wanted to have a great leap forward, as Mao
24 had done.

25 Q.This morning, with regard to the influence of the Soviet

78

1 Union, you mentioned trials. In my view one of the
2 characteristics of Democratic Kampuchea was in fact the absence
3 of trials. You talked about secrecy. It appears to me that any
4 proceedings were conducted in the utmost secrecy; that the nexus
5 between this Soviet source and what happened in Democratic
6 Kampuchea might be the confessions -- what we call confessions.
7 In the French we use "confession" and "aveu" but here in this
8 Court it's "confessions" we use.
9 In your discussions with the accused did you discuss with him the
10 importance of these confessions?

11 [13.44.04]

12 A.I quite agree with you, Your Honour. There were no trials in
13 Cambodia. I emphasize the importance in political training of
14 young Cambodians in Paris of the procedures that were used during
15 these trials and these were personality constructs which were
16 devised by the interrogators. I suspect you know this quite as
17 well as I do. Arthur London in the book of confessions as shown
18 in the film that was produced afterwards showed this.
19 The important thing in my view is that they were seeking
20 confessions and we used the word "confessions" in Cambodia
21 because the researchers here were Anglo-Saxon and they used the
22 word "confessions". And I think they are referring to
23 "santepheap" the word in Khmer -- if I am not mispronouncing this
24 word with my poor accent.
25 In any event, it was the same thing that was being referred to.

79

1 It was a technique which was at the heart of what was done in the
2 196 security centres of Cambodia. They were seeking a statement
3 from someone who had been found guilty beforehand in any event so
4 that they could justify their act and therefore so that they
5 could use this confession against those who were the next on the
6 list, if I may put it that way.

7 [13.45.48]

8 Much has been made of this because it is a key element and in
9 fact the accused himself said that his work consisted
10 fundamentally of re-reading confessions rather than carrying out
11 interrogations himself. And when you look at the volume of
12 documents you will realize that a lot of time was needed for
13 this.

14 So that part of his role was reflected in our discussions. We
15 talked about this at great length and in fact I did try to find
16 out more. I wanted to find out who had taught him this technique
17 so that he too could teach it to the interrogators because this
18 was one of the sources of terror or torture. This was the
19 ideological source and Son Sen played a major role in this
20 context although he was not alone. Vorn Vet was also an
21 instructor of the accused but Son Sen played a preponderant role,
22 which is why with a little help, I tried to establish a link
23 between what Son Sen did in Paris, what he learned in Paris, and
24 what he did when he was the accused's superior.

25 Q.During your discussions did you feel that the accused was

80

1 aware that these confessions were used to lend weight to
2 accusations, to definitions of the enemy which were provided by
3 the Party Centre? Beyond that did you feel or did the accused
4 indicate to you that he had contributed to the development of
5 these definitions of the enemy or the enemies of the Party?

6 A.Very briefly, the accused indicated that he did not believe
7 that it was through the techniques such as torture that the truth
8 could be obtained; that what is the truth?

9 [13.48.50]

10 On numerous occasions he said that he did as he was told. Did he
11 contribute to the definitions which were useful to the Centre?

12 Quite possibly because he obeyed orders from the Central
13 Committee of the Party, he emphasized strongly and he used
14 references to daily telephone conversations with Son Sen that
15 these were the instructions of Son Sen and it is on these
16 instructions that he acted as he did.

17 His whole framework for explaining his actions was based on the
18 fact that he was really to implement instructions issued to him.

19 He was particularly sensitive with regard to deciding the final
20 fate of the victims. In the conversations I had with him he
21 referred each time to the instructions he had received.

22 Q.This morning you also mentioned terror. I'd like to know
23 whether you discussed the types of relationships that he himself
24 had, the accused himself had with the S-21 personnel. Did you
25 discuss this with the accused?

81

1 A. Not at all.

2 Q. Because in the course of the proceedings the Court has heard
3 of people being reported. This was a widespread practice. It
4 would appear that Duch himself said that he reported to his
5 superiors the conduct of his subordinates where he found that
6 such conduct was contrary to that expected of a model guard or a
7 cadre of the Communist Party.

8 So you didn't discuss this at all, did you?

9 A. I repeat that we did not discuss the relationship between Duch
10 and the staff of the Centre. That said, it is but normal in such
11 a system where reporting is the rule that it was part of the
12 system.

13 [13.51.47]

14 I studied the camp in Boeng Trabaek where the diplomats were
15 interned as well as students. There was the centre director who
16 was required to report to Office 870 and who was required to
17 report bad behaviour or defection or poor attitudes of the staff
18 and the prisoners. So this was a general system where everyone
19 spied on everyone else and whoever failed to do so might himself
20 be under threat.

21 But this is a personal deduction rather than a conversation or
22 the result of a conversation with the accused.

23 Q. This morning we also discussed racist background in the
24 policies implemented by the Communist Party of Kampuchea, the
25 CPK. Did you discuss this with the accused or did he tell you

82

1 that he was aware of these problems? Did he tell you whether
2 some of the S-21 detainees were detained on racist grounds?
3 A.No. We discussed the presence of Vietnamese prisoners in
4 connection with the situation of the relationship between the two
5 countries but we did not discuss racism.

6 If I may speak more freely, because I have been in contact with
7 Cambodia for 20 years now, no-one can deny that when reference is
8 made to the Vietnamese in Cambodia, one hears in response
9 something that is not very fraternal, so it is not surprising
10 that one might hear something different from the accused than
11 from other Cambodians. There is a little of what we experienced
12 in Europe; you know, the way the French viewed the Germans and
13 the Germans viewed the French, with degrees of feeling that have
14 led to disaster on some occasions.

15 Q.I would now like to move on to another problem, a somewhat
16 thorny issue, which is the role of S-21 as compared to other
17 detention centres.

18 We know that there were many security centres in Cambodia. What
19 I would like you to tell the Court is whether, in your view, S-21
20 was a centre with some specific characteristics that set it apart
21 from the others or whether, as I read in your note, it was just
22 one centre like many others in this general system of planned
23 liquidation.

24 [13.55.53]

25 So if there are any peculiar characteristics of S-21, what are

83

1 they; what can you tell us? I should add that in your note you
2 said, in reference to documents not attached to your paper and
3 which are not in the record of the case, that S-21 was not at all
4 the principle place where exterminations were conducted.

5 A.I think there is an objective and a subjective peculiarity to
6 S-21. Subjective in the sense that since S-21 is in the
7 country's capital and because from 1979 it was transformed into
8 the Genocide Museum -- to use its title -- because that's where
9 the journalists go, and this is where attention has been drawn
10 the most, forgetting that at the beginning there was not much
11 about S-21. It only came after the research of DC-Cam which
12 highlighted the number of other security centres.

13 But there is an objective peculiarity because, unlike other
14 security centres, in S-21 victims included people coming from all
15 over the country. These were people who, when they arrived in
16 S-21, had been sent there by the Standing Committee of the
17 Central Committee. So there is a peculiarity with regard to
18 S-21.

19 I did mention it a while ago. It was in S-21 that, in varying
20 proportions, but in the majority where we found cadres of various
21 levels of Democratic Kampuchea who had come from all the
22 provinces or the zones, to use the terminology at the time of the
23 country. That said, it is still a little difficult to discuss
24 something that involves huge suffering and death. It's like a
25 classification of horror.

84

1 [13.58.57]

2 It remains true, however -- and this is what I was referring to
3 in my quote that you referred to yourself -- that there were
4 other security centres in Democratic Kampuchea or, at the very
5 least, there are reservations with regard to the counting of the
6 bodies or skeletons as they have now become. There were larger
7 numbers of victims than in S-21.

8 It doesn't mean that anybody's innocent. I will tell you
9 frankly, if you will allow me, that it is not only the accused
10 who should be accused as the head of a security centre. All we
11 need to do is to find all the heads of security centres who are
12 still alive today and many of us do know that some of them are
13 still alive. They are living peacefully whereas apparently they
14 were heading security centres where they were a large number of
15 victims, and sometimes a lot more than in Tuol Sleng.

16 Q.Now, amongst the specificities of S-21, is there perhaps one
17 related to the fact that S-21 had several branches; the Tuol
18 Sleng branch but also the one called S-24? And if you can reply
19 to this question, was it the case that all the security centres
20 were made up of several branches or were they differently
21 organized?

22 And another question. Do you know are there reliable statistics
23 -- more reliable than those about the number of persons who were
24 killed -- reliable statistics that would enable us to find out
25 how many persons were employed at S-21? Do you know how many

85

1 people were employed at S-21?

2 A.Well, the elements you are referring to -- the fact that there
3 were several divisions or sections or branches like S-24 and S-21
4 -- that's part of what I would call an objective specificity.
5 That's clear, and staff, even if it did vary, according to
6 current knowledge, it's a bit difficult to give figures because
7 when you have figures as apparently accurate as what is put in
8 the S-21 case -- and even if the former director of S-21 was a
9 very exact and cautious man, meticulous man -- but, nevertheless,
10 with regard to S-21, apparently because research was not carried
11 out with the same degree of intensity in the other centres,
12 particularly those where we think that there were far more
13 victims than in S-21.

14 [14.02.37]

15 But apparently, out of intellectual loyalty, it would appear that
16 there were fewer staff in other security centres because they
17 focused less, as I mentioned earlier, on confessions, so this is
18 an argument as well because we found no confessions elsewhere.

19 But it should be said that according to the statements of the
20 accused himself on the eve of 1 January 1979, Khieu Samphan said,
21 "Don't worry, the Vietnamese will not enter Phnom Penh" and that
22 this is one of the main reasons why the records of S-21 were not
23 destroyed. There was much more time in the other security
24 centres of Cambodia to destroy such records.

25 So I would be more cautious than others to say, well, since there

86

1 are no records elsewhere there was probably less of that taking
2 place. I think that here again there is a field of investigation
3 for research in order to establish the exact scope of the
4 phenomenon of physical elimination as a method of government.

5 Q.Thank you very much, sir.

6 JUDGE LAVERGNE:

7 I have no other questions for the expert.

8 MR. PRESIDENT:

9 Next, the Chamber would like to give the floor to the
10 Co-Prosecutor to put questions to this expert. The
11 Co-Prosecutors have 15 minutes.

12 MR. TAN SENARONG:

13 Thank you, Mr. President.

14 QUESTIONING BY THE CO-PROSECUTORS

15 BY MR. TAN SENARONG:

16 Good afternoon, Mr. Jennar -- Raoul. I have some questions for
17 you.

18 This morning, and just then in your response to Your Honour, the
19 strategies used by the leaders during the Democratic Kampuchea
20 regime, based on you research would you be able to tell the
21 Chamber the strategies or approaches used by the CPK during that
22 time?

23 Were they copied from other Communist countries, especially from
24 the former Soviet Union, from the Lenin-Stalin or from China or
25 from the Cultural Revolution in China or from Vietnam?

87

1 A.If my understanding is correct, Mr. Prosecutor, when you use
2 the term which is translated as "strategy" you're talking about
3 the project that was implemented?

4 [14.06.09]

5 Q.Would you please repeat your statement?

6 A.Well, in the French translation of your question the term
7 "strategy" was used. And I wanted to know whether what you meant
8 by this was the political project that was implemented.

9 Q.I have a problem with my earphones.

10 What I said is in reference to your report. At section 5 you
11 talk about the strategies used by the CPK. The CPK inaugurated
12 and implemented the use of such strategy and you talk about the
13 former Soviet Union, about Lenin and about Stalin.

14 So my question is the strategy implemented during the Democratic
15 Kampuchea, was it cloned or copied from those Communist
16 countries?

17 A.Well, as I said in my introduction this morning, and this has
18 been confirmed in numerous writings, Democratic Kampuchea wanted
19 to reach ideal Communist society in a single leap without any
20 transition, and we have writings in the archives of S-21, in the
21 records, of this determination to do better than the Soviet
22 Union, better than Lenin and Stalin because for those who follow
23 their thinking -- in fact the leaders of Democratic Kampuchea
24 think that they almost betrayed and they were almost traitors.

25 And the determination to do better than Mao's China, so there was

88

1 some sort of irrational dimension to this determination to outdo
2 everyone in the Communist world, whatever their political house;
3 better than those who were following Beijing, better than those
4 who were following Moscow.

5 [14.08.55]

6 This will to achieve excellence in a system which obviously --
7 and I said it and I emphasize this a lot -- took no account
8 whatever of the human cost in this vision of the revolution. No
9 transitional margin was calculated into this project.

10 So with regard to Party organization, security apparatus, I have
11 tried to show that, as far as I am concerned, the inspiration
12 comes more from Stalin, is more Soviet in nature even though
13 there was certainly an attempt here to implement a rural or
14 agrarian collectivism that was absolute. Here the connotation is
15 more Chinese.

16 But once again, by going further than that, in China, rural
17 families were not dismantled. Collectivization of land was not
18 carried as far in China as it was in Democratic Kampuchea. This
19 is the specificity. This is what I call the specificity of Pol
20 Pot-ism; this will to go faster, farther than all the others in
21 the edification of what they called Communism without any account
22 or consideration given to human life.

23 Q, Thank you, Dr. Jennar. My second question:

24 Based on your research, can you respond in brief -- the cruelty
25 and the barbarity during the mass killing, torture and the

89

1 administration system in various detention centres, particularly
2 S-21 Centre -- were the mechanisms similar or were it special
3 compared to this sort of system implemented in various other
4 Communist countries?
5 [14.11.27]
6 A.Concerning the operation of a security centre such as S-21,
7 the determination to extract from prisoners what was called
8 confessions or "aveux" in Europe and in Eastern Europe in
9 particular, but also in Russia and the Soviet Union, I see no
10 major difference except what we -- I mentioned to Judge Lavergne;
11 the fact that there were trials taking place, but trials which
12 are far removed from the vision one has of public justice and
13 adversarial justice in a democracy.
14 It was staged. This is what happened. In the Soviet Bloc
15 countries the trials were staged. The objective was to extract a
16 confession to achieve the depersonalization of individuals, their
17 humiliation, and in a manner which was certainly less systematic
18 in the Soviet empire than was the case in Democratic Kampuchea.
19 Capital punishment practised on a very large scale, and I have
20 alluded to this in Budapest and Sofia -- scores of persons were
21 sentenced to death. But the proportions cannot be compared. In
22 gauging horror, Democratic Kampuchea also practised a single-leap
23 approach.
24 Q.Thank you. This is my last question. Can you respond briefly
25 because we are on time limit.

90

1 Do you think the national reconciliation can be achieved and, if
2 there were an amnesty or pardon for the accused here, would it be
3 possible? Can you respond briefly?

4 A.You are asking me to give a short answer to a question that is
5 very difficult and sensitive. And in all honesty I believe that
6 I can't say yes or no in answer to your question. Neither can
7 one use a brief summary response. There are many people who are
8 survivors, who have suffered, who carry with them a grief and
9 pain that is far from being over and that there is a need -- this
10 country needs peace as much as it needs rice. It needs to turn
11 to the future. So we see objectives that are sometimes
12 contradictory and I'm afraid here that I'm going to fall outside
13 of the framework of this trial and speak of contemporary
14 Cambodia, and it's not my role.

15 But having witnessed operations where Khmer Rouge units rallied
16 the new government in the nineties, I would be tempted to say
17 that reconciliation is a process that must not leave justice by
18 the wayside.

19 Q.Thank you, Dr. Jennar.

20 MR. TAN SENARONG:

21 Thank you, Mr. President. My colleague will take the floor.

22 [14.15.25]

23 MR. DE WILDE D'ESTMAEL:

24 Thank you, Mr. President. If you will allow me, I have a few
25 questions that seem important to me for the witness, and it may

91

1 be the case that I will speak a little bit beyond the time that
2 we've been allotted, but since we went rather fast this morning I
3 would like to beg the Chamber to allow me to go to the end of
4 some of my questions, particularly with regard to the role of
5 S-21 in the Santebal.

6 BY MR. DE WILDE D'ESTMAEL:

7 Q. But before doing this, I would like to clarify something, sir.
8 I've read some of your writings, articles and books that you've
9 written about Cambodia, and you've written essentially from the
10 point-of-view of political analysis.

11 First of all, I would like to know if you carried out research of
12 an historical nature on a large scale with regard to -- or
13 concerning, rather, Democratic Kampuchea or if you referred
14 mainly to books already written by historians or research already
15 in existence?

16 It seems to me that you've concentrated more on a contemporary
17 era in Cambodia from 1989 on, which is when you came here. So
18 could you tell us about your research with regard to Democratic
19 Kampuchea?

20 A. Well, I won't argue the fact that I worked a great deal more
21 on the period following '79 than on the '75 to '79 period.
22 Nevertheless, and it was mentioned earlier, with an historian
23 called Ben Kiernan from Yale University, I was a member of the
24 scientific council which was the prelude to the creation of
25 DC-Cam and, in this capacity, I took part in research work,

92

1 particularly in those areas that were discussed with Judge
2 Lavergne -- the racist nation of the political positions of
3 Democratic Kampuchea.

4 [14.17.49]

5 Q.Thank you. More specifically, did you carry out specific
6 investigations of Santebal and the role of S-21 inside the
7 security apparatus of Democratic Kampuchea and, if so, did you
8 publish this? Perhaps I did not see some of the publications
9 that you have made.

10 A.Well, no, I did not publish anything on the subject. However,
11 within the same -- and working within the same team, at a time
12 when information was far more scarce than today -- I'm talking
13 about the eighties and the nineties -- with a team located in the
14 United States, we tried to identify a certain number of elements
15 which could be translated today in the determination of the chain
16 of command of the security apparatus, and I did work in this
17 framework.

18 Q.Thank you. In your written contribution, as Judge Lavergne
19 said earlier, apart from general mentions of sources, we didn't
20 find any footnotes that would support each one of the arguments
21 and conclusions that you shared with us. However, you're an
22 analyst, you're a professional researcher, and I'm a bit
23 surprised by the method that you employed. Could you explain to
24 us why you made this choice which prevents us from verifying the
25 facts that you mention in this contribution?

93

1 A.Oh, I understand your question quite well and when I see a
2 text which is not supported by references I'm the first to regret
3 this, but I did what I was asked to do. I was asked to prepare a
4 150-page study. Had I been asked to do a 150-page study with 40
5 pages of footnotes, I would have done it. But in fact I was
6 asked to prepare a short document which contained the essential
7 aspects of what I felt deserved to be mentioned and which we came
8 to with Judge Lavergne. I'm perfectly aware of the fact that
9 such a document is weak in the eyes of someone who needs
10 convincing, but I did only what I was told.

11 [14.20.38]

12 Q.Well, perhaps we can give you the opportunity to make up for
13 this, if possible. Could you give us the list of your sources
14 which would enable you to conclude that the 196 security centres
15 listed by DC-Cam which are referred to, and I quote:

16 "...are split into four categories. Each type of centre is based
17 on the authority of the corresponding administrative unit without
18 any hierarchy between these different levels".

19 This is your document E82, page 7 of the French.

20 Now, can you tell us what source you relied on to come to the
21 conclusion that there was no hierarchy between these security
22 centres?

23 A.Well, the sources are the DC-Cam documents. All the research
24 I carried out on this is based on DC-Cam. I can't give you the
25 reference numbers of the documents from memory, I'm sure you can

94

1 understand that, but these documents are in the archive and
2 documentation repository of DC-Cam, along with research already
3 performed by other researchers, and particularly one describing
4 the chain of terror which is quite explicit and deals with only
5 one area.

6 [14.22.19]

7 Now, it's on the basis of that research that I concluded that I
8 did not perceive that there was a hierarchical link. Of all the
9 figures that we have, I recall 196, maybe there were more but we
10 see no hierarchy between the different security centres. They
11 fundamentally all have the same function and the same role with,
12 as I said to Judge Lavergne before, the specific features of
13 S-21; for instance, as I said, the possibility to take into
14 custody and then to interrogate.

15 Basically S-21, the main difference with all the other centres,
16 had in fact jurisdiction over the whole country. Now, I cannot
17 say that this created a hierarchical link that placed S-21 above
18 all the other security centres and it is true that in S-21 you
19 will find persons whose responsibilities in the system came at a
20 much higher level than the victims of the other security centres
21 but, once again, apart from moral importance, from the
22 point-of-view of an administrative grid for a security system, it
23 did not place it in a higher hierarchical position.

24 Q.Thank you, but in your consultation you did state that in
25 Democratic Kampuchea the administrative structure was highly

95

1 hierarchical and you mentioned four levels precisely for the
2 security centres: those that were created at district level, at
3 regional level, at zone level and one single one which you
4 mentioned at the level of the Central Committee, and that is
5 S-21. Does this not tell us that there is a hierarchy between
6 the security centres, a hierarchy which is in parallel with the
7 power structure of the Democratic Kampuchea.

8 A.Well, in order to be able to state this with complete
9 certainty we would need to have in hand -- which I believe we
10 don't have -- traces of transfers from a district centre to a
11 regional centre, for instance. Whereas what we know on the
12 contrary -- and this is stated in a document dated 30 March '76
13 -- there is a district level responsibility, a zone level
14 responsibility and each time it is at that level without any link
15 or communication, if I may use the term. So this is what leads
16 me to think that there was no real solid hierarchy.

17 [14.25.40]

18 Q.If I go back to the example quoted by Mr. Vann Nath, who
19 testified here, if you know his story, he was arrested in a
20 cooperative in Balangk where he was detained for a short period
21 of time. He was then transferred to the Sector 4 security centre
22 in Wat Samrong for one night. Then he was transferred to Wat
23 Kandal in Battambang City, which was the zone security centre and
24 then finally, after having been detained in that location for
25 several days, he was transferred to S-21.

96

1 Does this not give us a clear idea that people who were arrested
2 were either interrogated and executed on the spot or were
3 transferred to the Central Security Centre if that person was
4 considered to be of importance? And would you have any contrary
5 examples where persons may have been arrested towards the centre
6 and sent to peripheral security centres in the districts or in
7 the zones from the Centre?

8 A.Well, the hypothesis of a contrary example that you mention is
9 not verified by the facts. I can't say either that what happened
10 to Mr. Vann Nath was current practice. Many of the people who
11 came to S-21 came directly. Perhaps they stayed overnight in a
12 local district or regional security centre; nevertheless they
13 were headed for S-21.

14 Q.How can one explain then that in S-21 we found not only 155
15 persons, according to certain lists that were produced -- 155
16 persons who were members of S-21 and were
17 arrested within S-21 and executed on the spot but also other
18 staff and cadres from other security centres in the rest of the
19 country. In fact, it is the accused who drew up a list of 40
20 names of persons who came from other security centres in the
21 country from all these zones.

22 [14.28.12]

23 How can you explain that they ended their life in S-21 and, as
24 far as we know, no member of S-21 staff was ever sent out to some
25 of the other regions' security centres?

97

1 A.As far as those in charge of those in charge of other security
2 centres are concerned, and I alluded to this this morning, to me
3 it's simple. The decision to send them to S-21 was based on the
4 Standing Committee decision that came from the Centre and that's
5 what made their transfer to S-21 so specific.

6 MR. DE WILDE D'ESTMAEL:

7 Mr. President, I would like to return to the conclusion of the
8 expert witness this morning.

9 BY MR. DE WILDE D'ESTMAEL:

10 Q.After having spoken to us at length about the influence of
11 Communism and Stalinism and the thought process of future leaders
12 of Democratic Kampuchea, at the end of his statement the expert
13 concluded by saying that he agreed with the fact that Duch could
14 be both a perpetrator and hostage.

15 Now, I didn't fully understand what this conclusion relied on,
16 whether it was the logical conclusion of everything that you had
17 explained before or whether something else came into play which
18 you didn't specifically mention. But I would like to draw your
19 attention to three elements amongst several others and hear your
20 comments.

21 The first, you said earlier that a certain number of persons had
22 answered the call of Prince Sihanouk to go in the jungle and join
23 the FUNK but Duch did not go into the forest or join the CPK as a
24 result of this appeal. He was in agreement with Party ideology;
25 as he said, he was ready to sacrifice his life for the Party.

98

1 [14.30.16]

2 And you also recall that when one became a member one had to be
3 aware of a series of fundamental principles, which he was
4 therefore aware of, and he was also familiar with the radicalism
5 of the CPK and came to know a certain number of his leaders quite
6 early on.

7 So we can't say that he was taken by surprise like the
8 Sihanoukists who had joined the FUNK. In fact, we believe that
9 he shared this ideology, as well as the consequences of this
10 ideology, and in particular the armed struggle which wouldn't
11 really necessarily make him into a hostage but rather into a
12 participant.

13 Now, secondly, you have the question of the terror which you
14 mentioned. Of course, one can say that this terror was extended
15 to all Cambodians, including those who participated in the
16 regime, but is it not also true that the accused vastly
17 contributed to this terror by his creativity, by his actions in
18 M-13, S-21, development of certain methods of torture which were
19 the result of his own past experience?

20 And the last thing that I would like you to give us an answer to
21 is how can one explain that if he was really a hostage, once the
22 Vietnamese took the capital city in 1979, why did he continue to
23 be a committed member of the Khmer Rouge for nearly 20 years,
24 whereas he may have had an opportunity, had he lagged behind, to
25 take advantage of the chaos of the debacle to part ways with his

99

1 companions.

2 When Nic Dunlop and Nate Thayer interviewed him in 1999, when
3 they discovered him he was still with the Khmer Rouge even though
4 Nuon Chea, Khieu Samphan and of course Ieng Sary before him had
5 gone to Phnom Penh already at the end of 1998. So it is the
6 length of his commitment. Can you really say that this is
7 representative of someone's status as a hostage?

8 [14.32.49]

9 A.Thank you. I did not say "actors and hostages". It was
10 "servants and hostages"; that's what I said. With reference to
11 your first point, that is whether it is not debatable that --
12 there is no debate on the fact that the accused was a member of
13 the Party and that he was part of a system which, as I have said,
14 was in the shadows or was in the shadow of President Norodom
15 Sihanouk of FUNK. There was no surprise element.

16 I have trouble accepting that the accused contributed to the
17 development of new methods of torture; those that were used in
18 S-21 were well-known before and even before M-13. They were by
19 no means new. They had been used. They were used in the prisons
20 of Norodom Sihanouk in the fifties and sixties. Did it
21 contribute to the terror? Of course they did. Any system that
22 uses methods such as these feeds terror.

23 With regard to your third question, I don't think it's as simple
24 as that. We know that on the 7th of January 1979 thousands of
25 people were taken by retreating Khmer forces to the Cardamom

100

1 Mountains and the Thai border, amongst other places, and there is
2 a network of mass graves of people who could not follow these
3 people and the Khmer soldiers any more because they were
4 exhausted.

5 A question might be put as to whether a person who had been
6 director of S-21 could think of defecting from his camp in a way
7 that would make him safe still. You have mentioned the chaos
8 that existed in 1979. Stability came soon after, at least from a
9 peacekeeping standpoint. It might be thought that the accused
10 saw no personal interest in defecting in light of the role that
11 he had played for four years previous to that, which means that
12 he felt more bound to stay, even though he knew that it was a
13 movement rather than a state where physical elimination
14 continued.

15 [14.35.50]

16 Proof of this is that when he defected he was the victim of an
17 assassination attempt which succeeded in killing his wife. This
18 confirms that there was some risk to his person.

19 I think going further than that would be speculation. I am of
20 the opinion that, and I know that comparisons are dangerous.
21 There is no head of an SS extermination camp who joined the
22 Allies. The majority tried to flee or to become anonymous,
23 primarily in Latin America.

24 So if you have a curriculum vitae, as it were, of Duch in 1979, I
25 do not think he would be inclined to join the regime or the

101

1 authorities that have overthrown the regime that you served.

2 MR. DE WILDE D'ESTMAEL:

3 Mr. President, if you grant me leave I should like to put a last
4 question.

5 MR. PRESIDENT:

6 You may proceed but please be mindful of your time allocated
7 because we would like to make sure that we finish hearing his
8 testimony this afternoon and I hope you would also help the
9 Chamber to suit this purpose.

10 MR. DE WILDE D'ESTMAEL:

11 I am afraid we did not hear what you said, Mr. President. So as
12 there was no translation I do not know whether I am allowed to
13 put the question or not.

14 [14.38.08]

15 MR. PRESIDENT:

16 Of course you are allowed to put your last question but please
17 reminded that the time allocated to you has been fully used and
18 we wish to remind you again that if the prosecution has used more
19 than the time allocated to you then the other parties would wish
20 to have their time doubled as well. And the Chamber is of the
21 opinion that if this system keeps going then we would probably
22 not be able to finish hearing the testimony of Mr. Jennar this
23 afternoon and we do not wish to have the session in relation to
24 this testimony to any time after the Pchum Ben festival.

25 So could you please try to limit to the time allocated for you

102

1 and use it wisely? Thank you.

2 MR. DE WILDE D'ESTMAEL:

3 Thank you.

4 BY MR. DE WILDE D'ESTMAEL:

5 Q. So this is my last question, Mr. Jennar.

6 On the 6th of August 2009 Judge Cartwright quoted David Chandler

7 in a question she was putting to him and she said:

8 "I am quoting from your book, Mr. Chandler. 'S-21 was probably

9 the most efficient institution in the country and, given that

10 S-21 was protected itself from its real and imagined enemies and

11 the Party's real and imagined enemies, S-21 was one of the major

12 organs of the party.'"

13 [14.40.08]

14 And Judge Cartwright asked whether this was consistent with the

15 emerging picture of S-21 in relation to other institutions of the

16 Santebal. And Mr. Chandler replied:

17 "Yes, indeed."

18 The judge analyzed other -- and it was said that:

19 "Having analyzed information from other centres it was

20 discovered that the same results were not obtained from

21 interrogations of other prisons of the Santebal. The other

22 prisons were not run from the highest levels of the Party. With

23 regard to the efficiency of other prisons, it would appear that

24 they were not at all as efficient as S-21. Unlike S-21, the

25 other centres did not attract the attention of the senior leaders

103

1 of the country."

2 So what I would like to know is your response to Mr. Chandler's
3 statements that S-21 was one of the most important organs of the
4 Party and the fact that it was in S-21 where they had the large
5 number of networks of traitors, thanks to the efforts of Duch and
6 his acolytes. There were people who were executed as a result of
7 this but was it not specific to S-21 that they collected as many
8 confessions and unearthed all this "networks of traitors" in
9 Democratic Kampuchea? Does this not make S 21 unique as an
10 institution of that type?

11 [14.42.15]

12 A.I am disappointed. I have a lot of respect and admiration for
13 David Chandler's work. Mr. Chandler is a pioneer and a model for
14 us all but we might disagree on some points.

15 When you say that many networks were discovered I do not get the
16 feeling that it was S-21 that conducted the investigations to
17 unearth these networks. There is no record of that.

18 The people who were taken to S-21 had already been suspected or
19 investigated or had already become the victims of jealousy or
20 conflict within a political party such as the one that existed at
21 the time. But upstream it was not the director or the employees
22 of S-21 who conducted the investigations. They are not the ones
23 who justified a decision. It was not their decision. It was a
24 decision of the Standing Committee to send people to S-21.

25 With regard to discovery, the confessions are justly famous or

104

1 infamous in that victims said what they said. These choices made
2 in the confessions were made by Office 870. That is the origin
3 of all.

4 Now, with regard to the end of the quote by David Chandler, I am
5 in strong disagreement at this point. There were many less
6 victims in the other 195 security centres, if that was the case,
7 then why do we have one 1,700,000? How come there are so many
8 more dead than the 12,000 dead mentioned in the introductory
9 submission?

10 If the other centres were as inefficient as that, and people did
11 die, once more I'd like to say that we should be careful of
12 statistics, especially if they're based on decomposed mortal
13 remains. The security centres have been identified. We know
14 where they are and we have what we have in Choeung Ek around
15 these security centres, so there were executions -- mass
16 executions; a great number of them.

17 I do not think we should minimize what happened elsewhere.

18 Although the other security centres were not the last place where
19 senior leaders -- national leaders went, there were a sufficient
20 number of intermediate leaders who died in other security
21 centres.

22 [14.45.32]

23 MR. DE WILDE D'ESTMAEL:

24 Thank you, sir. I have no further questions and I would like to
25 thank the Court for granting me more time.

105

1 MS. MARTINEAU:

2 Thank you, Mr. President. Mr. President, Your Honours, on behalf
3 of my colleagues I would like to put a question to Mr. Jennar.

4 QUESTIONING BY CIVIL PARTY COUNSEL

5 QUESTIONING BY MS. MARTINEAU:

6 Q. We wonder, we heard that you met Mr. Duch when he was detained
7 and in the record of the case there is no document attesting to
8 these visits; there is no report on these interviews. So this is
9 the question: in what capacity did you go and visit the accused?
10 When was this, and why was there no report that would enable the
11 parties to these proceedings to find out what the content of your
12 interviews was?

13 MR. PRESIDENT:

14 Since it is an appropriate time to take the adjournment, the
15 Chamber will take the adjournment for 15 minutes.

16 Any parties who wish to put questions to the expert could do so
17 during the time allocated for them.

18 [14.47.19]

19 The Court officer is now instructed to make any necessary
20 arrangement for the expert to take the adjournment also.

21 THE GREFFIER:

22 All rise.

23 (Judges exit courtroom)

24 (Court recesses from 1447H to 1504H)

25 (Judges enter courtroom)

106

1 MR. PRESIDENT:

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

3 The defence counsel, you may now proceed.

4 MR. ROUX:

5 Thank you, Mr. President. I wanted to react to the question
6 which was put to the expert by my colleague from the civil party
7 which is awkwardly put to the expert. He is not supposed to be
8 replying. It is for the defence to reply and the defence, within
9 the scope of its powers, has requested the possibility of having
10 in its team -- of having a consultant.

11 [15.05.21]

12 Perhaps it has escaped the scrutiny of the civil parties that all
13 of this was done according to the rules and that everything is in
14 the case file. The authorization to communicate, prepared by the
15 Investigating Judges, authorizing Mr. Jennar to visit the accused
16 as is necessary, which is what he did.

17 I have not requested from you the notes taken by your expert, Dr.
18 Sotheara, during his consultations with your clients, the
19 victims, so please be kind enough not to demand from Mr. Raoul
20 Jennar that he supply the notes of his communications with the
21 accused. You were entitled to experts; the defence is entitled
22 to experts.

23 Mr. Jennar prepared a report. The report has been filed. It is
24 perfectly transparent and you may freely question him both on the
25 content of the file and on the oral presentation that he made

107

1 earlier before this Court.

2 Thank you, Mr. President.

3 MR. PRESIDENT:

4 Civil party lawyer, you may proceed.

5 MR. KONG PISEY:

6 Thank you, Mr. President, Your Honours and distinguished members
7 of the Court.

8 BY MR. KONG PISEY:

9 Q. Good afternoon, Mr. Jennar. My name is Kong Pisey. I would
10 like to put two questions to you and I would like to leave the
11 rest of the time allocated to the rest of the members of the
12 civil party lawyers.

13 [15.07.30]

14 I am here on behalf of group 2 and group 4. I may go back a
15 little bit to the matter of the arrest.

16 As we are aware already, in Lon Nol's regime in 1973-'74-'75,
17 Phnom Penh was not yet fallen and the Khmer Rouge sent their
18 network to Phnom Penh. Some of their men were placed in some
19 pagodas and other places. And when the Khmer Rouge took control
20 of the regime, then they took power and Phnom Penh was under
21 their power.

22 Since they used to deploy their spies to different places, so
23 during the time when they were in power they were suspicious of
24 people who they perceived as suspicious, especially people of the
25 17th of April, who were accused of being enemies and later on

108

1 were executed. Most importantly, when people were interrogated
2 the confessions tend to be opposing themselves, the person who
3 gave confessions. So none of the confession is not against
4 themselves or self-incriminating.

5 My question is have you discussed with the accused the reasons
6 why such confessions were taken and that only the incriminating
7 confessions were taken?

8 A.Thank you. Of course, I've already said that earlier. The
9 question of confessions is a central issue both to understand
10 S-21 and the entire terror-based system of Democratic Kampuchea.
11 This somewhat peculiar methodology --I'm sure you'll agree --
12 designed to extract from persons who are arrested a statement
13 reproducing what the power, the Standing Committee, the Kampuchea
14 leadership wants them to say, was clearly the objective that was
15 sought. One should never forget.

16 [15.11.11]

17 And it was the same in the Soviet Union, that to be arrested
18 meant to be sentenced to death. So there was no attempt to
19 modulate a penalty in any way whatsoever. The only purpose was
20 to compel the person in detention to say what the power in place
21 wanted the person to say in order to be able to continue to
22 pursue a policy of repression. One should not forget that the
23 machinery of confessions is part and parcel -- as I said in my
24 introduction -- of an attempt to search for the internal enemy.
25 Now, this can be assimilated to paranoia. I don't have the

109

1 knowledge, scientific knowledge, to do this. But once the power
2 structure has understood this -- and it also came from the
3 training they received at the level of international Communism.
4 Once you are aware of the existence of an internal enemy, the
5 people you arrested must be compelled to say who is the internal
6 enemy, that they are part of it and that others whom they know
7 are also part of the internal enemy. That is not simply designed
8 to find the person being interrogated guilty but also to get more
9 names in order to arrest more people.

10 Q.Thank you, Mr. Jennar. The next question I may proceed -- it
11 is related to the public administration being implemented at
12 S-21.

13 Have you also discussed this matter with the accused in relation
14 to how public administration was being handled at the vicinity?
15 I would like to give a clue in relation to this matter. It is
16 about the political arrangements or administrations or how works
17 were done.

18 [15.13.54]

19 A.Oh no, sir, I didn't broach this question with the accused.
20 My main concern was to identify the ideological origins, the
21 sources of inspiration, the manner in which the accused and the
22 system of which he was a servant had finally come to do what they
23 did and where they drew inspiration for that.

24 Thus, I did not dedicate my interviews with him discussing the
25 internal modus operandi of S-21 and, in fact, this is work that

110

1 was being carried out by the Investigating Judges, so it wasn't
2 really my task to do it and we got a great deal of information
3 concerning the structure and organization of the Centre from
4 them, as well as the internal organization of the Centre.

5 Q.Thank you, Mr. Jennar.

6 MR. KONG PISEY:

7 Thank you, Mr. President. I have no further questions, but I
8 would wish my colleague to share the allocated time to put
9 questions to the expert.

10 [15.15.33]

11 MR. PRESIDENT:

12 The civil party lawyer group 4, you may now proceed.

13 MR. WERNER:

14 Thank you, Mr. President.

15 BY MR. WERNER:

16 Q.Good afternoon, Mr. Jennar. My name is Alain Werner and I
17 represent civil parties on behalf of my colleague, Ty Srinna, and
18 I have a few questions for you. We have very little time, thus I
19 would be very grateful if you could give succinct answers and
20 that would probably make it easier for me to ask more questions.
21 Now, I'd like to follow on one of the questions that you replied
22 to, coming from the Co-Prosecutor, and we certainly have
23 questions about sources. You said that intermediate cadres were
24 purged inside the country and so what are the precise sources
25 that you rely on to say that? And if you do have some, could you

111

1 give us the names of some of these intermediate cadres?

2 A.Well, I confirm what I said to the Co-Prosecutor. The sources
3 I relied on were the sources available in DC-Cam, so I wouldn't
4 be able to give you names here and now, but to my knowledge the
5 archives of DC-Cam are accessible, certainly to the civil
6 parties.

7 [15.17.04]

8 Q.You stated on page 7 of your report in French, ERN 00187717 --
9 you said about DC-Cam, an organization -- operational manual
10 practically identical for all the centres regarding methods to be
11 employed, including description of the tortures, and it is a
12 description of practices which were begun in various security
13 centres during the war in '70 to '75.

14 If I understand this correctly, the interrogation manual which
15 you mention is in fact a manual that was written by an S-21
16 interrogator. What are your sources? What enables you to
17 contend that a manual that was practically identical was used in
18 all the security centres? What do you rely on in order to make
19 this assertion?

20 A.Well, from my interviews with the accused. I asked questions
21 on the issue of training. I was concerned with knowing where
22 these techniques came from, who had taught them, who had learned
23 them, and I already had opportunity to mention Son Sen, but also,
24 as I mention in my introductory statement, the torture -- what
25 was later called the torture manual, which is in fact an

112

1 operational manual which was drafted in S-21. There were
2 training sessions organized by Santebal for staff other than the
3 staff of S-21, and one could find there persons in charge of
4 other security centres.

5 Q.And so this last assertion is based on what the accused has
6 told you. Is that correct?

7 A.(Microphone not activated)

8 Q.Could you repeat? We didn't hear your answer. The microphone
9 was not on. Microphone is still not on.

10 A.Yes, I confirm that it was based on interviews with the
11 accused.

12 [15.19.35]

13 Q.Dr. Etcheson, at this bar, did research -- mentioned sources,
14 said that torture methods in S-21 were distinct from those
15 practised in other detention centres by their cruelty and number
16 and, as a matter of fact, you did refer to that earlier.

17 But let us be specific. What specifically in your research
18 enables you to express a divergence with the doctor and to give
19 us an opposite opinion from what he gave?

20 A.We don't have any contrary indications that would enable us to
21 state imperatively that methods of investigation and torture used
22 in other security centres were of a softer or kinder nature than
23 what was practised in S-21. And insofar as -- and I said that in
24 my previous reply -- insofar as there were training sessions for
25 the members of the security services of different centres,

113

1 there's no reason to believe why in certain cases some would not
2 use some of the methods that were being applied in S-21.

3 Q.You discussed confessions. Now, to get a clear understanding
4 of what you're saying, is it correct to say that when we speak of
5 confessions in the detention centres inside the country, we can't
6 give any details because most of that material was destroyed? Is
7 that what you said earlier?

8 A.What I said and what I repeat now is that a scientific
9 approach imposes caution. It isn't because we didn't find
10 anything that there weren't any. It was easier, there was more
11 time to destroy them than in S-21 where the director was told by
12 someone who was in a high position, senior position in the KDP,
13 that there was no risk the Vietnamese would come in.

14 [15.22.04]

15 Q.Contrary to what you seem to be asserting, if I understand you
16 well, the accused accepted during these interviews that lists of
17 enemies were prepared at the end of confessions by the detainees
18 of S-21, at the request of the accused and of staff of S-21, and
19 therefore lists of accused and enemies prepared by those who
20 confessed in S-21 were circulated throughout the country. And
21 when I handed him one of these documents, he stated that in fact
22 staff of S-21 compiled, analyzed these lists and certain persons
23 -- not the accused -- but certain persons in fact came and
24 confirmed the fact that these lists were disseminated.

25 My question is the following. Are there elements in your

114

1 research that are precise and source-based that would allow you
2 to say that such lists of enemies, or such a system of lists of
3 enemies and the hunt for enemies, was organized throughout the
4 other centres in -- security centres in the country as well?

5 MR. ROUX:

6 Thank you, Mr. President. I would like Mr. Werner give us a
7 reference of the time when the accused recognized the existence
8 of thousands of lists. I hear what Mr. Etcheson -- I never heard
9 that the accused had recognized or acknowledged that there were
10 thousands of lists, so please if you want to ask this type of
11 question from the expert, also quote your sources.

12 BY MR. WERNER:

13 Q.Let me reformulate. The accused admitted that there existed
14 lists of enemies prepared in S-21 by the prisoners themselves.
15 He also admitted the fact that the guards at S-21 prepared
16 summaries and analyses of those lists. And Dr. Etcheson, with
17 regard to these two categories of lists, said here that there
18 were probably thousands of lists in each one of these categories.
19 And my question to you is whether there are specific elements in
20 your research that enable you to state that such lists of enemies
21 existed anywhere other than S-21.

22 A.First of all, I must say that I have a problem with the
23 expression "list of enemies". With regard to the confessions
24 that I was working on, there are names but I'm not talking about
25 lists. There are various names that emerge. So what I know, the

115

1 lists that I know about are lists that were prepared after the
2 fact.

3 The prosecutor spoke of a list of over 40 persons coming from
4 different security centres. These are lists that were prepared
5 later on the basis of people who came to S-21 and underwent the
6 fate that we know.

7 [15.25.33]

8 I am personally not aware of the existence of lists that would
9 have been prepared, of lists of enemies that would have been
10 prepared prior to their arrest.

11 Q.Perhaps I mis-spoke. I was speaking of lists that would have
12 been prepared at the end of confessions, lists containing names.

13 A.Well, the term "list" remains equivocal. In fact, lists --
14 there were names at the bottom of confessions, but speaking of
15 lists might lead one to think there were thousands of names and
16 I'm not ready to say that.

17 Q.Mr. Jennar, you mentioned -- and in fact it is the topic of
18 your report of the climate of terror, secrecy, permanent purges.
19 How do you explain that the accused managed to remain for nine
20 years from '71 to '79 -- managed to remain successively at the
21 head of two detention centres without being purged himself?

22 A.To answer your question would presuppose that purges follow a
23 logic or a rationale. I could answer by asking the following
24 question: how do you explain that a certain number of leaders,
25 members of the Standing Committee and the Central Committee, were

116

1 not purged whereas others were?

2 This falls in the category of the irrational, of obsession with
3 the enemy, because political explanations are not always genuine
4 motivations. There may be in the leadership of a party, as in
5 the leadership of any country, a situation of rivalry, so that
6 could be a cause.

7 [15.27.56]

8 And I would like to add, because this was an important factor,
9 this sort of obsession about seeing in anyone who seemed
10 uncertain a traitor, KGB, CIA, or Vietnamese agent. And once
11 this doubt was born, to go back to Lenin's words, then that
12 person became an enemy. Why this one in particular did not
13 become one, many say that a certain number of leaders of
14 Democratic Kampuchea, had the regime lasted a few more months,
15 would not be available before your Chambers today.

16 There is an irrational quality to a system where everyone is
17 suspicious of everyone and where the sole response is a purge.

18 Q.Last question and I'm done.

19 There is an interrogator whose name is Prak Kahn, who spoke here,
20 and that interrogator stated under oath -- and the French
21 reference 00356128 -- on 22 July 2009 stated that approximately
22 no less than 300 persons of Division 703, persons who were
23 working in S 21, were purged between '75 and '79.

24 And when he was questioned about the reasons why almost the
25 entire 703 Division was purged in S-21, the interrogator

117

1 confirmed what he said to the Investigating Judges was that
2 according to him the reason why so many people from that division
3 had been purged was that the accused did not want the 703rd
4 Division to acquire too much power and that the accused was
5 afraid that he might not be able to remain the director of S-21
6 forever.

7 So my question is -- my last one -- is it not the case, now that
8 the dilemma is no longer to kill to avoid being killed but that
9 he would have killed even his own staff in order to stay in
10 power? Do you have any comment you wish to make with regard to
11 what Prak Khan said?

12 [15.30.15]

13 A. Well, I feel like telling you that we're fully in speculation
14 mode here. What are the deep motivations if one has no objective
15 material element to rely on? Depending on whether you wish to
16 charge someone or remain with the information, you can say, well
17 yes, why not? There was a question of power more than anything
18 else. Or you'll say the exact opposite, depending on what your
19 position is.

20 So I would stay away from any form of speculation.

21 Q. I have no more questions. Thank you for answering my
22 questions.

23 MR. PRESIDENT:

24 The civil party counsel, group 3, you may proceed.

25 MS. MARTINEAU:

118

1 Mr. President, I was just going to say that we are satisfied with
2 Mr. Werner's questions and we do not have anything further for
3 the witness.

4 MR. PRESIDENT:

5 The Chamber would like now to give the floor to the defence
6 counsel so that you can put questions to this expert if you so
7 wish.

8 MR. KAR SAVUTH:

9 Thank you, Mr. President. Good afternoon, Your Honours.

10 [15.32.10]

11 QUESTIONING BY DEFENCE COUNSEL

12 BY MR. KAR SAVUTH:

13 Q. Good afternoon, Dr. Jennar. I would like to read two portions
14 of your report. As you stated, amongst the 196 detention centres
15 the head of those detention centres shall be categorized as
16 responsible for the crimes committed during such time.

17 I would like to seek your further enlightenment on the report.

18 You described about the detention centre from Chong Chroy until
19 the S-21 and that they should be felled within that category.

20 However, in all the DC-Cam reports, as well as in yours, the 196
21 security centres, amongst those only 64 had the figures of the
22 victims or the date.

23 Therefore, the chairpersons of the 10 security centres are among
24 those 64 security centres which have some surviving documents.

25 Are these what you meant in your report?

119

1 A.Thank you, Counsel. What it seemed important for me to do was
2 that there was a generalized system which covered the entire
3 country and on the basis of the information collected, and I
4 repeat here that we must be careful. The statistics of horror
5 are only statistics, and statistics are fragile if you have
6 nothing other than the skeletons from the mass graves around
7 detention centres.

8 Having recalled that, it seemed important to me to nuance what I
9 refer to as the subjective specificities of S-21 to emphasize
10 that there was a large number of victims, tens of thousands of
11 victims more than those that were found in S-21.

12 So there were nine centres -- nine centres where there were more
13 victims than in S-21 and for those centres nobody is before this
14 Court.

15 If I may be so bold, with all due respect to the Court, my
16 concept of justice if not to have scapegoats, it's to treat
17 everyone the same way. It is known, but please don't ask me to
18 name names. Do you not ask me to do what those who should do it
19 do not do.

20 [15.35.58]

21 But it is known that there are nine centres where there were more
22 dead people, more victims, more tortured people, more people
23 massacred than S-21. There are a number of the directors of
24 these centres who are still alive. I wanted to emphasize that.

25 Q.Thank you, Doctor, for your response.

120

1 My question is that among the 196 identified security centres in
2 the DC-Cam and in your report, only 64 have the statistics of the
3 dead and the rest did not have any surviving documents or
4 statistics. My question is, the 10 security centres that you
5 quoted in your report, were they 10 amongst those 64 security
6 centres?

7 A. My answer is yes. In my expert report, if I decided to remain
8 silent on the others, it is in fact because there is a
9 requirement of painstaking research and if I found information
10 not to be reliable, I preferred not to use it. I did see this.
11 You could go to S-21 on the first floor of Building B. There are
12 statistics for a very large number of security centres.
13 In some cases, my personal view is that the figures will not
14 stand up to scrutiny. I don't want to say they are fictional
15 because I have too much respect for the victims. I did not wish
16 to go out on a limb apart from those 64 centres I have mentioned.

17 Q. Thank you, Doctor. Also in your report, you stated that the
18 10 chairmen of the security centres out of those 64 security
19 centres fall under the category of those most responsible for the
20 crimes and serious violations of Cambodian and international law.

21 [15.38.54]

22 My question is, in your report the letter dated the 30th of
23 March, 1976, which the Standing Committee of the CPK designated
24 authorities to the four groups who had the authority to decide of
25 smashing inside and outside the party rank.

121

1 So the combination of these two portions of your report,
2 particularly the four groups with the authority, namely, within a
3 zone, the security of the zone has the authority to smash. And
4 the offices around the central office, the Office 870 is having
5 the authority to kill anyone and in the independent zone, the
6 Central Committee itself has the authority and within the army,
7 Son Sen and general staff had the authority to smash.

8 So my question is, amongst the four groups, are they those people
9 who fit the category of those most responsible for the crimes
10 because the party already designated them the authority to smash
11 people, so they should be the most responsible? And, in your
12 opinion, will they fit into such a category? Thank you.

13 A.Counsel, I'd like to put a question to you. Is there a
14 gradation of the seriousness of crimes regardless of course
15 whether -- that is depending whether your -- prison head in Phnom
16 Penh, Kampong Cham or Kratie? My answer would be, yes, these
17 heads of security centres, it's not because they are in the
18 provinces, as one might say, that their responsibility is
19 diminished. So they should be charged similarly.

20 Q.Thank you, Doctor. Your response seems not direct to my
21 question.

22 What I really want to know is that in your report you clearly
23 stated that the 10 chairmen of the security centres fit the
24 category of those most responsible for the crimes, et cetera, et
25 cetera, during that regime. And my question is, the four groups

122

1 that were designated authority by the party to smash anyone, will
2 they also fit into the category of those most responsible for the
3 crimes and serious violations? Thank you.

4 [15.42.33]

5 A.If I understand your question correctly, counsel, and if I
6 call to mind also the law establishing the Extraordinary Chambers
7 in the Courts of Cambodia and the Security Council Resolution and
8 the agreement between the United Nations organization and the
9 Government of Cambodia, there are two categories of persons; the
10 major leaders and persons who are responsible for grave breaches
11 of Geneva Convention and crimes against humanity.

12 In my view, the persons you are referring to in each of the four
13 categories fall within the ambit of the second group of persons,
14 which is referred to in the law and the Security Council
15 resolution.

16 I hope I have answered your question now.

17 Q.Thank you for your response.

18 And in your last response, you mentioned that the four groups of
19 people also fall within the second category; that is, those most
20 responsible for the crimes. Thank you for that.

21 And I have a small question for you in addition to that. In late
22 2007 or early 2008, I met you, Doctor, and we discussed some
23 issues including the reports and documents of the DC-Cam and your
24 report and that one detention centre in Ba Phnum, Prey Veng, was
25 not researched.

123

1 In Prey Veng you only talk about the Kamchay Mear district,
2 Kampong Trabaek, Kanhchriech, Me Sang, Peam Chor, Preah Sdach,
3 Prey Veang and Sithor Kandal, except Ba Phnum Detention Centre
4 and the Ba Phnum district.

5 I used to be in prison there -- in the Tuol Prison is of Ba Phnum
6 and that was the largest prison in that zone. It was located on
7 the top of the mountain and several senior leaders for the cadres
8 were detained there and later on they were executed at S-21.

9 The question is, have you done any further research in your study
10 to include the Ba Phnum district into your database?

11 A.No, counsel, I have not conducted further research.

12 [15.45.36]

13 Q.Thank you, doctor.

14 MR. KAR SAVUTH:

15 With the President's leave, I would like my international defence
16 counsel to take the floor. Thank you.

17 MR. PRESIDENT:

18 International defence counsel, you take the floor now.

19 MR. ROUX:

20 Thank you, Mr. President.

21 Good afternoon, Mr. Jennar. We have a few more questions for
22 you. Thank you for your contribution.

23 Mr. President, first I would like to draw to the attention of my
24 colleagues in the Office of the Co-Prosecutor that the defence --
25 as you may not know -- has prepared a list of documents at D80.

124

1 This includes three documents at D80/8, D80/9 and D80/10, which
2 are DC-Cam documents.

3 BY MR. ROUX:

4 Q.Mr. Jennar, the defence filed these documents -- forgive my
5 translation or my pronunciation. This is about three documents
6 from DC-Cam and I would like to know whether you had the
7 opportunity to go through these documents.

8 [15.47.29]

9 With reference to the first document, D80/8 in Khmer, and in
10 French it is "1975 to 1979, Cambodian Genocide Program of Yale
11 University", editors Susan Cook and Matthew Fladeland, June 2001.

12 That is the first document

13 The second document, D80/9 --

14 MR. ROUX (speaking in English):

15 -- "Composite LANSAT satellite image of Cambodia" --

16 MR. ROUX (speaking in French):

17 -- 72 to 77 and 1990, with mass graves and prison sites from 1975
18 to 1979, this is part of the Cambodian Genocide Program of Yale
19 University as well. You can view the documents on the Yale
20 website.

21 The third document is "Mapping the Killing Fields in Cambodia,
22 1975 to 1979," DC-Cam 2001 in English and in Khmer.

23 BY MR. ROUX:

24 Q.Sir, to the best of your recollection, are these documents
25 amongst those that can be viewed and that you yourself saw in

125

1 DC-Cam's offices?

2 A.Thank you, counsel. I have a very short answer; obviously.

3 You have given the complete references of this document and you
4 are not unaware that before they were placed in DC-Cam they were
5 noted in the Cambodia Genocide Program where I worked, so I'm
6 highly familiar with these documents.

7 MR. ROUX:

8 I would like to indicate to the Chamber that by a letter of the
9 9th of May 2008; that is, D80, we filed these documents with the
10 Co-Investigating Judges. Of course my colleagues in the Office
11 of the Co-Prosecutors and the civil parties necessarily have
12 knowledge of these documents.

13 [15.50.16]

14 I would like these documents to be put into evidence. They are
15 in the case file but I would like them put before the Court as
16 evidence.

17 BY MR. ROUX:

18 Q.Mr. Jennar, several witnesses have preceded you, including
19 somebody you know very well. He's a researcher like you. He's
20 Mr. Craig Etcheson.

21 I think you may have seen the written report of Mr. Etcheson in
22 the case file, but perhaps, you may not have been aware that Mr.
23 Etcheson departed quite significantly from his recent report when
24 he gave testimony and I may even say that he contradicted
25 himself. Amongst the things that he contradicted, he

126

1 particularly challenged the accused's statement when the accused
2 said that he had daily interviews with Son Sen or daily
3 conversations with Son Sen, and that Son Sen demanded that this
4 should be so.

5 The accused explained to the Court that Son Sen monitored -- on a
6 daily basis -- the activities of S-21 and required a daily report
7 on what occurred at S-21. In most cases the report was delivered
8 by telephone.

9 Mr. Etcheson said, "Mr. Son Sen was very busy and I have doubts
10 as to whether he would have been able to concentrate on S-21 on a
11 daily basis."

12 [15.52.35]

13 This morning with regard to the chain of command you said to the
14 Chamber that who Mr. Son Sen was. On this point, can the
15 accused's statements be subject to challenge, as Mr. Etcheson
16 believes, or since you know the chain of command in Democratic
17 Kampuchea, you think on the contrary that the accused's statement
18 on this count is credible?

19 A.Counsel, Mr. Son Sen was obviously very busy. He was very
20 busy going about his duties. One of those, and not the least of
21 them was to be the first-level person in charge of the security
22 policy and answerable to his colleagues in the Standing
23 Committee. Mr. Etcheson and I were not in a position to record
24 the telephone conversations if they did occur between Mr. Son Sen
25 and the accused. But in light of Mr. Son Sen's responsibility to

127

1 the heart of power in Democratic Kampuchea, it is plausible to
2 consider that he might have been concerned enough to monitor the
3 security centre, which depended directly on the Standing
4 Committee. So I am inclined to consider that, in this respect,
5 the information provided by the accused had a high degree of
6 credibility.

7 Q.You talk about this monitoring by Son Sen, who had to report
8 to the Standing Committee. Would you agree that this is a
9 specific characteristic of S-21 that, as the accused said, it was
10 daily monitored by the Standing Committee. This was not
11 necessarily the case with other centres. When you talk about
12 specific characteristics of S-21, would it not be that these
13 involved the permanent supervision or monitoring, or constant
14 monitoring, of the Standing Committee?

15 A.You must bear in mind the concerns of the leaders, this small
16 group of seven persons who led Democratic Kampuchea. They were
17 obsessed by the internal enemy and you can see this in the case
18 of an institution such as S-21. So, Counsel, I would agree with
19 you that this was a daily concern.

20 [15.56.22]

21 It was constant and it has, as has been said on various
22 occasions, especially as the people who were taken to S-21 as
23 shown in the introductory submission, had 80 links with the
24 Democratic Kampuchea; 80 percent of them had this link. These
25 were people at various levels of Democratic Kampuchea. It was

128

1 therefore normal that, unlike other security centres, the
2 Standing Committee was particularly attentive in regard to S-21,
3 and especially as some of the members of that Standing Committee
4 ended up there.

5 Q. Could you then agree with me to say then that this proximity
6 to the Standing Committee deprived Duch of any margin of
7 manoeuvre, and this may be somewhat different from other centres
8 that were more remote, where it was perhaps possible for the
9 director of the centre to have a greater or not greater, but had
10 a certain margin of manoeuvre? Is what I said a faithful
11 representation of what we might consider the chain of command to
12 be; the fact that Duch was so close to the Standing Committee
13 that he had absolutely no margin of manoeuvre whatsoever? Could
14 you agree with what I've just said?

15 A. Well, Counsel, I'm inclined to tell you that nobody, nobody in
16 Democratic Kampuchea, had any margin of manoeuvre, whether you be
17 in Phnom Penh or in the outlying provinces. Perhaps there was
18 some time lag for authority to come down given the distance, but
19 I believe that in a system such as this with squealing pushed to
20 the degree where it was pushed, and pervasive suspicion and I
21 used the term earlier even though I have no qualification to use
22 it -- paranoia -- there is no margin of manoeuvre for anyone,
23 whatever the function or the level in the hierarchy.

24 [15.59.27]

25 Q. And yet, Mr. Etcheson came here and contended at the bar,

129

1 under oath, that he considered that Duch had, if you will, an
2 autonomy of decision; that he had been in a position to take some
3 initiatives. What is your feeling about this? Do you think that
4 Duch had an autonomy in decision-making?

5 A.Well, if you have no margin of manoeuvre you have no autonomy
6 in decision-making. Why then would one read on so many
7 confessions annotations which in fact are requests going to the
8 higher authorities? If one had any autonomy in decision-making,
9 one would not need to consult. As far as S-21 is concerned, it's
10 very clear that the decision on the ultimate fate of prisoners
11 rested in the first place with the Standing Committee. It's very
12 difficult for me to conclude, on the basis of what we have
13 available, that there was any room for anyone to take initiatives
14 or have any autonomy in decision-making.

15 Now, I know that the statutes of the Communist Party of Kampuchea
16 invite members to be creative and display imagination, but
17 there's just so many things that didn't occur in reality. If you
18 read the statute and by-laws of the Communist Party of Kampuchea
19 carefully, then you have eloquent statements about proletarian
20 internationalism. I seriously doubt that a careful observer of
21 Democratic Kampuchea could find any trace of proletarian
22 internationalism there.

23 Basically, the by-laws of the Communist Party of Kampuchea is a
24 little bit like the Constitution of the Union of Soviet Socialist
25 Republics. From the point-of-view of constitutional documents,

130

1 it was a beautiful document, and we know what the reality was
2 there as well.

3 [16.02.14]

4 Q.Please correct me if I'm wrong, but I seem to have read that
5 this creativity could only be applied along party lines. Is that
6 correct?

7 A.Party line, Counsel, was the only one that counted. There was
8 no possibility to wander away from party line, and who defined
9 party line except those who were members of the Standing
10 Committee of that party.

11 Q.Now, sir, you've surely understood that the Co-Prosecutors and
12 the civil parties are attempting to attach great importance to
13 S-21, give it a particular level of specificity in comparison to
14 other centres, in order to justify the fact that Duch is alone
15 amongst the accused on this issue.

16 So it would appear to have been a very important centre and yet
17 you would agree with me to say that Duch was not an army general,
18 that in the military hierarchy he was at best a commander; this
19 is what he says himself. And I don't think you've found any
20 trace anywhere of a more important role in the hierarchy.

21 And he defined himself, when he was asked these questions, by
22 stating, "Well, as a matter of fact, I was the faithful dog of
23 the party", which is closer to the rank of commander than to that
24 of general. Can I indeed consider things to have been that way?

25 A.Counsel, perhaps if I speak in jest, I would like to say that

131

1 I have too much respect for dogs to assimilate them with the
2 function of the accused. A faithful dog is a very precious thing
3 and many blind people are aware of this. And I believe that in
4 effect, a centre director, be that an important centre -- and
5 no-one can deny that S-21 was an important centre, if only given
6 the quality, functions or titles of those who went through that
7 centre and died there after terrible suffering. But it is also a
8 characteristic of the system of this regime of Democratic
9 Kampuchea. And I said this insistently this morning when
10 alluding to what was happening in the Soviet empire; no-one was
11 safe.

12 And if no-one is safe, apart the ones making the decisions at the
13 highest level, everyone else is carrying out orders with zeal,
14 more zeal or less zeal, being careful always to avoid being in
15 the next group of people to be taken away, but always executing
16 orders.

17 [16.05.51]

18 Q.Mr. Jennar, many in this Chamber have reproach Duch for not
19 having resigned. This is a considerable issue which arose and
20 which I imagine will return in the submissions and pleadings of
21 the civil parties. He stated his position. From what you know
22 about that period, what can you tell us about the possibility
23 that one had to resign or to desert one's post? Do we have any
24 instances of that occurring? What can you tell us about this?

25 A.The Co-prosecutor earlier was kind enough to remind us that my

132

1 work is basically focused on post-'79, the Royal Government of
2 Cambodia is constituted by someone who was one of the first to
3 rebel against the regime of Democratic Kampuchea and managed to
4 escape to Vietnam. As it happens, the prime minister at the time
5 was five kilometres away from the Vietnamese border and one can
6 well imagine that it was easier to flee to Vietnam when you're
7 five kilometres away from the border than when you're in Phnom
8 Penh.

9 One should know -- perhaps this wasn't said yet -- that it was
10 prohibited for inhabitants of Democratic Kampuchea to freely
11 travel the country. And one didn't have an automatic
12 authorization to travel throughout the national territory. When
13 one worked in Phnom Penh one had authorization to travel within
14 Phnom Penh or in a zone within the zone and not beyond it.

15 And one should also know -- and this is stated in the documents
16 that have been filed -- that any attempt to leave the country was
17 subject to execution, to the death penalty. And one should also
18 know that, depending on the period that you are considering --
19 but it is important to recall this -- fleeing to Vietnam was not
20 without risks because prior to a real state of war occurring
21 between Democratic Kampuchea and Vietnam, Vietnam pushed back
22 into Kampuchea those who were attempting to flee, those who were
23 seeking refuge.

24 [16.08.53]

25 Now, this tapered off towards the end of 1977, a little bit

133

1 before the break in diplomatic relations, but in '75 and '76,
2 beginning of '77 even, fleeing to Vietnam was taking the risk of
3 being deported back and executed instantly. And so it wasn't
4 easy to consider fleeing the country. It was easier, admittedly,
5 if one was near a border of the country, particularly Thailand.
6 As we know, a certain number of Cambodians were fortunate enough,
7 I may say, to be able to flee to Thailand including during the
8 Democratic Kampuchea regime, but it was a small minority. And so
9 this wasn't without risks.

10 Now, secondly, even though this did not apply in all cases, but
11 it was said repeatedly and hasn't been challenged, when
12 Democratic Kampuchea struck, it didn't only strike the person
13 considered to be guilty or responsible but the wife and the
14 entire family. Therefore, the repression exercised against
15 someone who might flee or desert was a major risk. And the major
16 risk was in fact that the reprisals would be exercised against a
17 family and that could be a major incentive to not leave the
18 country.

19 So we're entering difficult territory here. And this was the
20 meaning of the last words I said in my introductory statement:
21 faced with this horrible choice, to obey and obey to the extent
22 of killing others in order not to be killed oneself, who could
23 today say with an easy conscience that they would sacrifice
24 themselves? This is a question which every one of us sees
25 lurking without ever being able to give a general answer to it.

134

1 [16.11.30]

2 Q.One last question, sir. You referred us to the last sentence
3 of your presentation of this morning. Well, let me refer you to
4 the beginning of your presentation where you expressed your
5 sympathy and compassion for the victims. You worked in Cambodia
6 toward a restoration of peace, and my question is of a dual
7 nature.

8 First of all, do you believe that the fact that for the first
9 time a former Khmer Rouge cadre publicly recognizes his
10 responsibility in this Chamber -- do you believe that this may
11 help reconciliation? That's the first part of my question.
12 The second is perhaps more difficult in that the civil parties
13 are in a legitimate quest to understand and to know everything
14 that occurred. I told them from the outset that they would not
15 be able to acquire knowledge of everything, first of all because
16 Duch is not aware of everything, and secondly because how can one
17 expect a human being to explain that which is inhuman?
18 And therefore I think that we will only get parcels of the truth
19 and this is where my second question joins the first one. Do you
20 believe that even if this trial does not bring out all of the
21 answers to all of the questions, do you believe nevertheless that
22 it may help foster reconciliation? And I want everything to be
23 clear here. I'm not speaking of forgiveness for something that
24 is too intimate and belongs to the victims; I am speaking here
25 about social reconciliation.

135

1 A.I was amongst those who, along with the Cambodian authorities
2 from '79 to '91, did not cease to request justice for the victims
3 which had been refused at the time for over 10 years by the
4 international community because -- and you know this as well as I
5 do -- in the peace agreements there was prohibition of the use of
6 terms such as "crime against humanity", "breach of Geneva
7 Conventions", or "genocide".
8 And that all that was mentioned and I quote, were "practices of a
9 recent past". Therefore, I was amongst those who was pleased
10 when in 1997 the first government issuing from the peace process,
11 the two co-prime ministers sent a letter to the Secretary General
12 of the UN requesting the assistance of the United Nations in
13 order to try the main leaders and those most responsible in
14 Democratic Kampuchea and responsible for crimes against humanity.
15 [16.15.40]
16 I was pleased with this even though it took quite a long time to
17 establish these Chambers, because I believe that this country
18 needs to know at all levels, needs to know that justice is done.
19 But as I said earlier, to judge is to understand and to explain
20 and you are right, Counsel; it is also -- these proceedings are
21 also the victim of the regime of Democratic Kampuchea and its
22 secretive nature. We will never get to the bottom of everything.
23 But what seems to me to be capital here and important is such
24 that it must contribute to reconciliation. Pacification of the
25 country did not occur through the decisions of the United

136

1 Nations. It was achieved through the Royal Government of
2 Cambodia in difficult conditions, but it has occurred; something
3 that neither the Vietnamese nor Norodom Sihanouk or even the
4 United Nations were able to do.
5 The Royal Government of Cambodia has managed to achieve this
6 pacification, rather than reconciliation remains vulnerable. It
7 must be protected. But I remain convinced that the proceedings
8 engaged before these Extraordinary Chambers may well contribute
9 to this insofar as there will emerge in public opinion, and more
10 specifically the Cambodian public opinion made up of survivors,
11 if it leads to the emergence of a feeling that it is part of this
12 necessary reconciliation.
13 Cambodians have suffered too much; far too much. It is necessary
14 now to settle the issue of the past in all fairness and justice.
15 And you're right not to mention the issue of forgiveness because
16 this is an individual feeling which goes to individual survivors
17 and parents of victims. But I think it is essential for
18 Cambodia, and I think particularly just 60 percent of Cambodians
19 born after 1979, once accounts will have been settled with the
20 past, they will be able to confidently turn towards their future.
21 [16.18.26]
22 Q.And according to you, the fact that the accused is the first
23 Khmer Rouge cadre to publicly recognize his responsibility,
24 according to you this may assist in building this future?
25 A.Counsel, I would like to ask you not to put this question to

137

1 me. This is a question which only Cambodians can answer. It is
2 my wish that it would help. It is my wish that it would
3 contribute to gaining an understanding and to explaining and to
4 turning the page.

5 We have seen -- well, I was a bit too young perhaps but in the
6 Nuremberg Trials we saw a majority of Nazi leadership rejecting
7 any responsibility, and then one of them breaks ranks and accepts
8 such responsibility. I believe that recognizing responsibility
9 is making headway, is making a contribution toward
10 reconciliation. This does not remove responsibility and what it
11 implies, but it contributes towards reconciliation.

12 And from that point of view my wish would be that the example set
13 by this accused be followed by the other main leadership of the
14 Khmer Rouge in the country. They owe us this, given the
15 suffering that they have inflicted.

16 MR. ROUX:

17 Mr. President, I have no further questions.

18 The defence thanks you, sir, for having come to the bar.

19 MR. PRESIDENT:

20 Next, the Chamber would like to give the floor to the accused if
21 he so wishes to make any observation in respect of the testimony
22 of Mr. Jennar. And at the same time, if he wishes to make his
23 observation in relation to the testimony of Justice Richard
24 Goldstone, then he would do so simultaneously.

25 [16.21.58]

138

1 THE ACCUSED:

2 Mr. President. Good afternoon, Professor Richard Goldstone, from
3 a distance, and Mr. Jennar who is here in the courtroom. I am
4 very grateful to both of you for your testimonies that
5 enlightened me on the nature of the work I done.

6 I have nothing to contest their testimony but my thankfulness to
7 both of them. That's all.

8 THE PRESIDENT:

9 The proceedings to hear the testimonies of the experts and Mr.
10 Raoul Jennar ---

11 You take the floor.

12 MR. ROUX:

13 Forgive me, Mr. President, for a question related to procedure.
14 I would like that there be filed in our debate the consultation
15 of Mr. Jennar which is at reference D80/5 of the investigation
16 file. And we would also like -- excuse me, D80/2, sorry. D80/2.
17 We would also wish that there be put on record the book of Mr.
18 Jennar, "Les clés du Cambodge", "Keys to Cambodia", which is
19 found at reference D80/5, as well as all the other documents that
20 I mentioned earlier.

21 Thank you, Mr. President.

22 MR. PRESIDENT:

23 The prosecutors, would you make any comments in relation to the
24 documents being put by the defence counsel, although they are
25 already in the case file?

139

1 MR. TAN SENARONG:

2 Thank you Mr. President. The co-prosecution, the national
3 Co-prosecutor has nothing to contest this submission of the
4 documents before the Court.

5 MR. PRESIDENT:

6 The civil party lawyers, would you wish to make any comment in
7 relation to the documents as raised by the defence counsel?

8 [16.25.23]

9 MR. WERNER:

10 We have no comments to make, Mr. President. Thank you.

11 MR. PRESIDENT:

12 Thank you.

13 Mr. Raoul Jennar, the proceeding to hear your testimony has come
14 to an end. The Court is very grateful to your attendance and we
15 appreciate your time, of course, as a witness and you turned up
16 as called.

17 (Witness exits courtroom)

18 Now the proceeding for today has already come to an end. The
19 Trial Chamber would like to adjourn the hearing now and will
20 resume the session tomorrow at 9 a.m.

21 The security personnels are now instructed to take the accused
22 back to the detention facility and bring him in by 9 a.m. The
23 Court is adjourned.

24 (Judges exit courtroom)

25 (Court adjourns at 1626H)