



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

16 September 2009, 0905H

Trial Day 72

Before the Judges:

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANEES AHMED	English
JUDGE CARTWRIGHT	English
MR. KAR SAVUTH	Khmer
JUDGE LAVERGNE	French
MR. ROUX	French
MR. SENG BUNKHEANG	Khmer
MR. WILLIAM SMITH	English
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. TY SRINNA	Khmer
MR. WERNER	French

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

2 (Judges enter courtroom)

3 [09.05.23]

4 MR. PRESIDENT:

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

6 According to our schedule and the notification made yesterday, in

7 today's session we are going to proceed to hear the statement of

8 the accused concerning his character, the questions that will be

9 put by the parties.

10 The security personnel are now instructed to bring the accused to

11 the dock.

12 The Chamber would now like to give the floor to the

13 co-prosecutors to put questions to the accused concerning his

14 character. The co-prosecutors will have one hour and 15 minutes

15 to do so.

16 [09.07.10]

17 MR. SMITH:

18 Good morning, Mr. President. Good morning, Chambers. Good

19 morning, counsel.

20 QUESTIONING BY THE CO-PROSECUTORS

21 BY MR. SMITH:

22 Q.And good morning, Mr. Kaing Guek Eav.

23 This is the last time that the prosecution will be questioning

24 you in this case and so we'd like to thank you in advance for

25 agreeing to answer the questions today. And thirdly, we would

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1 like ask you to be as focused on the questions as possible and as
2 brief as possible, if you can. We've got a number of topics to
3 cover and we would like to finish them within the hour.

4 And the last point before we start -- perhaps if we can agree
5 that if you try and open your mind as much as you can as to who
6 you were back 30 years ago at S-21, so that you can assist the
7 Chamber, continue to assist the Chamber in trying to ascertain
8 the truth in your role and in what happened at S-21.

9 So firstly, I'd like to follow up with some questions from Judge
10 Lavergne yesterday where he was discussing -- or the day before
11 -- he was discussing the idea of family. And he was discussing
12 the decisions that you made in relation to forming a family
13 whilst you were working at S-21.

14 [09.08.45]

15 In response to his questions you said, "My children were children
16 of Angkar which were raised to serve the revolution. That was my
17 notion at the time."

18 You then went on to say -- and correct me if I'm wrong -- "but
19 mentally I preferred the whole family loved or were involved in
20 the revolution."

21 So my question to you is, was it your intention that your wife
22 and your children would participate in the revolution and was it
23 your will at the time that your wife and your children, albeit
24 that they were born whilst you were at S-21, that they be a part
25 of the revolution and believe in it?

3

1 A.First, I still mentioned about the theory and I still stand by
2 the statement as I already indicated to Judge Lavergne. I joined
3 the revolution. I would like my parents to love the revolution
4 and that one day they too joined the revolution. And I wanted my
5 siblings to love the revolution and I wished one day they would
6 love the revolution and join it.

7 And to the best of my honesty I was the cadre of the Democratic
8 Kampuchea. And I had no right to get married with any people who
9 were evacuated. I had no right to get married to the 17th of
10 April people, people who were evacuated from Phnom Penh.

11 I would like to reiterate that the wife I got married with was
12 the candidate, a member of the CPK. She left home to Aural
13 Mountain in 1968 so I got married to the member of the CPK and I
14 really loved the person in Kampong Tralach. I got married with a
15 person who came from Kampong Tralach and my subordinates were
16 also recruited from Kampong Tralach. And even Chhun Phal was the
17 guy who was raised in Kampong Tralach.

18 [09.11.46]

19 And when the children were born, they were the children of
20 Angkar. And let's make it clear: it doesn't mean that the
21 children of Angkar had to report on the parents to Angkar but
22 they had, as the Communist ideology is, that they had to be
23 faithful to Angkar.

24 Q.Did you want your children, the children that were born at
25 S-21 -- did you want them to be a part of the revolution? Yes or

4

1 no?

2 A.Everyone wanted the better future of their children so any
3 revolutionary wished their children to love the revolution and to
4 join in the revolution. And to what the people would view about
5 the revolution at that time was another story.

6 Q.So you wanted your children that were born during your time
7 period at S-21 to be a part of the communist revolution. Is that
8 correct?

9 A.S-21 was part of the work of the revolution, so I did not aim
10 that my children would become the police as his father would have
11 been, but we would like him to be part in the revolutionary line
12 after all.

13 Q.Thank you. You met your wife in 1974 and you got married in
14 December '75. You had your first daughter on the 27th of April
15 1977 and you had your first son on the 14th of December 1978.
16 So during that period you obviously believed in aspects of the
17 revolution. You may not have agreed perhaps with some of the way
18 in which it was being carried out, but you believed in the
19 revolution, you believed that what you were doing at S-21 was a
20 means to an end. It was a way in which you and others could
21 achieve the Communist revolution and create this new society as
22 you had planned. Is that correct?

23 [09.15.13]

24 A.I have already repeatedly indicated in relation to this
25 matter. If we refer to the revolution notion, I think I actually

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1 did not really like the police work. However, I was in amongst
2 the candidate members, or the members of the party who had
3 nowhere to escape. So I already indicated that we were the
4 actors of the crimes and trapped in the system.
5 As Mr. Raoul Jennar already mentioned, I should have said that I
6 was the servant of the regime, and Madame Sironi-Guilbaud already
7 stated that I was part of the gear of the machinery.
8 And I would like my children to be part in the revolution, but
9 although I knew that it was part of crimes, but I could not
10 escape. I never envisaged that CPK would be defeated any day.
11 Q. So it is fair to say that you believed in what you were doing,
12 you believed in the revolution, but you just didn't like the idea
13 of killing and torturing. Would that be fair to say?
14 A. I think these issues cannot be separated. They are very
15 interrelated. Before 1971, before I received the task as the
16 police, I really trusted the party. However, later on, when I
17 had learned that people had been executed, I started to feel
18 suspicious and I started to realize that this is the way that the
19 revolution would be leading to, slowly but surely, but I really
20 don't expect that execution could take place.
21 [09.17.58]
22 Q. Why would you bring children into a world where you believed
23 that crimes were going to be committed and where you believed
24 that possibly you might be implicated in the regime and, if you
25 were implicated, your family would be implicated?

6

1 Why would you bring children into the world if, in fact, you
2 believed that would happen to you?

3 MR. PRESIDENT:

4 Mr. François Roux, you may now proceed.

5 MR. ROUX:

6 Mr. President, forgive me. I think that this is a borderline
7 question which is of a nearly intimate nature and I do not think
8 that it has its place in this debate. To ask someone why they
9 procreate -- please excuse me, but this is infringing on privacy
10 and I would ask that the prosecutor perhaps reword his question.

11 MR. SMITH:

12 I'm not quite sure I understand the basis of that objection,
13 however, Your Honour, I can put the question in another way.

14 [09.21.10]

15 BY MR. SMITH:

16 Q. Whilst you were at S-21, you felt secure enough in your own
17 safety that you would not be implicated otherwise you would not
18 have had children. Is that correct?

19 A. Regarding the implication, I think it is more about the
20 assumption rather than the reality. How could we conclude the
21 situation, whether I would be implicated during my work at S-21?
22 But, in reality, my soul was at the tip of my hair -- or I was in
23 fear anyway.

24 My brother-in-law was arrested and sent to live with me and
25 another brother-in-law also was arrested, and my superior Vorn

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1 Vet, Kuy Thuon and other close friends of mine who were the heads
2 of the zones ,were also arrested.

3 So I could not envisage when exactly I would too be implicated in
4 the confessions of the people arrested because I noted that some
5 already implicated Son Sen. So he too could probably envisage
6 that he would be implicated.

7 My wife was removed from the hospital and I really wanted to have
8 children, so if I did not die then I could really build a family
9 and if we died, we died. Our family altogether would have been
10 executed, so if I died everyone in my family would also die.

11 Q.You said that you were trapped in the Khmer Rouge regime, but
12 let's be clear. At the end everyone was trapped. I mean, Vorn
13 Vet was on the Standing Committee, Son Sen you say was
14 implicated. Everyone in the regime, including Pol Pot, was
15 subject to being implicated and subject to being taken into S-21.
16 Do you agree with that?

17 [09.22.45]

18 A.People who were not implicated were respected. There were Pol
19 Pot and Nuon Chea. They were not implicated in the confessions.
20 Sao Phim was implicated and died. Ta Mok, the fourth individual,
21 was also implicated but no one would dare to arrest him. Ieng
22 Sary was not implicated. The sixth person was implicated and
23 died. The seventh individual, Son Sen, was also implicated in
24 several confessions. Khieu Samphan, probably the eight
25 individual or person, was not implicated. So it is about the

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1 implication and this is what I can recall. So I have no idea who
2 else would have been implicated.

3 Q.Perhaps if we can go to some of the traits that you displayed
4 at S-21 and one of those was perhaps -- and it's been seen
5 through the evidence -- is your will and desire to accept the job
6 and the pride that you displayed at S-21 when carrying out your
7 job.

8 [09.24.16]

9 Would you agree with me that the education and training role you
10 had at S-21 was the largest role that you've ever had in your
11 career, and it was a valuable role to you because it related to
12 training and teaching in ideological indoctrination, not just
13 maths, but something that actually changed peoples' lives,
14 changed society?

15 And that aspect of it, and the fact that you were in charge of
16 the central interrogation centre at S-21, that made you feel
17 good, that made you feel proud, and it was a very big opportunity
18 for you, a man with a lot of ambition.

19 Would you agree with me that when you first took on the job at
20 S-21, you were proud about that fact?

21 A.Honestly, I was not proud to be accepting the assignment at
22 S-21. I was there at the beginning as the deputy chairman. On
23 March 1976, when Nat was removed and I was promoted to the
24 Chairman position and I contest or I challenged the position, I
25 would like Chhay Kim Huor to take the position. However, I was

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1 warned by my superior. So this shows that I was not proud about
2 that.

3 The remaining documents can also be thought to support these
4 arguments because the document under E5/2 from point 1 to point 8
5 are the documents during the time when Nat was in position, and
6 what annotations or writing I made in relation to those documents
7 and what kind of writing I wrote later on, you may refer to them
8 that I was not proud about being offered such position.

9 Coming to the education ---

10 [09.27.07]

11 Q.I would like to put some particular examples to you, so
12 perhaps if you can wait for that moment to explain about whether
13 you were proud in your role as an educator.
14 Maybe the word is not "proud". Isn't it the fact that you felt
15 satisfied? You felt satisfied that you got the position because
16 you felt that you were better than Nat. You were a better
17 interrogator. You were a better educator, and therefore you felt
18 that that position was more rightfully yours than Nat's. Would
19 you agree that you were satisfied of that fact?

20 A.It is not correct to say that I was satisfied, but it would be
21 better correct if you put it this way: that I was good at
22 pleasing my superior. Although Nat was my superior at that time,
23 his theory was not that good as mine. So I had the ability to
24 please others better than Nat.

25 Q.And the fact that you had the ability to please others better

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1 than Nat, namely please your superiors, that made you feel good
2 because you were ambitious and you were working together with the
3 highest level CPK leaders in the country. That made you feel
4 good. Do you agree?

5 A. Your assumption is entirely accurate, but you should also look
6 at the other aspects of the situation because I frequently, or
7 regularly, made phone calls to my superior every evening. So if
8 he ordered me to do anything, then I had to fulfill his orders.
9 So please balance this.

10 Q. We understand that you and everyone else in the Khmer Rouge
11 period was working under a system of orders but the question is,
12 of course, is whether or not people wanted to deliver those
13 orders or whether they objected to them. We will discuss that in
14 a moment.

15 [09.30.15]

16 But perhaps I would like to put a quote to you that Judge
17 Cartwright put to you in testimony the other day. And she quoted
18 from David Chandler's book and she stated -- she summarized the
19 book:

20 "You wanted to excel at your job at S-21. You thought you were
21 doing an excellent job. You wanted to excel right throughout
22 your career from the time you were a student. You wanted to
23 serve your superiors with enthusiasm and skill and you wanted to
24 be proud of your work. Is that a fair assessment of your
25 character?"

11

1 And you responded:

2 "Your Honour, talking about wanting to be in that role -- indeed,
3 yes, but I do not want to say the reason for my wanting to be
4 such a person at this stage."

5 So bearing in mind what you have said earlier, isn't it the case
6 that when you first started at S-21, as you have said to Judge
7 Cartwright, you wanted to be in that role. Things may have
8 changed later. Things may have changed later in 1978 when your
9 superiors and friends were being arrested, but when you started
10 at S-21, as you've said, you wanted that role. Can you explain
11 why you wanted that role?

12 A.Mr. Co-Prosecutor, your question is difficult for me to
13 respond because through the layers of interpretation in the Khmer
14 transcript into English and now you speak in English, I do not
15 know how appropriate it is from the English transcript and I now
16 listen through the interpretation in Khmer.

17 I think it would be appropriate if we look at my personal
18 transcript before the Chamber and that it could put the issue
19 before this Chamber for confrontation.

20 [09.32.50]

21 Q.I'm not sure whether there is a translation problem, however,
22 we can discuss the matter in another way.

23 Judge Cartwright also put to you another quote. She said:

24 "You are intelligent, well educated, you work hard and you were
25 enthusiastic. You like to please your superiors. You wish to be

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1 professional in everything you do. You are meticulous in your
2 work, pay attention to detail. You are proud of the work that
3 you have done. Is that a fair summary?"

4 And you responded:

5 "I do not object to that statement."

6 What aspects of your work at S-21 made you proud?

7 A.The word "pride" or being proud has been discussed extensively
8 previously and also you agreed not to use that word. We agreed
9 to use the word that I tried to carry my duties in order to
10 satisfy my superiors and they agreed on that.

11 [09.34.15]

12 So I would like to make a conclusion that within my capability in
13 using force; kicking, beating for instance, I did not have the
14 qualifications but equipping someone with education with
15 doctrination and theory, yes, I was capable to do that. First,
16 to satisfy my superior and once my superior was satisfied I would
17 be spared. And I did not push myself for promotion into the
18 Central Committee.

19 So this is not a pride. It is the endeavour on my part to
20 satisfy my superiors so that I could live and see the sun. That
21 is all.

22 Q.The word "pride" is a word that in fact you have used
23 throughout this trial. You have said that you were proud when
24 you discovered the high school, the Tuol Sleng High School. You
25 said that you seemed to be a bit proud when you were speaking on

13

1 the microphone at your training sessions.

2 You also said that when you met Pol Pot in the last half of 1978,

3 you also said that he made you feel good and perhaps if I can

4 quote what you have said to this Chamber. You mentioned earlier

5 that some -- I questioned you and you answered -- the question

6 was:

7 "You mentioned earlier that some party members would be jealous

8 if other party members met Pol Pot. Did you consider it to be a

9 privilege to be in Pol Pot's presence at these meetings?"

10 [09.35.45]

11 You answered:

12 "I would like to frankly state that at the time I had a very

13 strange feeling that I studied with the seven people in the party

14 for three years now and I meet the first person in the party for

15 the first time. And I had a very strange feeling but it's hard

16 to describe that feeling at the time."

17 I asked you:

18 "Did it make you feel good to be in his presence?"

19 And you said:

20 "The strange feelings mean, you know, the good feeling."

21 So my question is: why are you feeling good? In the last half

22 of 1978 when you believed or you have told the Court that you

23 felt the regime had got out of control, that you didn't believe

24 in a revolution anymore, that you hated your job, that you were

25 in fear of your life, how can you feel good when you meet the

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1 person that you believe with others is making all of this happen?

2 Can you explain that, please?

3 A.Mr. Co-Prosecutor, your question is long but to sum up with it
4 would be on the day that I attended a training where Pol Pot
5 delivered his speech. Every year I did not attend the meeting
6 with Pol Pot, it was always with Son Sen. But only that year
7 when soldiers were sent to the front and Son Sen did not open the
8 training in Phnom Penh so I attended with other people whereby
9 Pol Pot delivered his presentation.

10 [09.38.13]

11 So to sum up, I did not attend the session with only seven
12 persons; there were hundreds. Pol Pot was present, delivering
13 his speech and Nuon Chea was there next to him -- hundreds of
14 attendants at a time.

15 What I was excited about was, first, I attended the training with
16 the first person, not with the seventh person. But the most
17 exciting part was that Pol Pot did not allow for interrogation
18 and that was absolute: stop interrogating people. He also said
19 the word "bandits" were those who starved and who stayed in the
20 forest so if they were fed there would no longer be no bandits.
21 And I was happy with that statement because there was a previous
22 circular on the people who attended the CIA and what year et
23 cetera, and I was happy with such statement.

24 So when I returned from the training I did not ask people on that
25 because that was the speech by Pol Pot.

15

1 And Nuon Chea asked me later that Duch now knew more about the
2 Party line and he still instructed me to interrogate again. But
3 at that time I thought the interrogation was over because that
4 was advised by Pol Pot.

5 And I was so happy at the time. And that was my feeling.

6 And this is my response, Mr. Co-Prosecutor.

7 [09.40.02]

8 Q.At that time, you still believed in the Communist revolution.
9 You still believed that the revolution would succeed and you were
10 pleased to meet the leader for that very reason?

11 A.Talking about attending the training is a separate matter.

12 Meeting with the various leaders is just another matter.

13 I never met any other leaders except Nuon Chea and Son Sen and I
14 saw Pol Pot once during the training. So you have to separate
15 the matter between attending the training and meeting with the
16 leaders. I never met those leaders besides the ones that I just
17 mentioned.

18 Q.At the time you met Pol Pot in late 1978 you still believed in
19 the ideals behind the Communist revolution; yes or no?

20 A.Mr. Co-Prosecutor, the matter of believing something or not I
21 told you already in the past belief is accumulated in its nature.
22 In myself partly I believed the ideal but another part that it
23 was doubtful that it's not going to succeed.

24 And when the statement by Pol Pot talking about stopping the
25 interrogation and torturing, I thought, "Oh, now, they will

16

1 return to the proper path" and that I was happy. But if I was
2 lied to by the statements then I would be disappointed.

3 [09.42.11]

4 And that was the situation at the time and that's what we were
5 trained and instructed.

6 MR. PRESIDENT:

7 François Roux, you take the floor.

8 MR. ROUX:

9 Mr. President, I am sorry to interrupt again but I'd like to call
10 on my learned friend to put questions rather than putting forward
11 hypotheses or statements. Instead of saying to the accused "You
12 had faith in the mission, yes or no?" you should say "Did you
13 have faith in the revolution?" instead, because you have put
14 several questions where you put forward an idea and then you
15 asked the accused to accept your idea. Please be so kind as to
16 put questions for him. Don't ask him to agree to your ideas.
17 These are closed questions and I do not believe that these are
18 acceptable in your system.

19 MR. SMITH:

20 Your Honour, if I can briefly respond. They clearly were
21 questions. The accused clearly has an option whether to agree to
22 it or not. The questions are based on evidence that's in the
23 case files, based on testimony. As you know, Your Honours, the
24 defendant speaks at length with open-ended questions and it's
25 quite appropriate and quite proper, I submit, that questions such

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1 as "Yes or No?" serve the purpose to assist us in finding out the
2 truth in this matter.

3 [09.44.15]

4 (Deliberation between Judges)

5 MR. PRESIDENT:

6 The Chamber has noticed that it is difficult in dealing with the
7 questions to be put by the prosecutor because the questions are
8 long, and we have noticed the objections raised by the defence
9 counsel on two occasions already. And from what we have noticed,
10 these are leading questions.

11 Therefore, the Co-Prosecutor, you are instructed to rephrase your
12 questions, simplify them for appropriate response. Therefore,
13 it's better for you to ask several more questions rather than a
14 few long questions.

15 MR. SMITH:

16 Thank you, Your Honours. I'll adopt that approach.

17 BY MR. SMITH:

18 Q.During this trial, you have explained at length the efforts
19 that you went to in order to ensure that your interrogations led
20 to the implications of enemies. You have explained that you
21 would get innocent young men, you would indoctrinate them, you
22 would educate them, you would train them in torture methods, you
23 would dare them to be cruel to such a point that the confessions
24 would produce names of enemies, of which most of them you knew to
25 be false. You forwarded them to your superiors. When those

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1 names were forwarded, you've testified that your requests for
2 arrest were always approved and those innocent people were
3 subsequently arrested and killed.

4 Would it be fair to say that you exercised your power at S-21 to
5 the maximum when you were the Chairperson there?

6 [09.47.49]

7 A.Mr. Co-Prosecutor, before you put the question to me you
8 described the works that I did, using attitudes at your own will
9 which are not the attitudes I used in my statement. Therefore, I
10 would like to make my statement clear now.

11 It is my preference to recruit the poor peasants' children, to
12 educate them because of their class stance or their loyalty, and
13 that they are not influenced by any other factors; for example,
14 Chhun Phal is a case.

15 And when they arrived, I would assign them the duties; for
16 example, the guarding duty, the interrogation duty, et cetera.

17 So that was the practice and that's what I mentioned in the past.

18 Regarding confessions, I repeatedly stated that my crimes were
19 not that I directly executed those people, but it was my crimes
20 that I built those people up to interrogate, and if I built 10
21 people who were loyal to the party and who were meticulous with
22 the same types of work that I did, then the crimes will be more
23 widespread, and that was my crimes.

24 Another crimes were that I rejected their stance, their ideas and
25 notions, and I indoctrinated them with my own notion, with my own

19

1 idea and methodology, and that they had to accept what I wanted
2 them to accept. And I think the same practice is applied for the
3 current interrogation process.

4 [09.50.15]

5 Q.If I can just stop you there and put to you a statement that
6 you made to the Co-Investigating Judges, and it's 00149918 at
7 D21. It's a statement that you made in relation to the stances
8 that you took when you were at S-21, and you stated:

9 "At S-21, I evaded work to the maximum. I accepted only the work
10 that was unavoidable. I thus never grasped anything."

11 Would you agree with me that with the evidence that you've given
12 at this trial, that you misled the Co-Investigating Judges by
13 saying that, "I evaded work to the minimum" (sic).

14 Would you agree with me at the time you misled the investigative
15 Judges as to your role at S-21 when you made that statement?

16 A.Mr. Co-Prosecutor, would you be able to show that statement
17 with the Co-Investigating Judges in the Khmer language and also
18 the transcript in the Khmer language to be put before the
19 Chamber, so that I can examine them?

20 Q.Perhaps it would be easier and quicker -- Your Honour -- if
21 you could just comment whether or not that statement is true:

22 "At S-21, I evaded work to the maximum. I accepted only the work
23 that was unavoidable. I thus never grasped anything."

24 Is that statement true?

25 A.I do not understand your question, Mr. Co-Prosecutor, so I

20

1 cannot respond appropriately.

2 MR. SMITH:

3 Your Honour, I can't pull it up on the screen now.

4 [09.52.56]

5 MR. PRESIDENT:

6 Kar Savuth, you take the floor.

7 MR. KAR SAVUTH:

8 Mr. President, I would like to request the international
9 Co-Prosecutor to have precise questions for the accused. For
10 instance, if you were to say that my client has not confessed
11 fully to his activities then you can pinpoint which actions,
12 activities that he has not yet confessed.

13 And then you can provide the statement or the excerpt of the
14 statement he made before the Co-Investigating Judges.

15 MR. PRESIDENT:

16 The Co-Prosecutor, if you relied on the statements made by the
17 accused before the Co-Investigating Judges can you clearly state
18 which language of that statement, and can you tell us which
19 paragraph on what page and what is the ERN number so that the
20 Chamber is able to project that portion of the statement so that
21 the accused is able to examine and respond appropriately?

22 [09.54.14]

23 And you are reminded by the Chamber that the proceeding before
24 this Chamber is part of the overall proceedings and the
25 statements made during the investigation phase is just part of

21

1 the case file. So the statements made by the accused has been
2 stated so and he made several comments on his statements before
3 the Co-Investigating Judges.
4 So I think it could be different, relying on the documents during
5 the investigation, because during the trial phases he made
6 additional comments to those statements that he made previously
7 before the Co-Investigating Judges. So it would be better if you
8 can provide the excerpt or portion of the documents that you rely
9 upon so that the Chamber is able to have it shown before the
10 Chamber and that the accused has the capability to review it and
11 to respond appropriately.

12 MR. SMITH:

13 Thank you, Your Honours. Perhaps I will move on from that but I
14 will give the ERN number of 00149918, D21 in the English, and
15 perhaps that can be assessed at a later time.

16 BY MR. SMITH:

17 Q.Mr. Kaing Guek Eav, for the time that you were at M-13 from
18 the time you were at S-21 to the time that you say that you were
19 still a prisoner of the regime, can you tell the Court when you
20 felt that you were not a prisoner of the Khmer Rouge regime any
21 more? What year, please?

22 A.It was on the 10th of May 1999. At that time the government
23 detained me at the Military Court.

24 [09.56.55]

25 Q.Prior to 1999 were you free to move across or were you free to

22

1 move out of the Khmer Rouge area prior to that date?

2 A.Before 1999 I think that you already know the situation. In
3 around 1997 Meas Muth gathered up the people at Samlaut and put
4 them at a camp, and anybody who were to leave the camp would be
5 risking their lives, and they returned in 1998. I was scared of
6 Ta Mok's force and if I were to show my face, as I was the
7 Chairman of S-21, I would be beheaded.

8 Of course I could move freely but that was the concern that I
9 have had at the time. Ta Mok was a Khmer Rouge. That's why I
10 said the criminal regime of against the humanity ended when Ta
11 Mok was arrested by Hun Sen and detained at the Military Court.

12 Q.So are you saying for about 26 or 27 years from 1971 that you
13 had no possibility in all of those years to escape from the Khmer
14 Rouge? Is that what you're saying?

15 A.Could you please make a proper mathematical calculation? Yes,
16 I think so -- the duration is correct. I was under the detention
17 of the Khmer Rouge regime although it was in various different
18 forms. The Co-Prosecutor already knows. I stayed a little bit
19 out of the proper way and my wife was killed.

20 [09.59.39]

21 Q.Is it not the case that you stayed with the Khmer Rouge regime
22 up until the nineties because you still believed in it?

23 A.I say it's kind of appropriate if you put it that way. Of
24 course, by that time I totally do not believe in their ideal any
25 more. By that time I did not work at the battlefield. You can

23

1 ask the governor of the Samlaut district. Mr. Sophal wanted me
2 to be with the transportation unit and later on I was asked to
3 teach at the primary school and accepted that job.

4 So I was with them in person but whatever services to provide to
5 the battlefield or to kill people, I denied those requests. So
6 from the 17th January '79, yes, I dared to object to the request
7 for me to involve with any battlefield or with any killing. And
8 this is my response, Mr. Co-Prosecutor.

9 Q. When you spoke to the psychologist you talked about your
10 father's death in 1990 and you stated -- they stated in their
11 report:

12 "Talking about his father's death in 1990 and how he felt at the
13 time."

14 You said:

15 "I could not be a revolutionary and also have feelings."

16 Is it not the case that in 1990 you still were a revolutionary?
17 You still believed in the regime and that's why you stayed with
18 the Khmer Rouge.

19 A. I think the analysis of the experts have taken me by surprise
20 and it is now the matter that I am not in agreement with the
21 assumption or analysis by the experts anyway. So you should be
22 familiar with this.

23 [10.02.21]

24 Q. Many of the experts that have reviewed the documents in the
25 case, especially the documents at S-21, David Chandler and also

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1 the psychologist, have stated that the reason why you obeyed the
2 orders was not only out of fear of not obeying them but because
3 you believed in the underlying basis of them.

4 And if I can put to you a section of the report from the
5 psychologist and it states:

6 "Obedience was not the motivation for his acts, but a consequence
7 thereof because he needed something in which to believe. Also,
8 he was driven by fear (in 1977) and by the idea that he was
9 better off continuing in his job rather than walking away from
10 it."

11 Isn't it the case that you carried out the orders at S-21 because
12 you believed in the revolution not just because you were ordered
13 to carry them out?

14 A.Mr. Co-Prosecutor, I would like to state that the analysis of
15 the expert is another
16 case and, in reality, what I have experienced is another case. I
17 would like to tell you the reality and things that I have done
18 and I believe that the documents of S-21 remain so you may refer
19 to them.

20 [10.04.23]

21 And I did everything, not at will, upon the orders of my superior
22 because every day the confessions would have to be reported to
23 Son Sen and I was closely monitored whether or not -- whether I
24 like it or not, I had to do, otherwise I would be killed. And
25 this is just the reality as opposed to the analysis by the

25

1 expert.

2 Q. Just a few questions about your arrest.

3 You stated in Court that whilst you were preparing yourself to
4 gain a promotion to be the Chief of the Education Department of
5 Samlaut District; that essentially your future was changed by Nic
6 Dunlop. You stated that:

7 "Everything was compromised when Nic Dunlop found me, and later I
8 was arrested and put under detention at the military court on the
9 10th of May 1999."

10 My question is, if it wasn't for Nic Dunlop approaching you,
11 showing you the photograph of you at S-21 and you knowing the
12 fact that he knew of your role there, you wouldn't be in this
13 Court today. You would be teaching as the Chief of the Education
14 Department at Samlaut District. Would you agree with me on that?

15 A. You have stated, and in your statement you included Nic
16 Dunlop, but I may have to explain to you the accounts of what
17 happened now.

18 [10.06.52]

19 I already indicated to the Chamber already that when Sou Met
20 surrendered and defected to the government, my youngest brother
21 wanted me to live with him in Svay Chek. So Hen Sophal, Sou Met
22 and General Ngen Kong convened a meeting and there they convinced
23 me to defect to the government or integrating into the community
24 in Samlaut, and they installed me as the Chief of the Education
25 Department at Samlaut and that is permission of the government.

26

1 While we were preparing for this, then Nic Dunlop approached me
2 and everything was compromised, and that is true.

3 Q. So you had no intention for handing yourself over to the
4 authorities until you were confronted with your past acts. Do
5 you agree?

6 A. I may not have to say that I agree with you, but I would like
7 to elaborate as follows.

8 I already indicated to the Chamber, I think that no secret could
9 be hidden forever. One day the secret can be compromised.

10 In Banteay Meanchey I was recruited as the school teacher, but in
11 1996 in March, Ieng Sary integrated into the government and I
12 asked him to also accept me to join the government, but Ieng Sary
13 didn't recognize me.

14 Then I asked a favour from Sou Met so that I could be presented
15 to the government. I sought or I found a channel so that I could
16 be introduced to the government; that's why I asked Sou Met so
17 that I could be integrated. Then I -- actually, I had no
18 intention to escape from being -- joining the government.

19 [10.09.43]

20 Q. Just a few questions about your apologies. And in response to
21 Judge Lavergne's question of the other day, you testified that in
22 relation to the crimes at M-13 and S-21, you believed that the
23 party centre would be responsible before the history. You
24 testified that you told Peter Leuprecht the same when you were in
25 the military court.

27

1 However, when you met your two lawyers -- and I assume that
2 you're referring to the two lawyers here today:
3 "After my consultation with them, I agreed that this work was not
4 a responsibility of the government because the government would
5 not be responsible for criminal acts and it was the individual
6 who would be responsible for his own criminal act, but in my
7 mind, I was still believing that I was a policeman who was
8 carrying out the order assigned to me by my superior, and this is
9 how I developed my mentality regarding the crime and criminal
10 responsibility."

11 My question is, is it fair to say that you've only accepted
12 individual criminal responsibility or individual guilt since
13 2007, since you met your two lawyers, as you explained to the
14 Court?

15 A.I may have to reiterate the account of the story based on the
16 actual fact.

17 When I was assigned as the Chief of the Police at M-13, Chhay Kim
18 Huor told me that as M-13 was not in charge of arresting people
19 and I was assured that I should not be worried because the party
20 would be responsible, and I was reassured by him every now and
21 then.

22 [10.12.15]

23 However, when I noted that more and more people were being
24 arrested and I also made it clear with Peter Leuprecht, and I
25 believed that Peter Leuprecht also recorded the interview

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1 although I did not notice any camcorder that he was brought with
2 him, and I told him that the CPK's government was the legitimate
3 government in the eye of the United Nations and if I did not
4 follow the government, then I would be executed. So what have I
5 done wrong to obey -- to follow suit the order of the government,
6 but then people told me that this government was the criminal
7 government and as part of the government I shall be individually
8 responsible for the crimes I committed alongside with the
9 government acts.

10 MR. SMITH:

11 Thank you, Your Honours. I think my colleague has a few
12 questions.

13 BY MR. SENG BUNKHEANG:

14 Q.Good morning, Mr. Kaing Guek Eav. Do you know that In Lorn,
15 alias Nat, was removed on March 1976 and do you know the reason
16 why he was removed and where would he be sent to?

17 A.Thank you, Mr. Co-Prosecutor, for putting this question.

18 [10.14.07]

19 In Lorn, alias Nat, was removed on the 3rd ---

20 MR. PRESIDENT:

21 Mr. François Roux, you may proceed.

22 MR. ROUX:

23 Mr. President, I believe that we are in the process of asking
24 questions addressing the character of the accused. I don't see
25 what this question has to do in any way with the character of the

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1 accused. I would like us to return to the subject matter of
2 today.

3 MR. PRESIDENT:

4 The objection is sustained. So the Co-Prosecutor, could you
5 please reword your questions so that the questions are related to
6 the matter of the character of the accused as scheduled in
7 today's session?

8 MR. SENG BUNKHEANG:

9 Thank you, Mr. President. The prosecutor noted that this
10 question may lead to the follow-up questions, so we would like to
11 proceed to the next question then.

12 BY MR. SENG BUNKHEANG:

13 Q. Have you ever felt that you were jealous with In Lorn, alias
14 Nat, because you were the deputy to him at S-21? And you already
15 indicated to the Chamber that you was the chief of the focal
16 points network and that Nat was the member of the team, and at
17 that moment Nat was the chairman instead and you was the deputy.

18 [10.16.15]

19 So were you jealous?

20 A. Honestly, In Lorn, alias Nat, was older than I am. And as you
21 have already observed, that I already paid homage to two people,
22 and Stéphane Hessel and Madam Measketh Samphotre and I respected
23 them.

24 Although In Lorn was my subordinate previously, but I did not
25 really violate the rights of him being promoted to the chairman.

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1 And when I was at the S-21 -- and as the Co-Prosecutor in
2 Cambodia have already been familiar, that the CPK status have
3 been well given to the military.
4 In Lorn, alias Nat, Sambath and Meas Muth were the three
5 important people to be installed in the military and I was not
6 jealous. And during the meeting of the branch which was convened
7 at Office 505 in Peam commune, I could see how important their
8 roles were and I was not jealous at all.

9 And as I mentioned already, I was not satisfied with the role at
10 S-21 and, having had In Lorn as my superior, I was already happy.

11 Q.After 1979 have you still been faithful to Son Sen?

12 A.7th January or 7 ---

13 Q.7th January of 1979.

14 A.Thank you, Mr. Co-Prosecutor. It is the moment I really am
15 waiting to reveal the truth to the world and Cambodia.

16 [10.18.45]

17 I was very shocked when enemies implicated him. I was very
18 worried for him. When I was called to meet in Office M-18 I was
19 reassured that I should forget the past and I could see that Son
20 Sen had been still very faithful to me and been caring for me.
21 That's why after the 25th of June 1986 I still had very great
22 respect and faithfulness to him.

23 MR. SENG BUNKHEANG:

24 Thank you, Mr. President. We do not have further questions to
25 put to the accused.

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1 MR. PRESIDENT:

2 Since it is an appropriate time to take an adjournment the
3 Chamber will take the adjournment for 20 minutes and resume
4 accordingly.

5 (Judges exit courtroom)

6 (Court recesses from 1020H to 1044H)

7 (Judges enter courtroom)

8 MR. PRESIDENT:

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

10 The Chamber would like now to give the floor to the defence
11 counsel so that they have the opportunity to put questions to
12 their client. This is in relation to the questioning of the
13 accused's character. Defence counsel, you take the floor.

14 MR. KAR SAVUTH:

15 Thank you, Mr., President. Good morning, Your Honours. Good
16 morning, ladies and gentlemen.

17 [10.45.13]

18 QUESTIONING BY DEFENCE COUNSEL

19 BY MR. KAR SAVUTH:

20 Q.Mr. Duch, when you studied at the primary school did you ever
21 see a photo of Mao Tse Tung? If you did at the primary school,
22 what was your feeling toward his photo or portrait?

23 A.I did not see his portrait at a school. It was at a Chinese
24 house who was a vendor at the Stung market. It was actually on a
25 postcard. It was a portrait of him standing. It was a half-body

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1 photo from his thigh. Actually, it's from -- yes, from his upper
2 knee to the top of the head.

3 At that time the Chinese people were grateful to Mao Tse Tung as
4 he was able to reserve the livelihood of the Chinese people in
5 China. And of course I was rather excited as the relatives of my
6 late grandparents were poor people living in China.

7 Q.Thank you for your response. And when you were studying at
8 the Kampong Thom High School, how come you called Sou Sath as
9 aunty, but for the other person you only referred to as elder?
10 What were your feelings and decisions at the time?

11 A.The five of us, three boys and two girls, were in similar age.
12 We studied in a work group and we were leading students in the
13 school. I was afraid that the work group would lead to love
14 affairs so the four of us referred to her as elder sister and,
15 regarding Sou Sath, I referred to her as aunty because I knew her
16 nephew.

17 [10.48.04]

18 So the reference to elder sister and aunt were to avoid the
19 sentimental feeling toward love affairs.

20 Q.Thank you. When you were studying at the pedagogical
21 institute were you trained to join the revolution and, if so,
22 from whom?

23 A. I met Son Sen in late '63. I was still in the elementary
24 school at the teacher training institute and that I should
25 consider that only when I passed the exams. After I passed the

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1 exam, my focus was still on the mathematics subject. Only after
2 the arrest of more than 10 people including Chhay Kim Huor, I
3 threw away my mathematic books and I started to join the
4 revolution. My network at the time was with Kong Saroeun and
5 another student from Kampong Thom. He was from the first group
6 of the students at the time.

7 So my network started from there. And later on, through various
8 stages, I went back to my first network.

9 Q.In 1999 did you ever return to Sou Sath's house?

10 A.I did not go to Sou Sath's house in '99. That is my frank
11 response. I went to her house on the 21st -- actually it was in
12 1967 or '66. I cannot recall exactly. Actually, it was in '67,
13 I went to say goodbye to her before my departure to join the
14 revolution. It was the 21st October '67.

15 Q.Thank you. So in 1967 you went to Sou Sath's house. Did you
16 ever stay there overnight?

17 A.I went there in the evening and Sath and her husband Svay
18 Saroeun also joined the revolution. At that house there was no
19 other bed and a mosquito net, so both of them asked me to join
20 them sleeping together under one mosquito net. And a child was
21 also sleeping there together, so I slept overnight together with
22 that family.

23 Q.When you were sleeping with three adults and one child, did
24 you discuss on any matters?

25 A.Actually we stopped talking already. We discussed before we

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1 went to sleep. We talked about my farewell to them to join the
2 revolution. And we were so sentimental toward each other and she
3 was feeling rather sorry to see me go.

4 Q.And before you fled to the forest in 1978 (sic) did you go to
5 pay homage to your parents? If so, when you went to pay homage
6 to go to the forest to struggle, what was the purpose of you
7 running into the forest to struggle?

8 A.The 21st I went to Sath's house. Actually on the 20th I went
9 to pay homage to my parents and at night when my younger siblings
10 slept I spoke to my parents. My father was pity on me. He gave
11 me the lucky amulet. Although I did not believe in luck, I
12 accepted it from him to make him happy.

13 And as I reported earlier I joined the revolution and I wanted my
14 parents to join the revolution as well. So when I left I left
15 them to join the revolution I went to say goodbye to my parents
16 in order to join the revolution to liberate the country. That
17 was my feeling at the time.

18 Q.Thank you.

19 Can you reiterate the period between 1970 to 1975? You were in
20 the Liberated Zone and you clearly witnessed that the CPK killed
21 people or started to kill people from that time. Is this
22 correct?

23 A.I witnessed the killing of people. First, it was at the
24 Sector 25 in S'ang Koh Thom and late on at the Amleang where I
25 was assigned to work to do the police work.

35

1 Q.Thank you.

2 [10.54.13]

3 Upon witnessing such killings it was contradicting to your
4 purpose when you pay homage to your parents to say goodbye in
5 order to join the resistance. Is this a fair assumption?

6 A.That is true, it was contradicting to my concept.

7 Q.Upon seeing such events and you knew it was wrong, why did you
8 not flee from the Khmer Rouge group?

9 A.As I have informed the Chamber from the beginning and even
10 during the investigation phase, I had total conviction that I did
11 not make any single decision to arrest any person. I was only to
12 receive those people who were already arrested and then I would
13 have the confession sent to my superiors. And the people who
14 were responsible before the history were them.

15 Regarding the smashing of people I would not be able to do it.

16 At that time Chhay Kim Huor alias Hong tell me that then I should
17 allow the peasant class to do this work if I was not able to do
18 it myself. So in short, they were responsible for the history.

19 And, secondly, where could I flee? Along the way there were
20 guard-posts. I would be arrested but if I were to successfully
21 escape then I would escape to do what? Because I knew that Lon
22 Nol government would be defeated and I already informed the
23 Chamber that I had some complicated matters with my uncle who
24 married to a niece of Lon Nol. And I was still grateful to my
25 aunty and my uncle, but I knew that Lon Nol government would be

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1 defeated so I should not run toward a defeated people.

2 Q.Thank you.

3 [10.56.36]

4 So can you reiterate the fact that at S-21 you dissatisfied with
5 your role as the Chair and you were dissatisfied? Despite that,
6 you still tried to fulfil your duties in order to survive because
7 at that time you witnessed that Nat, the former chairman of S-21,
8 was arrested by the CPK and smashed at S-21 as well. So you
9 started to feel scared and were wondering when your turn would be
10 next. And if you were accused as an enemy by Angkar then you
11 would be smashed.

12 Is this a fair assumption?

13 A.The only exit is survival and in order to do that was to
14 fulfil the duties assigned to me. As I have repeatedly told the
15 Chamber, some people made analysis that I outperformed my role
16 and I responded that there is no set criterion to measure the
17 performance during the Pol Pot regime. They were interested in
18 monitoring these people or that people activity and that activity
19 would be considered traitorous if it was a little bit wrong.

20 So I tried to survive on a daily basis and that's what happened.

21 And, yes, you can say I am a coward person.

22 Q.Thank you.

23 [10.58.42]

24 7 January 1979 at 2 p.m. you left S-21 compound and at that time
25 you had the ability to escape from the Khmer Rouge group. And as

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1 you just stated, a piece that is stuck within a wheel in motion
2 can only be taken out when the wheel stops moving. But 7 January
3 '79 was the day the Khmer Rouge was defeated; that is, the Khmer
4 Rouge machinery was halted.

5 Why you did not escape from the Khmer Rouge and why you still had
6 to follow them? What was your concept or thinking at the time?

7 A. At that time my thinking was that it was shown through the
8 testimony of the expert, Jennar, Raoul yesterday. The Vietnamese
9 Communist Party was that if I were to run to them would they
10 trust me, and that was a major issue.

11 And a second issue is that I had hundreds of followers or
12 subordinates and if I were to flee what would be happened to my
13 subordinates? Would they be arrested and detained?

14 These were the two matters that forbid me from escaping.

15 Q. Thank you.

16 So far, you have already asked for forgiveness and expressed your
17 apologies to the victims and asked them to forgive you for all
18 the mistakes you have committed at S-21 but the families of the
19 victims have indicated that these kinds of apologies are not
20 genuine, are not from your genuine heart.

21 So can you please tell the Court whether those apologies are
22 really genuine?

23 [11.01.14]

24 A. CPK has educated its members that anyone who were arrested and
25 sent to S-21 must be regarded as enemies and smashed because they

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1 were people who were opposing the party.

2 When I said I would like to express my apologies to the victims

3 -- the family of the victims even to my staff members, at that

4 time I did not regard those people who perished were the

5 criminals or those who committed wrongdoing. It is the CPK, my

6 CPK which is the criminal.

7 I therefore submit that the misdeeds that I have committed

8 towards my people have to be responsible by me, myself, because I

9 realized that I have committed those wrongdoings and there is

10 nothing else to compensate for such misdeeds other than

11 expressing apologies.

12 And having expressed this, the other people who might have

13 committed crimes may believe that they have done something -- the

14 correct thing.

15 So I would like the Cambodian people to judge my apologies

16 because I treated the people who died as those who have done

17 nothing wrong, who were innocent, and that the decision by the

18 Court to toward the genuineness (sic) of my apologies is another

19 matter.

20 Q.Thank you. If I'm not mistaken, yesterday or the day before,

21 the national Co-Prosecutor indicated that your apologies or the

22 admittance of guilt is only 50 percent and that the 50 percent of

23 such a thing is still hidden. So could you tell the Court

24 whether 100 percent of such apology or admission for guilt has

25 already been expressed?

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1 A.The Co-Investigating Judges asked me a lot of questions and I
2 have, to the best of my honesty, responded to them and during the
3 Court proceedings in this Chamber the Judges of the Bench, the
4 prosecutors, the lawyers for the civil parties have put several
5 other questions to me and I have already responded honestly to
6 them. And what I have already completely responded to the
7 Co-Investigating Judges I would have said so, and if I found a
8 new thing that I needed to reveal to the Court then I had to do
9 so, and I did not intend to hide anything.

10 [11.05.12]

11 The crimes that I have committed have to be responsible by me
12 myself and, as I mentioned time and again, that an elephant
13 cannot be covered by a rice basket, and that I also even quoted
14 another slogan that the crimes, the huge crimes committed, could
15 not be covered by two leaves of tamarind. So I think this all I
16 needed to tell the Court and it is really true.

17 Q.Thank you. When Pol Pot was still alive, Pol Pot declared
18 that he did not really acknowledge the existence of S-21. So how
19 did you feel back then?

20 A.It is the secondary matter. The first and primary matter, it
21 was in China in Beijing because Yun Yat, the wife of Son Sen,
22 said that the experts from Sweden came to inspect the remains of
23 the dead bodies and they believed that those bones were those
24 people who died after the 7th of January. So I already indicate
25 that it was the moment that history was misleading by stating so.

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1 Later on, Nate Thayer told me that Pol Pot rejected that when he
2 was in power there was no S-21, only when he got to the Thai
3 border then he noted that in the media, the Thai media, there was
4 the existence of S-21 and Pol Pot stated that S-21 was
5 orchestrated by the Vietnamese, and I could not really accept it
6 because it is the history; I know the history. And I could not
7 really accept it, and I admitted that I was the Chairman of S 21,
8 "How come you said that S-21 was created by the Vietnamese?"
9 [11.07.55]

10 Q.Thank you. The last but not least question.
11 Could you please indicate to the Court, after you have been
12 familiar with the new page of history and having admitted your
13 guilt and after having seen or noted that the people who died
14 were executed arbitrarily and they were innocent, so can you
15 please tell the Court about your state of mind in regard to this
16 matter?

17 A.As I already stated, I joined the revolution to liberate my
18 people, to be grateful to my parents and my nation but, by the
19 end, the country was fallen into the complete tragedy and more
20 than 1.7 million lives have been perished.
21 The economy, the whole country collapsed, culture has fallen
22 down, and these make me find it difficult to point the finger to
23 anyone. And as a man -- as a man who believes in justice -- and
24 I acknowledge that it is the achievement of the CPK in which I
25 was the member.

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1 That's why I said that all crimes committed in Cambodia have to
2 be emotionally and psychologically responsible by me, and the
3 Cambodian people can actually point their fingers straight to my
4 face and they can reprimand me for whatever they would wish to
5 say and I will be solely and personally responsible for the
6 crimes committed, both legally and emotionally.

7 I would like to apologize. I would like to see the forgiveness
8 from the victims -- the families of the victims, and this is my
9 conviction and commitment before our nation, and that I have
10 already been fallen into the misconduct.

11 [11.11.03]

12 Last, I already asked the psychologists and how I should do to
13 make sure that Cambodian people really want to put me back into
14 society and recognize me again.

15 Q.Thank you.

16 MR. KAR SAVUTH:

17 With Mr. President's leave, I would like to share the floor with
18 my international co-counsel.

19 MR. PRESIDENT:

20 Mr. François Roux, you may now proceed.

21 MR. ROUX:

22 Thank you, Mr. President.

23 BY MR. ROUX:

24 Q.Well, Duch, we are coming to the end of this trial, to the end
25 of your statements. Your lawyers, as you have understood, wish

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1 to give you the opportunity of giving final explanations.
2 You know, and you've understood this through the questions of the
3 Co-Prosecutors, there are still certain doubts that remain with
4 regard to your admission of guilt in spite of all your
5 statements. And some continue to doubt the fact that your
6 remorse is sincere. So three or four questions still -- normal
7 because you've already spoken a great deal.
8 Concerning admission, I believe that I can suggest to you that we
9 re-read together what the prosecutor is expecting from you and
10 then I will ask you to give a single reply, a yes or a no. You
11 are aware of the fact that in the Bible, the book which you love,
12 it is stated that your yes must be a yes and your no must be a
13 no.
14 So Duch, in the preliminary statement of the Co-Prosecutors on 31
15 March 2009, page 69 of the French version, line 22, the
16 international prosecutor Mr. Robert Petit said the following:
17 [11.15.20]
18 "Therefore, if at the end of this trial we must establish the
19 truth about what has happened in S-21, I would respectfully
20 contend that you will need to confront the accused with the facts
21 of the case and the sole logical conclusion that may be drawn
22 from this, rather than an image of someone acting against his
23 will, which is the image that he tried to give throughout the
24 investigation, nearly unaware of the atrocities that were being
25 committed around him by his subordinates while he was busy in his

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1 office, concerned with taking notes. He was --"
2 -- said the prosecutor, Robert Petit --
3 "-- in effect and in reality the person who enjoyed the trust of
4 his superiors and thus implemented with devotion and mercilessly
5 the persecution by the CPK of the Cambodian people in S-21.
6 "Should he admit that, then and then only can the accused
7 genuinely claim to have confessed to his crimes and thus benefit
8 from the consequences of these admissions."
9 Duch, we have come to the end of these debates and with regard to
10 this I have only one question to put to you.
11 Do you admit that in reality you were the man who, enjoying the
12 trust of his superiors, implemented in a devoted and merciless
13 fashion, the persecution by the CPK of the Cambodia people in
14 S-21? Do you admit this, yes or no?
15 A.Yes. I completely admit it.
16 [11.19.00]
17 Q.Co-Prosecutors, as we come to the end of these proceedings I
18 have no doubt that you will be able to draw all the consequences
19 from this admission of guilt.
20 Duch, yesterday during the statement of His Excellency, Stéphane
21 Hessel, the question of Albert Speer was raised. He was one of
22 the people who stood trial in Nuremberg, just as you have just
23 done. Albert Speer also admitted before his judges his
24 responsibility. Following that, one of the prosecutors, Mr.
25 Henry King, who had accepted to testify in your trial -- Henry

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1 King visited Albert Speer on several occasions in his prison.
2 They spoke a great deal. They met again after Albert Speer was
3 released and Professor Henry King wrote a remarkable volume which
4 he wanted to share with this Chamber. So I have one question.
5 Duch, if Mr. Smith or Mrs. Chea Leang wish to meet with you in
6 your prison, would you be willing to speak to them?
7 A. Should anyone from the prosecution wish to meet me I would
8 then be very grateful and welcome their visit and I will be
9 telling them whatever they would like me to tell.
10 Q. Let us now come to the question of the sincerity of the
11 remorse you have expressed. The Investigating Judges, in their
12 Closing Order which I've read several times over, have stated
13 that you did indeed express remorse to the victims throughout the
14 investigation phase. They stated also that you co-operated
15 throughout the investigation and that amongst other things you
16 accepted to take part in the re-enactments in Choeung Ek and in
17 S-21. Your lawyers, we came to see you and we asked you the
18 question, "Would you be willing to return to Choeung Ek and
19 S-21?" And you told us, "Yes, I am ready".
20 So then your lawyers contacted the Investigating Judges and told
21 the Investigating Judges, "If you wish to undertake a
22 re-enactment the accused is willing". And they did organize this
23 re-enactment.
24 The first time in the history of international criminal justice
25 that an accused was returned to the venue where the crimes were

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1 -- his crimes were committed. The first time -- the first time
2 that you, yourself, returned, no longer as the Chairman but
3 between two prison guards, between two prosecutors. That is how
4 you returned to Choeung Ek and to S-21.
5 [11.24.47]
6 My question, Duch, and I speak to the man here, what did you feel
7 when on that February morning in 2008 you returned to Choeung Ek?
8 Please tell us what you felt in your heart at that time when you
9 arrived, when we all arrived at Choeung Ek. Tell us about
10 yourself, about what you felt, please.
11 A.Choeung Ek; when I was the Chairman of S-21 I tried my best
12 not to pay a visit to the location but it was inevitable because
13 I had to go there once.
14 It was not at that time did I go there to show that I was the
15 powerful person in the eyes of those who already died but my
16 superior already made such request that I go there three times
17 but then I could only -- the request was made three times but I
18 could only go there once.
19 The second time when I went to the vicinity along with the
20 Co-Investigating Judges -- I have not realized until today that
21 it was I who was the first criminal who had to pay a visit to the
22 locations of his crimes.
23 When I made the decision to go there I had to -- I had recalled
24 the dead souls of the more than 10 or 12 thousand people who
25 died. I had been thinking of the children who were executed, and

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1 who were executed in a very harsh manner when they were smashed
2 against the trunks of the tree. And I had been determined that I
3 had to go to the location in order to kneel down to pay homage to
4 seek the forgiveness and express the apologies to those dead
5 souls.

6 [11.29.20]

7 And also I was there to dedicate for the people who died. As a
8 Christian I had to do that. So this is the feeling that was
9 expressed in relation to my visit to the location. And this
10 feeling is well shared like the moment I am here also.

11 That's all.

12 MR. ROUX:

13 Mr. President, with regard to the next question, I would like an
14 excerpt of the video of that re-enactment be shown on screen. So
15 we have asked the AV Unit to please display an excerpt of
16 evidence, Annex 2, which is the end of the re-enactment. Perhaps
17 we could start the tape?

18 To be specific, at the end of the re-enactment in S-21 Duch
19 requested that he be allowed to read a statement on the spot for
20 the victims in the presence of all the participants. So I would
21 like that this excerpt be played in the hearing room at present.

22 MR. PRESIDENT:

23 I notice the international Co-Prosecutor on his feet. You may
24 proceed.

25 MR. SMITH:

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1 Your Honour, I'm not quite sure what the purpose of playing the
2 video is. I think we have seen it before and I also think it's
3 the type of showing of evidence that would normally be put
4 forward in a closing address.

5 So I just wonder what the purpose of showing this evidence is and
6 whether in fact it's actually got a question related to it.

7 [11.32.43]

8 MR. ROUX:

9 Mr. Prosecutor, I know that my learned colleague was not present
10 during all the hearings and perhaps he might not have been aware
11 that the passage that we are trying to show now is not one we
12 have seen before. I fail to see how you can forbid me from
13 putting a piece of evidence on record of the case before the
14 Court. Mr. President, what I'm asking is to put a piece of
15 evidence before the Court. It is a video recording of the
16 re-enactment. I do not think that this is any matter for the
17 prosecution at all.

18 MR. PRESIDENT:

19 The Chamber allows the showing of the video clip as requested by
20 the defence counsel.

21 Court Officer, can you arrange to have the video clip B-48/2 --
22 to have it shown on the main screen of the courtroom, please?

23 [11.34.52]

24 MR. ROUX:

25 For purposes of clarification I'd like to recall that when we

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1 showed an excerpt of the re-enactment before, this came from the
2 beginning of the record of the re-enactment in S-21 where the
3 accused asked to read a text but he stopped because he broke down
4 and wept.

5 So we are now at the end of the re-enactment and not at the
6 beginning. That is when the accused was able to read his
7 prepared statement. This is what I wish to show to the Chamber.

8 MR. PRESIDENT:

9 The AV unit you that they only end part of the D-48/2 shall be
10 projected on the screen.

11 (Video recording played)

12 THE ACCUSED (from video recording):

13 "Your Honours, I was frozen with great terror when I stepped
14 into those
15 premises where a dreadful and terrible calamity had occurred to
16 my country, my people and myself.

17 For one thing, I have flashbacks of unfortunate victims and their
18 families who had been subjected to hardship, torture, disgraced,
19 and countless inhumane acts before they were put to death.

20 I am filled with indescribable remorse; therefore, I agree to
21 submit to trial in the framework of S-21 alone. And I have made
22 a strong commitment that I will do whatever I can in order for my
23 country, people, victims and their families to obtain justice.

24 [11.39.36]

25 Similarly, I feel great pity for the personnel of S-21 who were

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1 forced to perform their tasks together with me against their
2 parents' and their own wills. Among those personnel some had
3 been forced to be in danger there.
4 This catastrophe awakens my memories and I am very sympathetic
5 towards myself that I had been trapped by their ideology and had
6 accepted all the assigned tasks which were criminal in nature.
7 My acts formed part of a mechanism which resulted in a chronic
8 disaster for my country, my people, and me. Whenever I recalled
9 those incidents I hold a grudge against the leading apparatus
10 which found every means to navigate this movement towards a great
11 tragedy. And I also get mad at myself who submitted to the
12 ideology by adhering to the criminal regulations without clear
13 consideration. My acts, therefore, have shown that as the
14 President of S-21 I have undeniably participated in committing
15 crimes against humanity on the whole S-21.
16 [11.42.50]
17 Your Honours, Mr. and Madam Prosecutors, I would like to express
18 my
19 sincere thanks that I have been taken here. Please allow me,
20 Your Honours, to offer my apology to all victims. Please allow
21 me to offer my apology to all victims who were subjected to very
22 severe hardship at that place until the time when they were put
23 to death or until 7 January 1979.
24 Offer my apology to victims' families who were heartbroken
25 because they had been living for 33 years without their beloved

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1 family members and have not yet obtained justice. I admit that
2 my suffering is but a small amount of water to the great sea of
3 suffering of the victims and their families -- allow me, Your
4 Honours -- who are seeking justice for the aforementioned
5 individuals, to express my apology to all of them. I would like
6 Your Honours to have this opportunity open to me at all times.
7 I would like to express my sincere thanks to Your Honours and
8 that I have sinned the survivors and that I will be able to
9 express myself before the Cambodian people.

10 [11.46.55]

11 MR. CHUM MEY (from video recording):

12 Ladies and gentlemen here present, Judges and Co-Prosecutors,
13 this is what I wanted. This is what I want. What I want is
14 freedom. Before, I was not free to speak out as I am doing now
15 because before if a person wished to challenge what was being
16 said, he would be tortured.

17 I am thanking Duch for coming to give testimony before the Court
18 and for admitting his responsibility. I have no grudge against
19 him. What I want is justice and peace for our country and for
20 the million or so of our inhabitants who were killed. My only
21 concern is that I would like him to speak the truth before the
22 Court and I wish to thank him very much."

23 (Video recording ends)

24 Q.Duch, does this remind you of important parts or important
25 stages in these judicial proceedings? I think this reminds you

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1 of important times in your life.

2 You heard that several victims are still not satisfied now when
3 the trial is coming to a close.

4 We also heard what the experts had to say. They have said that
5 for the victims, it is a whole process and the process has
6 started. This will help them to reconstruct their lives and this
7 trial is a stage on the road to reconstruction.

8 This brings me to my last question. Duch, do you authorize me to
9 tell the victims that, if they wish, they can come and see you in
10 your prison cell; that you will open the door of your cell to
11 them and the door to your soul? Do you authorize me to tell the
12 victims that, Duch? Do you wish me to tell them that the road
13 does not end today and that the road that connects you and them
14 remains open if they wish it to be so?

15 [11.51.27]

16 A.I am much appreciated for that. Any victim who wishes to see
17 me, I would be very
18 happy to do so. You are all welcome.

19 I opened the door to them emotionally and, most importantly, I
20 would like to express my inner emotion of my feelings of my guilt
21 admission so that they could see my true self, and I would like
22 those victims to finally acknowledge that I finally accept my
23 responsibility; that I admit my guilt. So regardless of who you
24 are as well as you are a victim, the door is always open for you.

25 [11.52.58]

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1 MR. ROUX:

2 Mr. President, I think we have come to the end, at least insofar
3 as the questions to be put by the defence are concerned. Thank
4 you.

5 MR. PRESIDENT:

6 The questioning of the accused's character has come to an end and
7 before we take a break I would like to inform parties to the
8 proceedings that for this afternoon's session the Chamber will
9 have a proceeding to receive any request for submission of
10 additional material or documents which are not yet considered put
11 before this Chamber.

12 And the Chamber will consider those requests for additional
13 submission of documents this afternoon and if the proceeding does
14 not finish this afternoon we will resume tomorrow morning again.

15 [11.54.29]

16 As the parties have been informed, the Chamber already set the
17 deadline for the submission of additional materials and
18 documentary evidence, and the proceeding will start this
19 afternoon.

20 It is now appropriate for a lunch break. Therefore the Chamber
21 will adjourn and will resume in the afternoon starting from 1.30.

22 The hearing is now adjourned and the security guard take the
23 accused back to the detention facility and bring him back before
24 1.30 p.m.

25 THE GREFFIER:

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1 All rise.

2 (Judges exit courtroom)

3 (Court recesses from 1155H to 1332H)

4 (Judges enter courtroom)

5 [13.32.27]

6 MR. PRESIDENT:

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

8 For this afternoon's proceeding, and as I already informed
9 parties to the proceedings, is that the Chamber will hear the
10 submission by the parties on the request for admission of
11 additional materials which are not included in the submission of
12 those documents during the proceedings up till today.

13 And in order to facilitate the process, the submission has to be
14 clear on the remaining and pending documents and the new
15 additional documents that are sought to be admitted. Also, it
16 has to be clear on the identification of those documents.

17 And regarding the new documents which are sought to be admitted
18 before the Chamber, have to have clear identification so that
19 parties can examine those documents before the Chamber makes it
20 decision whether they are admitted for review or examination
21 before its Chamber.

22 And I would like the Co-Prosecutor now to start with this
23 proceeding if they have additional documents to be requested.

24 [13.34.51]

25 MR. AHMED:

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1 Your Honours, I stand before you in all humility in recognition
2 of the fact that today you have completed hearing of evidence in
3 this momentous exercise of finding justice to the Cambodian
4 people in this trial which has been created on the intersection
5 of national and international laws.

6 This Court has been created on the intersection of the desires of
7 the national and international communities to get justice; albeit
8 delayed, albeit at some cost.

9 So I realize the momentous nature of this day when you're
10 finished hearing evidence. And I have this onerous task to bring
11 before you certain further documents that are already on your
12 case file that may or may not be to some extent referred to
13 during the trial that you have heard for these more than six
14 months, but just so that a historical record is made of the
15 crimes that occurred at S-21, and of the background and the
16 context in which those crimes occurred at S-21.

17 In the proceedings that are before you, you have led the
18 examination of witnesses quite appropriately so because you are
19 the trier of fact. You are searching for the truth. And so were
20 the Investigating Judges when they examined as neutral and
21 impartial investigators evidence that was brought before them
22 either by parties or that they independently gathered.

23 At the same time the rules that Your Honours have given us from
24 your plenary casts a burden, an onus on the Office of the
25 Co-Prosecutors to prove the case beyond reasonable doubt under

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1 87(1).

2 [12.37.29]

3 And what I am going to do today is not to burden you with further
4 documentation but a very sincere request on the basis of analysis
5 of all the documents that you have seen or heard in this trial to
6 essentially complement those documents with certain further
7 documents that will make your exercise of judgment a bit more
8 easy and, as we call it in criminal law parlance, you will have
9 the best evidence before you.

10 I have mentioned in my opening few sentences that this Court has
11 been created as a marriage of national legal procedure prevalent
12 in Cambodia to that of international standards adopted at
13 tribunals such that are trying crimes of magnitude and complexity
14 as this crime.

15 Therefore, while the national courts of Cambodia in their
16 ordinary municipal jurisdiction would accept the entire case file
17 as the case file for reliance at trial and for their judgment;
18 however, quite appropriately, because of the specific, complex,
19 and a very big nature of these proceedings -- there are crimes in
20 the nature of hundreds and thousands of individual criminal acts
21 are being prosecuted against an individual for a period of three
22 years, eight months and a few days -- it's quite appropriate that
23 complete documentation is before you to assist you at judgment.

24 And this exercise at the end of trial when we have been able to
25 make a tentative evaluation of what has come before you and what

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1 may further assist you in your judgment is to that effect; to
2 give you access to the best evidence, such that the making of
3 judgment is facilitated, is made easier for you. After all, we
4 deem this as our duty under 87(1).

5 [13.40.09]

6 While creating those Internal Rules and granting us this burden
7 to discharge, you also said under 87(2) and (3) that certain
8 documents can be brought before you, can be put before the
9 Chamber, can be subjected to examination so that there is a
10 sifting mechanism, a filtering mechanism.

11 And you focus yourselves in your judgment only on key facts at
12 issue that have also been held by my learned friend and his
13 client in admitting certain facts in the agreed facts that they
14 have provided to your Court. It has also been held by some
15 co-operation that this accused has demonstrated.

16 So this background is essentially to tell you that what I am
17 going to embark upon is not an exercise of lock, stock, and
18 barrel putting material from the case file before you, but a very
19 sincere and methodical exercise to bring certain more material
20 that complements and may also supplement the material already
21 before you.

22 Now, in respect of these four heads of materials that I'll
23 address, Your Honours, we have had some preliminary discussion
24 with my learned friend, Mr. Roux. He, in his usual magnanimity,
25 has said certain things to us which I wouldn't want to say and

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1 I'd let him say. So I will essentially bring these documents
2 before Your Honours and let my learned friend respond. Should he
3 have major objections to those documents, I shall revert to them
4 in detail in respect of why they should be taken on record by
5 Your Honour.

6 [13.42.14]

7 Now, with that background let me begin in respect of the four
8 sets of documents that we wish to bring before you -- that we
9 wish to put before you so that you use them at trial.
10 Your Honours have, over a period of time, adopted a certain
11 methodology as to how they should be put before you. Your
12 Honours, in a decision in a trial management meeting on 11th of
13 June, said that it could be treated to be put before Your Honours
14 if it's appropriately identified. And then Your Honours
15 elaborated by saying appropriate identification does not mean
16 reading it aloud in court or even reading its summary, which may
17 be necessary at times, but essentially identifying that document,
18 the name of that document, the ERN number of that document, and
19 certain such other things that very clearly puts it on record.
20 And in my next few minutes of submissions I shall attempt to do
21 exactly that.

22 Now, as I submitted, all these four heads of documents are before
23 you in some form or the other. One form has been under Rule 92
24 which once again, Your Honours, rules permit us to bring written
25 submissions throughout the trial till the Closing Submission, to

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1 bring to your attention either evidence or arguments that we wish
2 to canvass before you. So we have adopted that mechanism which
3 in our most respectful submission is quite permitted under the
4 scheme of the rules adopted by you.

5 [13.44.11]

6 I shall begin this exercise in the very beginning. The first
7 document -- and indeed it's a map that we wish to bring before
8 you -- is a map that the learned Investigating Judges annexed as
9 Annex A to their indictment. This has been clearly on the record
10 before you since the time you received the indictment as
11 confirmed by the Pre-Trial Chamber on the 5th of December of
12 2008.

13 Clearly there are no three ERN numbers of this; there's only one
14 ERN number for this map. And I can demonstrate to you that map
15 which has been very helpful for the Office of the Prosecutor in
16 evaluating evidence. It is a complete pictorial description of
17 S-21 and its vicinities. It is at ERN number 00210940 and this
18 is Annex A to the indictment received from the learned
19 Co-Investigating Judges.

20 The second item that I wish to bring before you -- and I will
21 give one minute background to that, Your Honours -- is a document
22 that we filed on the 29th of April before your Court. And this
23 document essentially pertained to the establishment of the
24 existence of an international armed conflict throughout the
25 jurisdiction of this Court, on the territory of Cambodia between

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1 Cambodia and Vietnam.

2 Now this accused before you has admitted in the agreed facts of
3 the establishment of an armed conflict between Cambodia and
4 Vietnam, between 31st of December 1977 till the end of the
5 temporary jurisdiction of this Tribunal.

6 While agreeing with that, it is the contention of the
7 Co-Prosecutors that indeed an international armed conflict
8 existed between Cambodian armed forces controlled by the Khmer
9 Rouge regime, and the forces of Vietnam during the entire
10 temporal jurisdiction of this Tribunal.

11 [13.46.53]

12 My learned friend, in his magnanimity and usual generosity, has
13 not denied that there was not an armed conflict between 1975 and
14 end of 1977. He has left it to Your Honours in the light of
15 evidence before you to determine whether there indeed was an
16 armed conflict between April 1975 and December 1977.

17 Your Honours would recall the expert witness Professor Nayan
18 Chanda mentioned in his testimony that indeed an armed conflict
19 existed throughout the temporal jurisdiction of this Tribunal.
20 Therefore, the documents that we wish to bring before you and
21 that we brought before you on the case file on the 29th of April
22 2009 in the form of the document E61, and its attachments, are
23 those documents that we wish to put before you so as to assist
24 you to conclude that there was indeed an armed conflict on the
25 territory of Cambodia for the entire temporal jurisdiction of

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1 this Court.

2 Now, those documents are contemporaneous documents, some of them
3 created by the DK regime; some of them communiqués of
4 neighbouring and other governments and the United Nations; some
5 of them magazine and newspaper articles which in the absence of a
6 witness before you who has seen all those events, in our most
7 respectful submission, is the best evidence that should assist
8 you to conclude that there was an armed conflict on the territory
9 of Cambodia.

10 Those documents are added as Annex A to our filing E61 of the
11 29th of April 2009. And just as His Honour, the President,
12 directed me, I shall give you the ERN numbers first of our filing
13 and then of the Annex A that consists of the documents attached
14 to that filing. Bear with me for these ERN numbers, Your
15 Honours.

16 [13.49.34]

17 The English version of this document of 29th April 2009 bears the
18 ERN number -- and I shall be very slow -- 00326308 to 00326309.
19 And this document reads: "Rule 92 Submission. Notification of
20 Armed Conflict Documents to be put before the Trial Chamber
21 pursuant to Rule 87(2)". The Khmer version of this document
22 bears the ERN 00326310 to 00326312. That's the motion supporting
23 the annexes.

24 And I shall now read the annexes. Annex A bears the ERN 00333057
25 to 00333141 in Khmer. In English it bears the ERN 00326313 to

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1 00326348.

2 Our discussions with my learned friend on this armed conflict
3 documentation resulted in the observation of my learned friend
4 during the proceedings of this Court on 19th May 2009. And I
5 read from those proceedings at page 67 in English. And my
6 learned friend said:

7 "I told the Office of the Co-Prosecutors, give me a one-page
8 summary of these press articles, but I was dreaming. My dream
9 would have been that the Office of the Co-Prosecutor instead of
10 putting all these press articles would select the most important
11 ones and put them."

12 If I were to understand my learned friend's observation
13 correctly, although he would have preferred those documents,
14 those press articles from various newspapers around the world --
15 some of them in English, some in Khmer, some in French and some
16 in two or more of those languages -- the best option would have
17 been for us to have translated all those press articles into all
18 the three languages of the Court.

19 [13.52.37]

20 But the other option that he so magnanimously gave us was to give
21 him a summary of those documents. We would most respectfully
22 submit that our submission just now be deemed as a summary of
23 those documents, except if my learned friend still deems that we
24 need to satisfy him further, we would be very happy to do so.

25 This was the second submission, Your Honours. My third

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1 submission pertains to the documents that are attached to our
2 filing, a more recent filing of the 19th of August 2009, and this
3 filing in English -- I may read so that it may be translated for
4 the benefit of others present in the Court: "Co-Prosecutors
5 request for the admission of relevant testimonial statements and
6 annotated S-21 documents collected during the judicial
7 investigation."

8 This document, following Mr. President's direction, bears
9 document number E152. Its ERN in English is 00364635 to
10 00364649. In Khmer its ERN are 00364650 to 00364672. Now, this
11 filing of the 19th of August 2009 has four annexes. Annex A --
12 and once again I must submit that all these documents were
13 obtained, subjected to test and examination by the learned
14 Co-Investigating Judges.

15 [13.55.06]

16 First is Annex A, which consists of statements given by this
17 accused before the Office of the Co-Investigating Judges. It
18 also includes records, written records of confrontation that the
19 learned Investigating Judges organized, and the written records
20 of the reconstruction that was mentioned this morning, once again
21 prepared by the learned Co-Investigating Judges.

22 Annex B to this motion consists of witness statements, once again
23 taken by independent, neutral and impartial investigators of the
24 learned Co-Investigating Judges during the judicial investigation
25 that have been available to the parties since the time they have

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1 been available to the Co-Prosecutors.
2 Annexes C and D of this document of the 19th of August 2009 are
3 about 60 such documents on which this accused during his
4 chairpersonship of S-21 made annotations. A lot of these
5 documents were used by investigators of the Investigating Judges
6 to put to various witnesses. A lot of these documents were put
7 by the Co-Investigating Judges to this accused. A lot of these
8 documents were put in this Chamber to this accused and to other
9 witnesses for their comments.
10 In our respectful submission, these documents prove -- go to the
11 very core of the issue before you and which is the role and the
12 extent of participation of this accused for the crimes that are
13 charged against him. They were contemporaneous documents
14 prepared by or under supervision of this accused which he signed
15 and annotated without fear of criminal prosecution and in his
16 exercise of full authority as the Chairman of S-21.
17 [13.58.02]
18 Therefore, they shall be of greatest assistance, in our most
19 humble submission to Your Honours, in concluding the extent and
20 the nature -- and, if at all, mitigation is called for -- of the
21 responsibility and the punishment that should visit this accused.
22 You also had a discussion about that with my learned friend and
23 I'll leave it to him to respond to you on what he thinks about
24 these documents.
25 The last set of documents that I wish to bring before Your

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1 Honours -- in fact it's not documents, it is a document -- is a
2 book and this forms the basis of our filing of 24th of August
3 2009 before Your Honours.
4 This filing consists of a motion which is numbered 00369927 to
5 00369928 and in Khmer 00369929 to 00369930. This document was
6 described as document number E160 and it's entitled
7 "Co-Prosecutor's notice to place Nic Dunlop's book The Last
8 Executioner on the case file and for its admission as trial
9 evidence".
10 We made extensive efforts to find this book in French also.
11 Unfortunately -- and actually the author conceded to us that he
12 also felt that that was unfortunate -- it is not available in
13 French. It is only available in English and in Khmer. This
14 book, Your Honours, was extensively referred by the learned
15 Co-Investigating Judges. The accused was asked questions about
16 it in the judicial investigation, and so also during the trial
17 before you.
18 In our most respectful submission, this book gives the most
19 complete account of the activities of the accused post Khmer
20 Rouge regime; that is, post January 1979. The accused, as he
21 told the learned Investigating Judges, has read this book and
22 this book, in our most respectful submission, should be before
23 you specially when, as my learned friend claims, the whole issue
24 before this Court is whether there should be mitigation for the
25 remorse and the apology and the admission of guilt demonstrated

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1 by this accused.
2 [14.01.47]
3 The ERN numbers of this book, as placed on the case file, are as
4 follows. In English -- and the entire book is on record -- in
5 English it is 00369932 to 00370270. In Khmer it should be
6 00370271 to 00370539. Now, Your Honours may tell me -- and I ask
7 this question to myself -- should books lock, stock and barrel in
8 an entirety be put before Chambers and should they be burdened
9 upon the Judges in their evaluation of evidence?
10 Your Honours, we would submit that this would be an exception.
11 This book is written by this journalist, who discovered this
12 accused, on the life of this accused himself. We requested the
13 learned Investigating Judges to call Nic Dunlop, the author of
14 this book, as a witness; either as a witness of fact or as an
15 expert. But the learned Investigating Judges, when we made this
16 request towards the close of judicial investigation, said that
17 the Co-Prosecutors may make this request during trial because the
18 Investigating Judges were in a process of closing and submitting
19 the indictment at an expeditious pace.
20 They also respectfully sought before Your Honours to call this
21 witness, Nic Dunlop. Your Honours concluded in your wisdom that
22 it would not be appropriate to call this witness, and therefore,
23 in the light of all of this, we would most respectfully submit
24 that since this book has been so extensively referred and
25 cross-referred, it would be in the interest of justice that this

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1 is before you.

2 [14.04.21]

3 And in making the submission I would make two observations and
4 then I shall be done with my submission. The first observation
5 is, Your Honours, that we made requests before learned
6 Investigating Judges on filing documents that were in the public
7 domain. The learned Investigating Judges, both of them being
8 very accomplished in their national jurisdictions in the civil
9 law procedures, told the Co-Prosecutors in their Order of the
10 19th of March 2009 -- and this concerned a report about the
11 effect of this trial on the lives and mentality of the victims of
12 the Khmer Rouge -- said that this is a public document and if the
13 Co-Prosecutors or the judicial officers later wish to use any of
14 its findings they may do so at their wish.

15 Now, we are not citing this as a binding precedent for you, but
16 we would most respectfully submit that this being a public
17 document available in the public domain, referred extensively
18 during this trial and judicial investigation, read by the
19 accused, subjected to some examination, it should be and most
20 respectfully ought to be admitted for your consideration at
21 judgement.

22 Your Honours, these would be my preliminary remarks. And if my
23 learned friend has some very fundamental objections to this or
24 should Your Honours have certain questions to me, I shall be most
25 respectfully available to answer specific questions, but without

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1 further ado I would rest my case here.

2 MR. PRESIDENT:

3 The defence counsel, do you have anything to make observation or
4 any objection to the request made by the Co-Prosecutors?

5 [14.06.55]

6 MR. KAR SAVUTH:

7 Mr. President, Your Honours, and the hearings, I would like to
8 raise some observations and the decision will be in the hands of
9 the Trial Chamber. And I will respect the judgement of the Trial
10 Chamber. My observation is on the armed conflicts between the DK
11 regime and the Government of Vietnam. So the armed conflict was
12 arisen between the top governments between the two countries, so
13 if we include these documents into case 001 to aggravate it
14 against Duch, it seemed to be very serious.

15 It is unacceptable to me and I frequently remind the Chamber that
16 if you include these documents into case 002 it might be more
17 appropriate because the armed conflict between the DK government
18 and the Vietnam government it was at the government level, it was
19 not at Duch's level.

20 In addition to that, the DK government, there were four people
21 including Pol Pot, Ieng Sary, Vorn Vet and Son Sen. Three of
22 them were deceased and only Ieng Sary. So if you include these
23 into case number 2, and we examine against Ieng Sary it would be
24 okay. In addition to that, I also mentioned that if we take the
25 armed conflict between the forces of the DK regime and the

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1 republic socialist of Vietnam to use and to try only the
2 Cambodians, it seems injustice or no justice because many
3 Cambodians died and if you use that to use only against the
4 Cambodians, it's not appropriate. However, we should try to find
5 the lie to prove that justice for Cambodians and for the
6 international community.

7 So if you include the document related to the armed conflict in
8 this trial, so what happens to the acts, the fighting and they
9 kill the Cambodian prisoners of war in Vietnam. Why we don't
10 have the war crimes tribunal? And the Vietnamese prisoners of
11 war fight in Cambodia and they end up in Cambodia and we tried
12 them in this - the responsible person for that. So to me I think
13 that we should include this document into case 002. It would be
14 more appropriate. However, it is in the hands of the Trial
15 Chamber. This is just my observation.

16 [14.10.57]

17 MR. PRESIDENT:

18 François Roux.

19 MR. ROUX:

20 Well, Mr. President, ladies and gentlemen, I would like to make a
21 few additional comments after the long presentation of my
22 colleague from the prosecutors office.

23 I am perfectly willing to be magnanimous but I don't want to be
24 stupid with regard to the armed conflict which our counsel Kar
25 Savuth mentioned, for six months I've been saying to the Office

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1 of the Prosecutor, if you wish to file over 200 press articles
2 which exist only in English, that is your responsibility. But
3 what we ask you to do is to produce at least a one-page summary
4 giving us the gist of what the articles you want to submit
5 contain. Because if at some point I were to discover that you
6 have produced documents which had to do with something else, then
7 I want to be able to make you accountable for it.
8 And now for six months I've been waiting for a single-page
9 summary. Then I'm handed a document which is several pages long,
10 but that's not what I asked. I asked a one-page summary
11 explaining to us this is what can be found in the 200 press
12 clippings that you feel are required in order to demonstrate
13 armed conflict about which Counsel Kar Savuth says, "Well, first
14 and foremost, it has to be discussed in the 200 press clippings
15 that you feel are required in order to demonstrate armed conflict
16 about which Counsel Kar Savuth, says, "Well, first and foremost,
17 it has to be discussed in case number 2." So I'm still waiting
18 for that one-page summary which you had committed to produce.
19 And I would like to add, Mr. President and distinguished members
20 of the Court, that with regard to this conflict the discussions
21 that we've had with the Office of the Prosecutor were dealing
22 exclusively with press articles. I had personally expressed the
23 opinion that I thought that 200 press articles might be
24 exaggerated, but what have I discovered?
25 I have discovered that under cover of this purported agreement of

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1 mine, there appear to be five books, analytical reports, military
2 reports, telegrams, video clips. I have never approved any of
3 that; never. So magnanimous -- yes, you will find that in me
4 when I say, "If you wish to submit 200 articles, I believe it's
5 too much, but that is your responsibility. You should take
6 responsibility for it and give us a one-page summary of it."

7 Full stop.

8 [14.14.39]

9 Don't take advantage of that to pretend that you have my
10 agreement to slip in a slew of documents about which I have never
11 given any form of agreement.

12 Coming now to the map you suggest, we have no observation; that
13 was your first point.

14 On point three, testimony and documents commented on by the
15 accused, you are returning to an appendix or Annex A to your new
16 request because you're never assured of submitting motion after
17 motion after motion and application.

18 I tell you that your request of 19 August 2009 which is 15 pages
19 long has yet to be translated into French. I don't know if
20 there's a Khmer version. These are not acceptable working
21 conditions.

22 So what I understand from the request or application of 19 August
23 is that the Office of the Co-Prosecutors wishes that there be
24 entered into the file all of the reports of interrogation by the
25 Co-Investigating Judges. Obviously, the defence has no objection

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1 to submitting to the Chambers or putting before the Trial Chamber
2 the reports of the interrogations performed by the Investigating
3 Judges, but you always want more.

4 And so the Office of the Prosecutor then takes the liberty of
5 singling out document 25 with reference D90, 25 June 2008. And I
6 would like to respectfully call the attention of the Chamber to
7 the fact that this report of interrogation belongs to case file
8 2; it should, therefore, not be entered into case file 1.

9 [14.17.25]

10 Thus all of the reports or transcripts of interrogations made by
11 the Investigating Judges in the framework of case number 1 --
12 yes, without exception or exclusion. All of the documents that
13 were commented upon by the accused at the request of
14 Investigating Judges -- whether they are appended to this
15 transcript or handed in later by the accused -- yes, of course.
16 That was part of the work of the Co-Investigating Judges and in
17 order to save time, on several occasions, Co-Investigating Judges
18 gave documents to the accused in the presence of Co-Prosecutors
19 and asked the accused to make his comments. All of this is in
20 the investigation file and obviously, since all of this has been
21 argued in a contradictory fashion, the defence is certainly in
22 agreement with placing these in the file.

23 However, in your list, dear colleagues, Co-Prosecutors, you
24 forget that there were two re-enactment minutes. I know that
25 you've mentioned this very little and this is a legal act which I

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1 continue to consider to be a major one. However, Mr. President,
2 distinguished members of the Chamber, I would beg you to be very
3 careful and make sure that there not be one re-enactment report
4 as has been requested by the Co-Prosecutors, but the two. In
5 other words, Choeung Ek and S-21 should be filed.

6 Similarly, we request that your file contain the film of this
7 re-enactment, excerpts of which were shown in court this morning
8 by the defence.

9 As for Annex B which contains 69 witness statements compiled in
10 the course of the investigation, the defence has no objections.
11 However, with regard to Annex 2, mention is made of 60 documents
12 from S-21 which are alleged to be -- and I say this pointedly --
13 to have been annotated by the accused with accompanying
14 translations.

15 [14.21.19]

16 I respectfully beg the Court to take note of the fact that the
17 defence voices its firm opposition to submission before the
18 Chamber of documents from S-21 which were not the subject of
19 debate during hearings. Why is that? Because in the course of
20 the investigation, but also during the debates before the
21 Chamber, you will recall that together we realized that there
22 were numerous translation errors pertaining to these documents
23 from S-21.

24 In fact, I recall that during the investigating stage, there was
25 a moment when the Office of the Co-Prosecutors was proud to use a

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1 term that was used at length by the Office of the Co-Prosecutors
2 this morning, was proud to present to Duch a document issuing
3 from S-21 where it appeared that his signature had been placed;
4 whereas, as it turned out upon examination, the sign that they
5 were showing simply meant that they came to the end of a
6 paragraph and that this was a sign that was repeated throughout
7 the document. So I believe only in one thing and that is
8 adversarial debate and nobody can deny that Duch co-operated with
9 the Co-Investigating Judges and the Chamber in the work of
10 deciphering the S-21 documents that were shown to him. And it is
11 thanks to Duch and his willingness to co-operate that we were in
12 a position to analyze the documents that were put to him, but it
13 is also thanks to this contradictory scrutiny that we were
14 successful in singling out serious mistakes in the interpretation
15 of some of these documents.

16 Thus I wish to say to our colleagues from the Office of the
17 Co-Prosecutors you have had available one year of investigation,
18 practically one year of trial on top of that. You have chosen to
19 bring to the bar witnesses who sometimes were of no interest at
20 all. That is your choice. Rather than do this, you should have
21 put in the contradictory debate those very documents. You did
22 not do it and you cannot today seek leave to put them before the
23 Trial Chamber with no contradictory scrutiny.

24 [14.24.42]

25 Finally, with regard to the book of Nic Dunlop, I recall that

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1 Duch has admitted a series of reservations toward this book, at
2 least some of the passages in the book. However, this being
3 said, we will comply with the wisdom of the Chamber on that
4 question. So these were the observations of the defence, and the
5 defence itself will later seek from you leave to introduce a few
6 new documents, rather than hundreds of new documents.

7 Once again, I regret that the Office of the Co-Prosecutors deems
8 it useful in a trial where the accused recognizes everything he's
9 accused of -- deems it useful to bury us under scores, hundreds
10 of pieces of evidence which for each one of them require
11 translation into all languages and cost time and money for this
12 Tribunal.

13 MR. PRESIDENT:

14 Please, the floor is yours, Mr. Co-Prosecutor.

15 MR. AHMED:

16 Thank you very much, my learned national and international
17 defence colleagues, on your observations.

18 Beginning at the very beginning, let me respond to my learned
19 friend Maître Savuth's observations regarding armed conflict;
20 that certain accused in case file 2 should be burdened with this
21 documentation and not this, because Pol Pot and others higher up
22 in the hierarchy were responsible for this and not this accused.

23 Your Honours, there's some wisdom in that submission but the
24 problem for the Co-Prosecutors in their objective and onus to
25 prove the case beyond reasonable doubt is the charge that the

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1 learned Investigating Judges gave to us under the Geneva
2 Conventions.
3 [14.27.28]
4 Now this accused stands charged for various crimes that have been
5 described in the indictment as confirmed by five Judges of the
6 Pre-Trial Chamber for being charged with grave breaches of the
7 Geneva Conventions. Now my learned friend very well knows that
8 to prove grave breaches of Geneva Conventions one has to prove,
9 as the Co-Prosecutor has to, the existence of an international
10 armed conflict and the connection that's required between the
11 crimes of this accused with that armed conflict. Without such a
12 connection and without the proof of an international armed
13 conflict, the charge of Geneva Conventions shall fail.
14 Now I don't want to go into the history of this case that's come
15 before you in the form of the indictment. Before the
16 investigating magistrates and even before you in this trial we
17 submitted that this accused should also be charged with national
18 crimes under the 1956 Penal Code of Cambodia. My learned friends
19 vehemently opposed that. If this accused was charged with
20 national crimes -- which he indeed stands charged -- only
21 national crimes, this connection with armed conflict would not
22 have been required at all.
23 Now my learned friend cannot oppose national crimes which don't
24 require armed conflict and then say that we should not be able to
25 prove armed conflict, which is required for the charges currently

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1 labelled against this accused. So we are bound by the
2 requirements of international law to prove an international armed
3 conflict.
4 Your Honours, I will not burden you with too much of legal or
5 jurisprudential arguments but I'll just read you a most seminal
6 description of an international armed conflict by one of the best
7 judgments written under international law, at least in its
8 earlier years. This was written by the Appeals Chamber of the
9 International Criminal Tribunal for the Former Yugoslavia in the
10 famous Tadić decision.

11 [14.30.32]

12 The Appeals Chamber comprising of five learned judges held --

13 MR. PRESIDENT:

14 Defence counsel, you may proceed.

15 MR. ROUX:

16 I'm sorry to interrupt my learned friend but I do not think this
17 is the time to make your pleadings, your closing submissions, and
18 this is not the time to justify your claim for war crimes. We
19 are not doing a class on war crimes here. If we want to conclude
20 this evening I do not think we ought to do what you are doing
21 now.

22 MR. AHMED:

23 Your Honours, I am not in the business of teaching great doctors
24 of international law like my learned friend is. I was
25 essentially bringing to your attention the requirements of a

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1 number of documents to prove armed conflict, and that's why I was
2 reading to you the definition of armed conflict, which I shall
3 not read in deference to my learned friend's suggestion.
4 I should only state that the Tadi? decision stated that it has to
5 be a protracted violence between states. Now, clearly to prove a
6 protracted violence between states over a period of three years,
7 eight months and 20 days, as we are faced in this Court, we would
8 be required to bring such evidence that establishes a
9 continuation -- a continuum of conflict, skirmishes of various
10 types such that it forms a complete armed conflict throughout the
11 temporal jurisdiction of this Court.

12 [14.32.44]

13 Therefore, these articles are not repetitive but they are
14 necessarily required to prove this existence of armed conflict
15 and its protracted nature between states such as Cambodia and
16 Vietnam. So therefore my respectful submission is that it is not
17 repetitive. It is indeed required. Your Honours wouldn't be
18 willing, like any other Judges of any international tribunal, to
19 conclude the existence of armed conflict on the basis of one
20 document? Or much less, admission of an accused?

21 It will not be countenanced by any judge that an admission of one
22 accused would lead to an unquestionable acceptance of the
23 existence of armed conflict throughout that temporal jurisdiction
24 of this Court. And I shall not go further.

25 Regarding a summary, Your Honours, our document of 29th of April

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1 2009 was indeed a one full page summary of what was contained in
2 these binders. They may look big but they are indeed a
3 collection of documents that are completely and in detail
4 described in our filing E61 of the 29th of April 2009.
5 [14.34.35]
6 However, should my learned friend wish, the Office of the
7 Co-Prosecutors on its own will provide another summary to my
8 learned friend so as to satisfy his suggestion. And we can
9 discuss that with his office.
10 Your Honours, it was not our desire to omit one report of
11 re-enactment and the Co-Prosecutors respectfully state before you
12 that Your Honours should also admit the second re-enactment and
13 indeed all such documents associated with the re-enactments and
14 reconstructions that were undertaken by the learned
15 Co-Investigating Judges.
16 Regarding Nic Dunlop's book, Your Honours, we are not submitting
17 that Your Honours should rely your judgement on the book of Nic
18 Dunlop. We are bringing it before you, putting it before you for
19 consideration. It may or may not be true, depending on what Your
20 Honours conclude on the basis of other corroborating evidence and
21 the testimony of this accused. And therefore Your Honours should
22 treat that with the scrutiny, with the strict scrutiny that Your
23 Honours will have to apply to all the documents that are before
24 you in this trial to reach a conclusion.
25 Your Honours, the last point -- and which became a bit

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1 contentious in the response of my learned friend -- is in respect
2 of annotations of this accused on the documents produced at S-21.
3 While the easier thing for the Office of the Co-Prosecutors would
4 be to go back to its list and filter out such documents -- and
5 there were quite a few of them -- that have been put to this
6 accused or other witnesses during either the judicial
7 investigation or this trial, once again, in submitting that Your
8 Honours consider these documents, we were not submitting that all
9 of them may or may not have been authentic or at least authentic
10 in the eyes of this accused.

11 [14.37.08]

12 I would respectfully submit in respect of Annex D that I would go
13 back to my chambers, make another list and confer with my learned
14 friend and come out with a mutually acceptable list in respect of
15 Annex D.

16 And this should be done in reciprocation for the generosity that
17 my learned friend has just demonstrated in respect of acceptance
18 of other documents. We still maintain though that these
19 documents are very crucial, contemporaneous, directly relevant
20 best evidence that this Court has before it.

21 After all, trials of this nature like you are trying -- just like
22 Nuremberg -- turn on evidence because no one witness, no one
23 accused can give you a complete picture of what happened at S-21
24 and the nature and extent of the role of this accused during
25 those three years, eight months and 20 days.

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1 Your Honours will clearly have to rely equally, if not more, on
2 documentary evidence. But in respect of this Annex D, Your
3 Honours may grant us a week or less than that to go back, confer
4 with my learned friend, and come back with a solution, not before
5 the Court but to file it before you, and then Your Honours in
6 writing may choose to decide in a way Your Honours wish to.

7 I hope I've answered all my learned friend's observations.
8 Should Your Honours have further questions, I shall be willing to
9 respond.

10 [14.39.10]

11 MR. PRESIDENT:

12 Judge Lavergne, you take the floor.

13 JUDGE LAVERGNE:

14 Thank you, Mr. President. I might wish to put a number of
15 questions to the parties to shed light on some issues.

16 So we have four series of documents. The first series is the
17 map. I understand that there is a clear agreement between the
18 parties to put this document, this map, before the Court, I take
19 it.

20 There is a second batch of documents according to the
21 Co-Prosecutors -- the existence of an international armed
22 conflict. What I understand is that there is an objection on the
23 part of the defence in principle to the effect that these
24 documents are not necessarily relevant to case number 1 because
25 they allegedly concern the leaders of Democratic Kampuchea.

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1 The defence further contends that there has not been an
2 international court to try people for the war criminals or the
3 prisoners of war who were killed in Vietnam. I would also like
4 to understand whether the defence is relying on the Chamber for a
5 determination of this matter.

6 I also heard objections regarding an application pertaining to
7 200 press articles or thereabouts. If I understand correctly,
8 the objection is that these press articles are not summarized
9 properly.

10 [14.41.12]

11 In any event, they are not identified or summarized, so there are
12 two possibilities for putting documents before the Court --
13 either notification or summary. So what the defence is saying is
14 that they're not adequately summarized.

15 Please let me continue and finish the list and you will have the
16 floor after that.

17 Further, if I understand it correctly, there is an objection to
18 the placing before the Court, in addition to the articles,
19 documents that are allegedly books, military reports or video
20 footage. At this stage I have not heard any objections to the
21 fact that these documents are available in only one of the
22 working languages of the Court. I wish to have confirmation on
23 this point so that there will be no difficulties subsequently.
24 Concerning interview reports or re-enactment reports, I believe I
25 understood that there is an agreement between the parties, or at

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1 least the Co-Prosecutor and the defence, to the effect that these
2 documents should be considered as having been put before the
3 Chamber.

4 The same applies to witness statements that were collected during
5 the investigation phase.

6 With regard to Annex D -- that is, 60 documents which are
7 annotations made in Duch's hand -- it seems to me that some of
8 these documents have already been put before the Court. I do not
9 know, therefore, whether the Co-Prosecutors have prepared a list
10 of these documents already put before the Trial Chamber or
11 whether these are 60 completely new documents that have never
12 been put before the Court. They will not be treated in the same
13 manner.

14 Lastly, there is the book by Nic Dunlop. I would like the
15 defence to state clearly whether -- this book is in English and
16 the fact that this book is in English raises whether the defence
17 is objecting to the presence of this book or the existence of
18 this book only in English.

19 [14.44.26]

20 MR. AHMED:

21 Your Honour, sorry to interrupt.

22 Just to clarify that it's also available in Khmer. I'm sorry, I
23 didn't mean to interrupt Your Honour.

24 JUDGE LAVERGNE:

25 (No interpretation)

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1 MR. ROUX:

2 Thank you, Your Honour. With regard to documents supporting the
3 case of the existence of an armed conflict, the defence wants to
4 reiterate its position which is set out in the facts admitted,
5 where the accused admits that there were prisoners of war from
6 the 31st of December 1977. It is an admitted fact.

7 In spite of that, the Co-Prosecutors considered that it was
8 necessary to make submissions in this regard before the Court,
9 asking the Court to decide, to determine that this armed conflict
10 spread all over the country during the DK era. From the outset
11 the defence has always said that this was not one of the points
12 of case number one. The defence has said this before from the
13 start.

14 And then the prosecutor asks the defence whether the defence
15 agreed to putting about 200 articles before the Court. Actually,
16 it's more. It's 138 plus 87. I think Duch is better at
17 mathematics than I am and he could give you a general figure, but
18 I can tell you that it is more than 200 press articles only in
19 English.

20 [14.46.33]

21 So I told my learned friends on the other side, "If you want to
22 put this document before the Court only in English, I would like
23 you to be responsible for preparing a one-page summary of what
24 these articles are about. It does not seem terribly difficult, a
25 summary in French". And in reply I have dozens of pages in

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1 English with summaries of each article. And this is how you
2 flood a tribunal and translation services with documents.
3 I maintain that these documents are totally redundant. There is
4 no need to flood the Chamber with 200 useless press cuttings. I
5 am not requesting a translation into French because I do not want
6 to submerge the translation services. I just want a summary, a
7 one-page summary in French, in which you will tell me what the
8 articles contain. Is this perfectly clear? I asked for this six
9 months ago.

10 With regard to your other question, Your Honour -- that is,
11 whether they could identify -- whether the Co-Prosecutors can
12 identify S-21 documents which have been put before this Chamber,
13 this is a matter for the prosecution because it is the prosecutor
14 that put before the Court documents on screen and it should be
15 easy for them to make a list of documents that were put before
16 the Court and subjected to an inter partes debate.

17 So these documents and other documents submitted to the
18 Co-Investigating Judges and which were the subject of an
19 adversarial debate, we will not object to.

20 Lastly, regarding Mr. Nic Dunlop's book, I am going to be
21 magnanimous. As my colleague says, the book exists in Khmer
22 although it doesn't exist in French, so it is in at least two of
23 the Tribunal's languages. I consider that it is useless at this
24 point to overwhelm the translation services, although I would
25 have been pleased to have a French copy to read.

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1 [14.49.47]

2 So at this stage of the proceedings we are not going to ask for
3 another translation because there is a Khmer version that Mr. Kar
4 Savuth has been able to read.

5 I hope I have covered the questions that you put.

6 (Deliberation between Judges)

7 MR. PRESIDENT:

8 I notice the defence counsel is on his feet. You may proceed.

9 MR. ROUX:

10 I beg your pardon, Mr. President, but at this stage whilst we are
11 discussing the documents that will be put before the Trial
12 Chamber, it is my view that we should add the psychological
13 assessment report. I think it would be useful for the Court to
14 order that all documents that will be considered as having been
15 put before the Court should be placed on the Tribunal's website.
16 This is a public trial. It is indispensable that anyone who so
17 wishes may have access to documents if these were discussed
18 publicly or if they were considered as having been debated
19 publicly. This is a fundamental principle; that is the public
20 nature of proceedings.

21 [14.52.08]

22 MR. PRESIDENT:

23 The Chamber would like now to give the floor to the civil party
24 lawyers if they wish to submit any additional documents, and you
25 have to clearly state whether your submission is related to the

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1 existing remaining documents with proper identification so that
2 the Chamber can follow the procedures and that parties should
3 adhere to the instructions given by the Chamber.
4 And if they have new additional documents they should state so as
5 new documents. And that would help the Chamber for its
6 examination and consideration before it decides on its admission.
7 So civil party lawyer group 1, you take the floor.

8 MS. TY SRINNA:

9 Good afternoon, Mr. President, Your Honours, distinguished
10 members of the Court. My name is Ty Srinna. I'm representing
11 civil party group 1 and my colleague is Alain Werner.
12 This is the last day of the hearing and I would therefore like to
13 make two requests. Both requests are related to submission of
14 documents for examination and decision. My first request is
15 related to documents already existed in the case file and my
16 second request is related to submission of new evidentiary
17 documents which are not yet part of the case file. And for my
18 first request that is the documents already in the case file.
19 They are related to the confession of Men San, alias Ya, with the
20 ERN from 0009497 to 00009682.

21 [14.55.29]

22 Between those pages there are some relevant parts, especially on
23 the page with ERN 00009499 and 00009500 where there was an
24 annotation of the accused and the page with the ERN number
25 00009574, which shows the letter the accused wrote to Men San,

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1 alias Ya, in the last paragraph of the letter, and the page with
2 the ERN 00009587. It is at the point where the accused wrote a
3 letter to Comrade Pon. It's the third point of the letter. And
4 the ERN in English and in French -- I apologize. I do not have
5 those ER numbers.

6 However, these documents have already been translated and have
7 been placed in the case file already and I seek leave from the
8 Chamber to admit this document into the case file as basis for
9 Your Honour's judgement.

10 Regarding my second request, it is related to new documents which
11 are not yet placed in the case file. We submit that we would
12 like to make an oral submission of these new documents related to
13 this S-21. The reason for our oral submission is that we already
14 made our written submission and we sent our submission to the
15 translation pool but unfortunately the translation unit is too
16 occupied with various other urgent requests and they're not able
17 to produce the translation for us on time. Therefore, I would
18 submit the written request with its translation in due course. I
19 believe the translation shall be done before the final oral
20 submissions.

21 The evidentiary documents that we wish to submit are delivered to
22 the defence counsel for their own examination and decision this
23 morning. In relation to those documents we submit to include
24 18-page document. They are daily list of prisoners at S-21. In
25 these documents there is a signature of Hor, who was a member of

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1 S-21, and the signature indicates that the lists were made by Hor
2 in order for his report to be sent to the upper echelon for the
3 examination on the daily activities of the prisoners at S-21.
4 [15.00.53]

5 On these lists there are tables indicating the daily number of
6 prisoners and the newcomer prisoners as well as the prisoners who
7 died at S-21, as well as those prisoners who were sent to be
8 smashed. I believe these lists are new and crucial evidence that
9 ought to be included in this 001 case because these lists show
10 the situation of the prisoners at S-21 and no such list exists in
11 the case file so far indicating such situation at S-21.

12 In addition, these lists also indicate clearly the fact that the
13 detainees at S-21 who died by various means, which are in
14 addition to those who were sent to be smashed at Choeung Ek.

15 Amongst those lists there are also indications of smashing by
16 blood-drawing and that a prisoner at S-21 committed suicide by
17 hanging himself in an individual cell or in a cell at S-21. This
18 list also indicates the tortures inflicted upon the prisoners who
19 died later on and some prisoners also died due to various
20 diseases. And the list also indicates that prisoners died during
21 torture, during the interrogation process.

22 My group also examined the list and compared the list against the
23 list already exist in the case file which is E68.1. And it is a
24 list of prisoners to be smashed after they had been re-educated.
25 And the list had been placed before this Chamber for

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1 confrontation already.

2 We compared the numbers and the names of the prisoners who died
3 at S-21 against the list that we newly found. Then we found out
4 that in our new documents of the list of the daily activities of
5 the prisoners are not included in the list of prisoners to be
6 smashed at S-21. And this is the reason of its difference and
7 this is a new document, supplementing the existing document
8 already in the case file.

9 [15.05.29]

10 Therefore, Your Honours, I believe the 18 list that we newly
11 found should be included in the case file for the interest of the
12 Chamber to ascertaining the truth as well as to seeking justice
13 for those who died at S-21. Therefore I urge Your Honours to
14 grant the admission of this list as part of the case file.

15 Thank you.

16 MR. PRESIDENT:

17 Please, Mr. Alain Werner, the floor is yours.

18 MR. WERNER:

19 Mr. President, distinguished members of the Court, briefly, to
20 add to what my colleague said -- I would simply like to be sure
21 that everything is clear on two points.

22 First of all, to be correct with the interpretation service. As
23 you know, the civil parties were quite busy these last few days
24 because following your order we must submit a motion on
25 reparations tomorrow so there was a great deal of discussion

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1 among civil parties and we were only able to submit the motion
2 today to the translation department which Ty Srinna has mentioned
3 earlier. And that is the reason why we handed it to our
4 colleagues from the defence as early as we could, and that was
5 two hours ago.

6 We expect that this document will have been translated by next
7 week since Friday and next Monday are holidays. And that is why
8 we took the liberty of submitting a motion orally which will give
9 our colleagues time to reply and to have a maximum of time to
10 work on this and to intervene before your Chamber.

11 [1.07.51]

12 Now, an additional element with regard to the relevance of this
13 motion, the fact that it is important for our civil parties. And
14 the reason is the following: as Ty Srinna told you, what we have
15 discovered -- first of all, it's 18 one-page lists. These are
16 daily lists. These are 18 one-page lists. And if there was
17 really a list being made every day, there should probably be a
18 great deal more of them but we're talking about 18 lists today.

19 What seems to us important is that in these lists we have 18
20 names of persons who were detained in S-21. In our motion there
21 will be a statement by Tuol Sleng attesting to the fact that
22 these lists were found in S-21. These 18 lists are persons who
23 were not executed but who died either under torture or because of
24 the conditions of detention, and by suicide in one case.

25 Of these 18 names, we compared these 18 names, as Ty Srinna said,

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1 with the consolidated list of the Co-Prosecutors. And for 14 of
2 the 18 cases, these names are not to be found there. In other
3 words, these daily lists are mentioning persons who died but were
4 not executed and their names cannot be found in the consolidated
5 list. That's important for us, and why is that?

6 Because as you know, for four of our clients -- and I have spoken
7 at length about this -- we were unable to supply additional
8 evidence and as the accused and one of his lawyers have quite
9 rightly submitted, the names of the relatives of our clients are
10 not found on the consolidated lists.

11 [15.09.50]

12 Therefore, if we could submit these lists before the Trial
13 Chamber, that should make it possible for us to support our
14 argument that it is more than probable as I say, that these
15 persons died in Tuol Sleng, perhaps through other means, not
16 execution but illness, torture, suicide, or other.

17 And it would be logical that the names of these persons cannot be
18 found in the consolidated list. And again, we think it's
19 important for us to be able to rely on these documents because
20 that will help us buttress our final submission which is that for
21 four of our clients the fact that the names cannot be found on
22 the consolidated list does not mean that these persons had not
23 been detained in S-21.

24 One more word and then I will be done. And to tell you that we
25 were brought into this case in January. We have limited means

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1 and a limited team. We've really made all efforts to scrutinize
2 all the documents. This required a great deal of time and we
3 were as diligent as we could in order to include all these
4 documents.

5 And in fact my colleagues spent an enormous number of time in
6 Tuol Sleng manually going through the documents to identify
7 these, as is stated in our writings. I know it's late but again
8 we believe that it would important for the case and for our
9 clients specifically that these documents be put before the Trial
10 Chamber.

11 Thank you.

12 [15.11.29]

13 MR. PRESIDENT:

14 The Counsel for civil party group 1, can you mention the source
15 of your documents and the reason why it is late in submission?
16 And you just made the request just at this moment.

17 MS. TY SRINNA:

18 Thank you, Mr. President. I will take this floor to provide
19 clarification.

20 We found these documents at Tuol Sleng Museum and I spent quite a
21 lot of time to find the documents as mentioned by my colleagues.
22 Then we found this document and we requested for a photocopy and
23 we need some time to do that. And we need to make a request to
24 the Ministry of Culture who is responsible for the Museum.
25 And we need to have the permission to make copy of the documents

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1 at Tuol Sleng Museum. And we wait some time, three days or one
2 week to get the permission because some times the person in
3 charge was busy and we received three days or one week to get the
4 commission because sometimes the person in charge was busy and we
5 receive that on the 26th of August 2009, and we receive the
6 document. And we spent some time to read and to discuss with the
7 civil party and we need some time to spend to look on this
8 document.

9 Another point about the way in submission of this document is
10 that our group was formed to participate in case 001. We started
11 in mid-January 2009 and it is the time the investigation is
12 closing and the hearing was started. So during this period it
13 was very stringent for us that we need to look a lot of documents
14 that should be used in this case 001.

15 [15.15.20]

16 In addition to that, even though our group had a short time to
17 study the case, but we made our effort to find additional
18 documents and material for using in the hearing, so that we can
19 ascertain the truth. We try to look for evidence every day even
20 though we need to spend some time in the hearing and in our free
21 time we need to find more evidence and documents to support our
22 case in the hearing.

23 These are the grounds for our late submission of the documents.

24 Thank you, Mr. President.

25 MR. PRESIDENT:

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1 Now, it is time for the Trial Chamber to adjourn 18 minutes and
2 we will come back in session at 3.30.

3 (Judges exit courtroom)

4 (Court recesses 1516H to 1536H)

5 (Judges enter courtroom)

6 MR. PRESIDENT:

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

8 Next, the Chamber would like to hear the submissions by various
9 other parties. The proceedings regarding the documents requested
10 by the civil party group 1 -- actually there are two requests;
11 the first one relating to the documents already placed in the
12 case file and a new request for a new 18-page document. I wish
13 to hear the comments from various parties.

14 Defence counsel, you take the floor.

15 [15.37.14]

16 MR. KAR SAVUTH:

17 Thank you, Mr. President. The defence counsel believes the
18 documents requested by the civil party counsel group 1, including
19 those documents already placed in the case file for that part, it
20 shall not be granted because it's already in the case file and if
21 the civil party counsel believes any portion of those documents
22 are crucial, then they should mention it in their final closing
23 submission with the proper document identification, title and ERN
24 number. That is my first observation.

25 And to my second observation regarding the newly-found documents

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1 related to S-21, as a principle all the documents produced by
2 S-21 shall be submitted to the Co-Investigating Judges during the
3 investigation phase so that it can be examined and confrontation
4 could be made, as some producers of the documents are still alive
5 and a question could be put to those people before the
6 Co-Investigating Judges.

7 Therefore, the defence counsel is not supporting this request.

8 Thank you.

9 MR. PRESIDENT:

10 François Roux, you take the floor.

11 MR. ROUX:

12 Thank you, Mr. President. We are indeed very surprised, Mr.
13 President, distinguished members of the Court; surprised by these
14 belated requests and we see no link between these requests and
15 the persons which our colleagues from group number one are
16 asking.

17 [15.39.40]

18 The confession of Ya or the names of some of the clients quoted
19 in these confessions, I thought that we had agreed that we
20 couldn't use confessions. And if the name of one of your clients
21 is not in such confessions, what is the point; what is the
22 interest?

23 Again I observe, Mr. President, distinguished members of the
24 Court, that the civil parties are trying to become prosecutors;
25 that's not their role. If the confession relates to one of their

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1 clients then we can discuss it, even though this is all very late
2 in the day, but the first question that we must ask is does this
3 connect to one of the clients you are defending?
4 As for the totally new documents, here again I wish to
5 congratulate my colleague for her investigative skills, but I'm
6 very sorry; I believe you're working with an non-governmental
7 organization which has been dealing with this subject for many
8 years which regularly -- since the outset of the trial -- has
9 been posting information on their website. And remember, if you
10 will recall the statement about the sentence to be applied to
11 Duch, well, you have a solution that's being offered. It's an
12 open and shut case for them. It's on their website.
13 And so rather than making this kind of comment, I believe that
14 that organization which has been working on this issue for 10
15 years would perhaps have been better inspired if they had gone to
16 S-21 to look for some documents.
17 And similarly, I believe I understand that the Office of the
18 Co-Prosecutors began working in 2006 and I'm extremely surprised.
19 One year of investigation by the Co-Prosecutors and nothing. One
20 year of investigation of the Investigating Judges, nothing.
21 Practically one year of trial, nothing.
22 [15.42.12]
23 And on the last day of trial then people come with a ream of
24 paper and say, "Well, this is all important." And again I ask,
25 "Did you find in these reams of documents the names of the

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1 persons on whose behalf you speak?" No, and once again, civil
2 parties, you are behaving as if you were prosecutors and every
3 time that you're out of character then you're taking the risk of
4 drifting, as happened with the victims last week. I'm sorry to
5 have to say this again.

6 I would like us to abandon this mode of operation, personally. I
7 praise the work that was done but it's not your work to do, to
8 find paths and tracks and see the prosecutors and say, "Well,
9 this is important for the entire case." Yes, to submit documents
10 that have to do with your clients, yes. But at a time when the
11 accused no longer has the time to enter into adversarial debate
12 about these documents and can no longer comment, please don't
13 pull a hare out of the hat suddenly. We are here and our
14 presence here is all about justice and not entertainment.

15 And so, I am shocked. I must say it again. I am shocked by this
16 method of work and I hope that you will take to heart the need to
17 recall the minimal rules of procedure and, as I've said on many
18 times, sworn enemy of what is arbitrary form is the twin sister
19 of freedom or liberty.

20 [15.44.29]

21 So, we ask that these documents not be entered.

22 MR. PRESIDENT:

23 Alain Werner, you take the floor.

24 MR. WERNER:

25 Mr. President, I would like to give a brief answer.

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1 Thank, you, Mr. President. Very briefly concerning the first
2 request of my colleague, as you know, according to the Internal
3 Rules we are here to assist the Co-Prosecutors and my colleague
4 and we all consider that this is our task and we feel that it is
5 important that this document which has already been filed be put
6 before the Chamber. I don't see what damage it can do to the
7 defence.

8 With regard to the second observation of my colleague, I would
9 like to say two things briefly.

10 First of all, this is a thin realm. We're talking about 18
11 pages, not hundreds of pages.

12 Second, to say that the defence is unable to respond is
13 inaccurate because today we are speaking about this precisely to
14 enable the defence to speak. We are going to submit a document.
15 Obviously the defence will be in a position to respond not at the
16 hearing but in writing. Therefore, the defence will have all the
17 time in the world to reply to what we are going to submit. It
18 will be submitted next week and we will ask you to accept that
19 this document be in - put before the Trial Chamber.

20 [15.46.21]

21 Perhaps I wasn't sufficiently convincing or clear or maybe both,
22 but it is our point of view, and I believe that it is an honest
23 point of view to argue that above and beyond the great relevance
24 of these documents, these documents will be of great importance
25 to us in order for us to support our contention that you must not

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1 in your judgment exclude four of our civil parties.
2 This is not at all a secondary matter for us. Now, a debate has
3 unfolded throughout these hearings and the defence, more
4 specifically the accused, has constantly insisted on the fact
5 that he did not recognize that such and such person was in S-21
6 because the person's name is not on the list. And this was
7 argued on numerous occasions. We developed our own argument.
8 But I believe that it is also our duty as counsel for these four
9 clients. We also sought to find other means to convince you and
10 to show that it isn't because the names of the relatives of these
11 four clients cannot be found on that famous consolidated list of
12 the Office of the Prosecutor that these four persons could not
13 have been detained in S-21.
14 So, yes, I agree, it's quite clear that it is not the names of my
15 four clients that is found in these lists. Nevertheless, it
16 seems to me to be an argument in good faith to defend the idea
17 that since the names of 14 people whose names are on these lists
18 and who without any doubt died in S-21 from illness, suicide or
19 torture who are not in a consolidated list -- and I think we can
20 very honestly and in very good faith defend the idea that the
21 relatives of our four clients in particular -- and I can repeat
22 their names if you wish, it is explainable that those names are
23 not in the consolidated list, just as the list of the other 14 is
24 not to be found there either.
25 And again, we feel that it is important for our clients that

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1 these documents, above and beyond the relevance to the case, that
2 these documents be accepted and put before the Trial Chamber.

3 [15.48.47]

4 Thank you.

5 MR. PRESIDENT:

6 Defence counsel, you may respond.

7 MR. ROUX:

8 Mr. President, no one is questioning the good faith of my
9 opponent. It's not a question of good faith and you know this
10 full well. It's a point of law.

11 It is possible that the persons you represent today had relatives
12 in S-21. That is possible. But you cannot defend an idea and
13 it's opposite. You had no cease, all of you, to attack Duch
14 stating that he was an extremely meticulous man. And now, you're
15 trying to say that there may be persons who were in S-21 but were
16 not on the list. That is not possible. A court can't conclude,
17 "Well, these people were probably in S-21."

18 My dear colleagues, we're all lawyers and you know that if we
19 dare to open that door, there is no more justice to be done.

20 [15.50.23]

21 And so I would like to ask you that if your clients in all good
22 faith believe that members of their families were in S-21, I am
23 not challenging their good faith or yours, but when we are in a
24 court of law, you know that we need to work on the basis of
25 documents, particularly if you say that the accused was a person

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1 who spent all his time being meticulous and preparing documents.

2 So Mr. President, whatever the importance of the debate, it is an

3 interesting debate for a conference perhaps, but before the

4 Bench, and the prosecutor repeated that earlier, it is necessary

5 to rely on documents. So, today you are producing documents

6 which tend to say that the accused is guilty. Well, don't waste

7 your time. He said he's guilty. On the other hand, you're

8 submitting documents where the names of your clients cannot be

9 found.

10 Thus, Mr. President, distinguished members of the Court, in this

11 case, I see no solution other than to say that if this can

12 reassure the civil parties, please say in your judgment that

13 these persons are certainly acting in good faith. But you must

14 also remind them of the law because one can also make mistakes in

15 good faith. And we've seen it happen in this Court that people

16 made mistakes in good faith. And it is not possible to make a

17 mistaken decision.

18 Thank you, Mr. President, members of the Court.

19 MR. PRESIDENT:

20 Judge Cartwright, you take the floor.

21 JUDGE CARTWRIGHT:

22 Thank you, Mr. President.

23 [15.52.27]

24 On a less critical issue than those raised by the defence, can I

25 just inquire a little more about the timing of the location and

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1 production of this 18 pages of daily list?

2 As I understand it, you received a translation on the 26th of
3 August last after waiting for up to a week for a photocopy. Do I
4 assume from that that you found the information about a week
5 earlier?

6 Secondly, from the 26th, up to a week for a photocopy. Do I
7 assume from that that you found the information about a week
8 earlier? Secondly, from the 26th of August until today is
9 approximately three weeks. Can you explain why this material was
10 not put before the Chamber while the evidence portion of the
11 trial was being -- was still under discussion.

12 Are you able to assist me with that, either Ms. Ty Srinna or Mr.
13 Werner?

14 MS. TY SRINNA:

15 Thank you, Your Honours. In relation to this matter, I would
16 like to address to the Bench that on the 26th of August 2009 it
17 was the date we received those documents, because we spent some
18 time before that seeking for those documents.

19 [15.54.19]

20 When we received them and then we spent some time to read and
21 review and we do the comparison to find the names of our clients
22 and to check whether there is relevance matter in those lists.
23 And based on our finding there were some prisoners, many
24 prisoners died in S-21 whose names were not appeared on this
25 massing list. And it's just related to the number of prisoners

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1 at S-21.

2 For those who died -- and it's only those who were taken for
3 smashing that appear on the list of execution. And then we
4 looked further to find the kinship connection of the victim to
5 our civil party or to our clients and then we found some of the
6 victims were end up at S-21 without recorded in the lists of
7 S-21.

8 And in addition to that, the reason why we failed to request to
9 put those documents before the Court, before we have spent much
10 time in a very busy work and we were not allowed to request to
11 put before the Court at that time and that we should wait until
12 the hearing of the witness and experts that proposed by the
13 defence counsel.

14 So we had to wait until other time until today. These are our
15 problems and our obstacles preventing us from submission of these
16 documents earlier.

17 MR. PRESIDENT:

18 Please, you can take the floor.

19 MR. WERNER:

20 I just saw that Judge Lavergne may want to ask question, so shall
21 I address Your Honour, Judge Cartwright?

22 [15.57.22]

23 Just one thing more. First there has been internal discussion
24 within our team to try to understand the scope and the importance
25 of the documents. Secondly, there has been discussion with the

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1 prosecutor, the Office of the Co-Prosecutor, because indeed we
2 wanted to make sure that it was not documents they had within
3 their office without being in the case file or it was not
4 documents that somehow we have missed in the case file. So there
5 were discussions with the Office of the Co-Prosecutors.
6 And finally, as you know, in the last three or four weeks there
7 were civil parties in Court and then there was a discussion on
8 the character of the accused and your decision that for some
9 parts we were not allowed to take part. We didn't see any
10 opportunity at that stage for us to intervene in view of the fact
11 that Rule 87(4) said that during the Trial -- during the Trial --
12 either on its own initiative or at the request of a party, the
13 Chamber may summon here any person as a witness or admit any new
14 evidence. So we thought that under 87(4) we could file something
15 until the end of the trial. It does not mean end of the
16 hearings, but end of the trial.

17 So we thought that we were still within the time imposed by 87(4)
18 to file that motion. And when we understood that there would be
19 discussions today, then we decided to show this morning or
20 yesterday the exhibits to the defence counsel and to orally make
21 the argument in front of Your Honours. So that's the best we can
22 provide as explanation at that stage.

23 MR. PRESIDENT:

24 Judge Lavergne, you can take the floor.

25 [15.59.29]

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1 JUDGE LAVERGNE:

2 Yes, thank you, Mr. President.

3 Well, we've now heard one party. I'd like to know if the
4 Co-Prosecutors were made aware of the documents which the civil
5 parties would like to see put before the Trial Chamber and if
6 they have an opinion concerning this request and whether they
7 think that these documents will be useful in ascertaining the
8 truth.

9 MR. AHMED:

10 Your Honours, a meeting was sought by the civil party concerned
11 with the Office of the Co-Prosecutors. In that meeting, which I
12 attended along with one colleague, we told the learned counsel
13 that it may be a relevant document. It may refer to matters at
14 issue at this trial, yet the considerations under 87(4) where due
15 diligence has to be demonstrated for this document to be adopted
16 or accepted by this Court should be met.

17 So we said that of course it's up to you to tender to this
18 document and we shall take a position accordingly. And because
19 the document is relevant and because the civil parties, given
20 their limited resources, have brought them before you, we shall
21 take no position on this matter, Your Honours.

22 MR. PRESIDENT:

23 Yes, you may take the floor, Mr. François Roux.

24 MR. ROUX:

25 Mr. President, Your Honours. It goes without saying that if

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1 these documents were to be put before the Trial Chamber you would
2 have to reopen the proceedings so that the accused may be
3 afforded the opportunity to comment on these documents.

4 [16.01.42]

5 Excuse me, I'm sorry, but this is -- I'm flabbergasted. We have
6 all been working hard to ensure that there are no delays in the
7 trial and what you are asking for is an extension of a time
8 limit? And you are dealing with an accused who has said that he
9 admits everything. And you are referring to documents that do not
10 go to proof of added guilt, and documents that do not actually
11 emanate from your clients.

12 This is not my view of how justice should be done. But let's go
13 on. We could do this on the 25th of December. That might be a
14 good day to do this.

15 MR. WERNER:

16 Your Honour, can I answer in one word?

17 MR. PRESIDENT:

18 Now please make sure, so how many times would you like to take
19 the floor? So in this case, how long and the time that you need
20 so that we can save some time and if you raise so many remarks.
21 It may take a long time, so could you tell me how many times you
22 need to talk before you come to your conclusion?

23 MR. WERNER:

24 Mr. President, with all due respect, your Chamber asked the
25 Co-Prosecutor to make a statement with regard to this

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1 application. The prosecutor spoke, the defence was allowed to
2 speak again and there are other points that I think it is fair
3 for me to raise. I think it is normal for me to wish to respond
4 to what Mr. Roux has just said.

5 MR. PRESIDENT:

6 I do not understand what you just said because we seem to argue
7 on the document but it seems to me now you have the agreement
8 between the Co-Prosecutor and the defence counsel, François Roux.
9 So could you please mention the matter again and then we can
10 leave some time for other civil party counsels to make their
11 address and submission, and then we can conclude this matter for
12 tomorrow and then we can schedule for the next day or the next
13 week to continue the hearing so that we can use for the new
14 document or the document to be submitted.

15 [16.05.06]

16 And then we can make the assessment of time for the Trial Chamber
17 to make a ruling on that so that we can come into conclusion for
18 the date for the final submissions that we have specified.

19 MR. WERNER:

20 I shall be very brief. First, obviously I've said this several
21 times. We consider that these documents have something to
22 contribute. Secondly, if Mr. Roux is saying that these documents
23 have no value, and then because they're not prejudicial to the
24 defence -- and I think under 87(4) it is perfectly possible for
25 the defence to respond in writing and the accused can respond

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1 through his lawyers when they will have perused the documents.
2 Mr. President, with all due respect, the prosecutors have not
3 taken a position. They are neither in agreement with the defence
4 nor with the civil parties. They have not taken a position.

5 Thank you.

6 (Deliberation between Judges)

7 MR. PRESIDENT:

8 Judge Jean-Marc, you may take the floor.

9 [16.07.28]

10 JUDGE LAVERGNE:

11 Thank you, Mr. President. I would just like us to return to a
12 matter that was raised by the defence a while ago. This is with
13 regard to the summary in French of the documents that the
14 Co-Prosecutors wish to put before the Court and these documents
15 pertain to the armed conflict.

16 What I would like to know from the Co-Prosecutors is whether the
17 summaries of each document severally attached to their document
18 was sent for translation into French. I would like to know if
19 this is not the case. I will have a question for the defence
20 afterwards but first I should like the prosecution to answer this
21 question first. Is there a pending request for translation of
22 the lists of documents which have been put before the Chamber
23 with regard to the armed conflict?

24 MR. AHMED:

25 Your Honours, on the 29th of April 2009 when we filed our annexes

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1 to the armed conflict documents, which run into some pages with
2 detailed summary of each document, it was filed in the two
3 languages that the Office of the Co-Prosecutors has chosen under
4 the Practice Directions. Once they have been filed in the two
5 languages that the Office of the Co-Prosecutors has chosen, then
6 it's for the Court Management Section to translate them in the
7 language of the other parties.

8 Now at this stage I cannot assist Your Honours whether this is
9 under translation but I shall be able to assist the first thing
10 tomorrow morning -- whether it is under translation as requested
11 by Your Honours or the Court Management Section. But we file in
12 the two languages, which is English and Khmer, which are the
13 languages that the Office of the Co-Prosecutors has chosen under
14 the Practice Directions of filing of documents.

15 [16.09.46]

16 However, now that I have the floor, just one more minute to add
17 that a number of these documents -- and I can give figures,
18 should I have time -- are also the documents themselves, not just
19 the summary, in more than one official language of this Court.
20 There are 430 documents. More than 200 are at least in two
21 languages. So I can assist you further but in respect of the
22 annexes I'll be able to assist first thing tomorrow morning.

23 JUDGE LAVERGNE:

24 Thank you. We await these clarifications tomorrow with bated
25 breath.

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1 I shall now move on to the defence. I seem to understand that
2 the Co-Prosecutors made a proposal with regard to confessions
3 which are supposed to be supporting the annotations of the
4 accused. The proposal was that you should meet and discuss which
5 of those documents could be admitted by both parties and put
6 before the Chamber.

7 So what I would like to know is whether the defence will accept
8 this proposal or has accepted it and I would like to know the
9 exact position of the defence in regard to this matter.

10 MR. ROUX:

11 Thank you, Your Honour. For once I shall be extremely
12 inflexible. I will tell the Chamber that we consider that we've
13 had a lot of time discussing matters with the Office of the
14 Co-Prosecutors and this time has so far proven to be useless. I
15 will not spend more time on this.

16 [16.12.09]

17 If the Office of the Co-Prosecutors offered, in order to save me
18 time, to verify these documents that they would put before the
19 Court. So for my part I am not going further than that. We've
20 had three months of discussions on the admitted facts, day and
21 night, for nothing.

22 MR. PRESIDENT:

23 Please, Mr. Co-Prosecutor, you may take the floor.

24 MR. AHMED:

25 Your Honours, I don't mean to make it endless but just to

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1 conclude in response to what my learned friend observed.

2 This matter before you right now, in respect of annotated
3 documents, has got nothing to do with agreed facts. Therefore,
4 my respectful submission -- in light of the acceptance of other
5 documents by my learned friend -- was that we can consider that
6 my learned friend, should he wish to evaluate such documents,
7 that he may agree to accept.

8 In the absence of such agreement, as I now see that is the case,
9 we would press that these documents be taken on record and
10 considered put before the Chamber on the basis of our
11 application.

12 Just to add that we have removed from this list such documents
13 that were put before your Chamber and have been granted an E3
14 number. Now, I must respectfully submit that there is a delay in
15 our receipt of E3 numbers; therefore, such documents that were
16 put before you which have not yet been granted E3 numbers find a
17 mention in this annex, but those who have already been granted E3
18 numbers have been removed from this list.

19 [16.14.17]

20 And one last request on this E3 number issue, Your Honours, we
21 would most respectfully submit that an E3 number be granted to a
22 complete document and not one or two relevant pages that were
23 discussed in the Chamber. That may assist you in your final
24 analysis when you deliberate on judgement to have the complete
25 document before you and should there be an appeal, it should be

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1 helpful for an Appeals Chamber to deliberate on the basis of the
2 complete document.

3 And in that view of our matter, our submission would be that all
4 those documents whose ERNs have been read before you in your
5 Chamber should be granted E3 status because we should be sure
6 what we should include in our closing submissions which are due
7 very, very shortly, Your Honours.

8 That's my limited submission. Thank you.

9 MR. PRESIDENT:

10 You may take the floor, Mr. Counsel.

11 MR. ROUX:

12 Just a point of order; I am not responding. I have already said
13 what I wanted to say, but it's just a point of order.

14 [16.15.39]

15 I asked that all the documents that will be put before the Court
16 should be placed on the Court's website; but for confessions, I
17 think it is not possible for us to put them on the site. This is
18 out of respect for the victims. So we should pay close
19 attention. When perhaps the annotations of Duch will have been
20 discussed in Court, the first page of the confessions can be
21 placed on the website. I think that if we are to respect the
22 memory of the victims, I think it will require us not to put the
23 full confessions on the website. I just wanted to draw attention
24 to this point.

25 For other matters, I rest my case. I think that only the

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1 confessions that have been publicly discussed in proceedings
2 should be put before the Court.

3 (Deliberation between Judges)

4 MR. PRESIDENT:

5 Judge Lavergne, you may take the floor.

6 JUDGE LAVERGNE:

7 Mr. President, a last question for the Co-Prosecutor.

8 We understand that you want the trial to be expeditious. We have
9 a question to put to you.

10 Of the 60 documents that purportedly contain annotations made by
11 the accused -- in his own hand -- do you intend to put the
12 documents before the Court including those that have not been
13 discussed adversarially or do you expect to limit the documents
14 you will tender to documents that have been the subject of
15 adversarial debate?

16 [16.20.48]

17 If that is the case then there is a problem because the defence
18 should be afforded the opportunity to make submissions on the
19 documents that have not been the subject of an adversarial
20 discussion so far.

21 So what we would like to know is whether the Office of the
22 Co-Prosecutors will agree to limit its request to put documents
23 before the Chamber to documents that have already been discussed
24 adversarially during the proceedings bearing in mind that a while
25 ago the defence referred to documents produced at the request of

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1 the Co-Prosecutors, but it seems to me they are documents -- that
2 they are documents which were shown to the accused by the accused
3 himself -- by the Chamber itself and sometimes, by some civil
4 parties.

5 MR. AHMED:

6 Your Honours, I have an answer, but subject to Your Honours'
7 leave, if Your Honours are minded to adjourn for the day, I will
8 give you a very considered response in the morning keeping in
9 mind a very serious observation made by His Honour, Judge
10 Lavergne. But should that not be the case, I'm happy to respond,
11 but I'd be very respectfully submitting that Your Honours may
12 allow me first thing in the morning to make observation on this
13 and we shall try, should it be possible, to discuss it with
14 defence overnight to come to a conclusion; otherwise, I'll make
15 my observations the first thing tomorrow morning. If Your
16 Honours are not adjourning, I shall give my tentative response.

17 JUDGE LAVERGNE:

18 One last question for the defence for scheduling purposes. Will
19 the defence have other documents to put before the Court? This
20 is for information purposes only.

21 [16.23.09]

22 MR. ROUX:

23 The Chamber has our list of documents that had already been
24 submitted under D80 at the commencement of trial. Under E59 we
25 put a number of documents before the Court. These documents are

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1 mainly books and video footage in addition to other written
2 documents pertaining to the Obrenovic case.
3 We have one last document, however, which is quite new. This is
4 the record of an interview that was given by civil party Chum Mey
5 to a French newspaper and we did not wish to put the document
6 before the Court until we had asked to see the video that we saw
7 today. And now, we would wish to put this document before the
8 Court. This is the only new document. All the other documents
9 have been made public. It shouldn't take a lot of time.

10 [16.25.07]

11 MR. PRESIDENT:

12 Now, it is time for the Trial Chamber to adjourn the afternoon
13 session because we could not finish today because there are three
14 groups of civil party lawyers who intend to make the request
15 because we spent more time for the prosecutor and the defence to
16 provide documents.

17 And the Trial Chamber is declared adjourned for today and we will
18 come back to session tomorrow at nine o'clock.

19 And security official is instructed to take the accused to the
20 detention facility and bring him back tomorrow before nine
21 o'clock.

22 (Judges exit courtroom)

23 (Court adjourned at 1626H)

24

25