



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

17 September 2009, 0912H

Trial Day 73

Before the Judges:

NIL Nonn, Presiding
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YOU Ottara (Reserve)
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The Accused:

KAING Guek Eav

Lawyers for the Accused:

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANEES AHMED	English
MR. HONG KIMSUON	Khmer
MR. KAR SAVUTH	Khmer
JUDGE LAVERGNE	French
MS. MARTINEAU	French
MR. ROUX	French
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. TY SRINNA	Khmer
MR. WERNER	French

1

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

2 (Judges enter courtroom)

3 [09.12.49]

4 MR. PRESIDENT:

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

6 For today's schedule, we will continue what we left off

7 yesterday; that is a request for submission of additional

8 documents to be put before this Chamber by parties to the

9 proceedings.

10 We started that proceeding yesterday, but we had not finished it

11 yet, and the international Co-Prosecutor submitted to adjourn the

12 proceeding yesterday in order to prepare himself for the

13 documents to be submitted before this Chamber.

14 So I believe proper documents and proper lists of documents with

15 proper identification of those documents to be submitted before

16 this Chamber shall all be appropriate and they shall not be

17 lumped-up together with no proper identification. They all

18 should be well-organized in advance.

19 [09.14.44]

20 And the important thing is identification of those documents

21 shall be properly mentioned, including the document numbers, the

22 titles, as well as the ERN numbers of those documents because

23 some documents have the same names. The difference might only be

24 the date of the document.

25 And you, the Co-Prosecutor, submitted those documents yesterday

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1 but withdrew himself to make a new list on those documents and,
2 actually, all parties have been reminded of this proceeding a few
3 months ago.

4 And now I would like to give the floor again to the
5 Co-Prosecutors, so that they can provide clarification on the
6 documents they wish to submit and consider put before this
7 Chamber.

8 MR. AHMED:

9 Your Honours, may it please your Court. Just in the beginning to
10 clarify Your Honours' understanding of what happened yesterday.
11 We just sought your leave because you were at the close of your
12 afternoon session, to respond in more detail to those very, very
13 fundamental questions raised by Judge Lavergne. So we had our
14 answers, but we thought we would give them in detail this
15 morning.

16 [09.16.30]

17 Number two, Your Honours, the documents that we sought to discuss
18 with my learned friends were on the basis of the observations of
19 my learned friends. It was not on the basis of any confusion or
20 any lack of understanding of those documents on the part of the
21 Office of the Co-Prosecutors.

22 Having said this, now I'll immediately go to the two questions
23 raised by His Honour, Judge Lavergne. And those two questions
24 were this.

25 Do we have the French translation of the Annex to the filing of

3

1 the 29th of April 2009, which is E61, which comprises of the
2 name, the description, the ERN number, and all such details that
3 Your Honour just mentioned that are required for putting a
4 document before the Chamber?

5 The second question Judge Lavergne put to me was, what does the
6 Co-Prosecutor have to say in respect of the annotations of the
7 accused on the documents that we mentioned in our filing of the
8 19th of August 2009, which comprises Annexes C and D of that
9 filing.

10 I shall address these questions in seriatim and I would request
11 Your Honours to indulge me for about five to seven minutes
12 because I have to give a little background about these documents.

13 The documents pertaining to the armed conflict have been on
14 record of this Court since at least the 29th of April 2009.
15 Under Article 2.2 of the Practice Directions on the Filing of
16 Documents, a party, such as the Co-Prosecutors, are required to
17 file documents in two official languages of the Court. The
18 Co-Prosecutors did this on the 29th of April 2009. We checked
19 once again with the CMS. The practice thereafter is for the
20 receiving judicial authority to forward that filed document in
21 the third language of the Court should it wish to.

22 [09.19.17]

23 So I would most sincerely request Your Honours to clarify with
24 the greffiers whether it's actually been forwarded for
25 translation into French.

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1 The other question that arose was in respect of how many
2 documents as attachments to that filing of 29th of April 2009 are
3 in English, how many are in French, how many in Khmer and how
4 many in more than one language. And I will take essentially two
5 minutes to respond to that question.

6 There are 430 documents that provide the chronological account of
7 the protracted violence between Cambodia and Vietnam. Each
8 document provides evidence of armed clashes or disputes on
9 different dates and on different locations. These documents
10 emanate from international and national sources, including
11 minutes of the Standing Committee of the CPK and other organs of
12 the Communist Party of Kampuchea. And they are supporting and
13 corroborative of the statements made by the accused, by the
14 expert Nayan Chanda, and others in this case.

15 I shall now just tell you the translation status of these
16 documents. All these documents have been on the case file for at
17 least one year and five months, as of today. Of the 430
18 documents, 212 are included in the Introductory Submission filed
19 on the 18th of July 2007. They have been there for more than two
20 and a half years. 135 of these documents were referred in the
21 Closing Order of the Co-Investigating Judges of the 8th of August
22 2008. Combined, 239 out of these 430 were included or referred
23 to either in one of those filings.

24 [09.21.31]

25 The remaining 191 documents were disclosed on 21st of March 2008

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1 in document B60, which was entitled "Co-Prosecutors request to
2 admit documents relating to proving the existence of an armed
3 conflict during the period of Democratic Kampuchea".

4 Now, just to tell Your Honours about requirements of translations
5 of these documents and I shall with in about two minutes on this
6 issue.

7 My learned friend and the counsel for the charged person Khieu
8 Samphan, took exactly the same issue in case file 2 that they
9 don't have all these documents in the French language.

10 As a result, the counsel for Khieu Samphan said the trial should
11 be stopped and my learned friend said expeditiously all these
12 documents to be translated.

13 The Co-Investigating Judges, in a detailed and reasoned order of
14 the 19th of June 2008, said this -- and they both belong to civil
15 law jurisdictions:

16 "Accordingly, a charged person is entitled to the translation
17 into Khmer of indictment of the Co-Investigating Judges and
18 elements of proof on which any of this indictment is based. The
19 charged person is also entitled to the translation into Khmer of
20 the introductory submission and the final submission of the
21 Co-Prosecutors, and their footnotes."

22 [09.23.15]

23 And last, most importantly, what the learned Investigating Judges
24 observed:

25 "The remaining translation of the case file documents are not

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1 elements of proof for the determination of the Trial Chamber and
2 are not therefore covered by the requirements to translate into
3 the languages of the charged person."

4 Now, this was confirmed by the Pre-Trial Chamber in which the
5 Pre-Trial Chamber observed that exculpatory material should also
6 be translated (a) into the language of the accused; (b) also in
7 the other language so that the counsel can assist the accused.

8 We agree with that. This is not exculpatory material.

9 And the last and the most important thing the Co-Investigating
10 Judges held and confirmed by the Pre-Trial Chamber:

11 "For the rest of the documents, the counsel should rely on the
12 multilingual facilities available in the defence team, as also
13 available in the Defence Support Section."

14 And they said the same applies to other parties, including the
15 Office of the Co-Prosecutors.

16 In our most respectful submission, we have abided by the
17 conditions of appropriate identification as required by you in
18 the two languages that we were supposed to file them in, and we
19 did that on the 29th of April 2009.

20 My learned friend's client, he understands at least French and
21 Khmer. My learned friend's national colleague understands French
22 and Khmer. My learned friend understands English and French.

23 And I think in line with the order of the learned Investigating
24 Judges, we are not required to translate every single document on
25 the case file and, indeed, that supports the establishment of

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1 armed conflict into all the three languages of this Court.

2 [09.25.17]

3 Your Honours, the next issue raised by Judge Lavergne was on the
4 question of the statements of the accused. Now, my learned
5 friend said in response to the question raised by the civil
6 parties that this is not an occasion to re-open the trial. This
7 is not the occasion to re-open the evidence.

8 Clearly, we are not asking for that. What we are asking for,
9 Your Honours, is essentially in line with what Your Honours
10 directed. Your Honours, in your transcript of the 31st of August
11 2009, directed -- and which is about 17 days ago -- this Chamber
12 on today and yesterday shall consider procedural matters, such as
13 putting documents before the Chamber under Rule 87.

14 We are doing exactly that. We have given the notice of these
15 documents to my learned friend on the 19th of August. In any
16 case, all these documents have been on the case file since the
17 time the introductory submission was filed in July of 2007.
18 They're all in Khmer, which the counsel's client understands, and
19 they are, in our most respectful submission, not required to be
20 put to a witness. They are to be essentially put to the accused,
21 not even examined in open Court. He should just give his remarks
22 in those documents which have been appropriately identified so
23 that Your Honours make take a decision on that matter.

24 [09.26.54]

25 Now, in respect of documents that have already been put in this

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1 trial, I clarified yesterday, and for better record I shall do so
2 in exactly one minute.

3 When we filed our Annexes C and D of the filing of 19th of August
4 in respect of the accused's annotations, we were aware that some
5 documents had been put on record. We went through entire
6 transcripts of Your Honours till the 19th of August and excluded
7 such documents that had been granted E3 status. So, to directly
8 respond to His Honour Judge Lavergne's question, such documents
9 that have been granted E3 status have been excluded.

10 Now, such documents that may have been mentioned, but Your
11 Honours have chosen not yet to grant an E3 status, clearly have
12 been retained in that list so as to assist Your Honours to take a
13 decision and to assist the accused in responding to those
14 attachments in Annexes C and D of the filing of the 19th of
15 August. That's my clarification. I don't know whether I've been
16 very clear, but should His Honour have any further question I
17 shall be able to answer that.

18 And, just to finish, these are the most direct evidence and I ask
19 myself the question, if the accused's annotations about what he
20 did in S-21 are not retained on record, what better evidence
21 would this Court have in the absence of major witnesses, in the
22 absence of people who saw and died, and in the presence of this
23 gap of 30 years when witnesses' memories have faded and some have
24 chosen not to give a complete version for fear of
25 self-incrimination, in our most respectful submission this is the

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1 most direct relevant evidence that proves the case of the guilt
2 of this accused, which he has accepted.

3 [09.29.02]

4 Now, it's international law that no conviction can be returned
5 only on the guilty plea of an accused and that's what we are
6 doing. We are not wasting the time of this Court. We are just
7 telling Your Honours to put these documents, which he may have
8 authored because there are at least 60 of them, to confirm that
9 he did or he did not do, without any taking of time of this
10 Court, and Your Honours may conclude that what he's actually
11 admitting is reflected on the factual record.
12 This will also assists to keep a complete historic record
13 because, after all, you're not just a criminal Court; you're also
14 recording the history of what happened in Democratic Kampuchea.
15 That's my submission and I shall be available for any questions.

16 JUDGE LAVERGNE:

17 In order for things to be perfectly clear, are we to understand
18 that at present there is no request for translation into French
19 of the summary of the elements that were suggested for putting
20 before the Court?

21 MR. AHMED:

22 That question to me, Your Honour? There is no request from the
23 Office of the Co-Prosecutors because the Judicial Chambers make
24 that request once they receive in the two languages of the filing
25 of the parties.

10

1 JUDGE LAVERGNE:

2 A last question perhaps with regard to the proposal made by the
3 defence of obtaining a one-page, French-language summary.

4 Do the Co-Prosecutors have a final position with regard to that
5 request?

6 [09.31.15]

7 MR. AHMED:

8 Your Honours, I undertook that I shall do so. It's happening and
9 it will be given in all the three languages of the Court in --
10 Your Honours, I can't give you the number of hours but very soon,
11 within hours.

12 (Deliberation between Judges)

13 MR. PRESIDENT:

14 Mr. François Roux, you may now proceed.

15 MR. ROUX:

16 Thank you, Mr. President. Good morning to you and to the other
17 members of the Bench.

18 Well, so it took the Office of the Co-Prosecutors fifteen minutes
19 to give a yes or no answer to the initial question of Judge
20 Lavergne which is: the documents which you transmitted on 29
21 April, have they been or have they not been translated? Fifteen
22 minutes to answer that in order that, at the end of the day what
23 we heard was that it was no, they haven't been translated.

24 [09.33.55]

25 Judge Lavergne, you invited the defence yesterday to be in

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1 contact with the Office of the Co-Prosecutors in order to find a
2 solution and I told you I wouldn't do that any more. And today
3 you have confirmation that it's absolutely useless. Therefore,
4 you have been submerged, overwhelmed, I would say. We have in
5 our office, the carton of documents which was addressed to us
6 concerning armed conflict.

7 I won't return to the debate we had about armed conflict. We are
8 overwhelmed with documents and I said since the month of January
9 in all discussions that we had then with the Office of the
10 Co-Prosecutors that I would accept that 200 press excerpts not be
11 translated because it would be too much time but I want a
12 one-page summary in the French language.

13 Since January -- since January -- I fail to understand. I don't
14 understand this method of work.

15 Second, I am terrified and I mean what I say -- I am terrified to
16 see coming to the light of day, at the end of trial -- how can I
17 characterize this to avoid being offensive? I'm terrified. The
18 colleague of the Co-Prosecutor's office, apart from all due
19 respect -- I'm terrified to learn that at a time when the trial
20 is nearly over, you, the Office of the Co-Prosecutors -- you
21 realize that you still haven't put before the Court 60
22 confessions; that you have not yet asked for adversarial debate
23 before this Court of 60 confessions? Is this what you are
24 confessing to us today?

25 [09.36.22]

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1 We've just spent six months with you. You've brought witnesses
2 to be heard. You submitted documents and at the end of the day
3 you tell us, wait a minute -- wait a minute -- there are 60
4 confessions here which we hadn't yet mentioned so I wanted to
5 hand them to you in bulk, as we would say, but when the trial is
6 over. When do you expect the accused to respond?
7 So you are going with two months remaining while I thought that
8 we were going to be pleading immediately after the debates. We
9 were given an extra two months. What for? So that you could
10 write another 160 pages of memorial that you might be studying.
11 And what do you want to do then? Make sure that the accused will
12 have to answer all these questions, all these documents which you
13 are dumping in bulk before the Court?
14 I'm shocked. I'm shocked that you could be so irresponsible and
15 poorly organized, to avoid using stronger words. So I apologize
16 for becoming angry over this but there are elementary rights of
17 the accused -- elementary rights. One year of investigation,
18 eight months of trial, a trial during which it was the task of
19 the Office of the Co-Prosecutors to bring into the debate these
20 64 documents and to obtain a response from the accused.
21 You chose not to do this. You chose to make us waste time with
22 useless witnesses but you cannot deprive the accused of the right
23 to make his observations orally and in adversarial fashion about
24 these documents.
25 It doesn't seem to me that it is possible to reopen the

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1 proceedings in order to do this or then let us make everything
2 clear. The Chamber would need to immediately release the accused
3 and then we'll start the proceedings again for an entire year.
4 And I would like to remind you that the accused has been in
5 detention for 10 years, that every passing day is an additional
6 day of provisional detention. One cannot play around with this.

7 [09.39.42]

8 So, it's very simple. The defence considers that the proceedings
9 and the pleadings are over, that the prosecutors cannot file over
10 60 documents and then in passing they say, Annexes C and D. I
11 only have an Annex D. I want to avoid any mistakes. Where is
12 your Annex C? I don't have it. What is all this about?

13 And at E152.3 all that I have is an Annex D. So what do you mean
14 when you mention an Annex C?

15 Thus, Mr. President, members of the Court, on behalf of the
16 defence I ask that all of these documents not be accepted because
17 they were not the object of adversarial debate during the
18 proceedings. In the alternative, if the Court decides to
19 authorize that these documents be put before the Chamber, I ask
20 that the entire proceedings be reopened and that the accused be
21 immediately released.

22 MR. PRESIDENT:

23 The international Co-Prosecutor, you may proceed.

24 MR. AHMED:

25 If you could indulge me just for five minutes. I shall not be

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1 long and I shall not use strong language.

2 My learned friend should just go back to the filing of the 19th

3 of August 2009 to see that Annex C is the Khmer translation of

4 the Annex D that you have before you, number one.

5 [09.41.31]

6 Number two, Your Honours -- as Your Honours yourselves declared

7 on the 31st of August 2008, your proceedings are not over. You

8 have kept these few days and you have been very generous with

9 your time allocation on this for allowing the parties to put

10 documents before you such as to complete the record before you

11 when you sit to deliberate your judgment.

12 Now all these documents have been on the case file. We did not

13 invite my learned friend to give his response in a public hearing

14 today or yesterday. We made our filing on the 19th of August

15 2009.

16 My learned friend, from then till today, had one month to respond

17 to this -- and in writing. And he knew on the 31st of August

18 that Your Honours are putting these three or four days apart only

19 to receive the response and not to give a response in Court that

20 he will not respond. Now, if he were to not respond, that is

21 fine. Your Honours may then decide. But my learned friend

22 should not say that we are delaying, after having filed the

23 application about a month before, because he did not choose to

24 respond to that application.

25 And the third and the most important submission in this regard,

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1 Your Honours, is this is usual practice in international
2 tribunals when at the conclusion, especially of guilty pleas,
3 evidence in support of what has been pleaded is accepted by the
4 parties just for completion of record, and yesterday I saw a very
5 laudable submission by my learned friend that these exhibits
6 should be put on the website of this Court. We sincerely support
7 that because, after all, if only Duch's guilty plea was to be put
8 on the website of the Court without any supporting independent
9 documentation, it will not be seen as justice has been properly,
10 judicially and legally done.

11 [09.43.55]

12 Your Honours have led these proceedings. The witnesses that have
13 been brought before this Court have been asked to come by Your
14 Honours. Any wastage ever sought by the office of the prosecutor
15 would have been denied by Your Honours. To say in open court
16 that the Court's time has been wasted by useless witnesses called
17 by Court, in my most respectful submission, is inappropriate.
18 And lastly, Your Honours have led these proceedings. This is an
19 inquisitorial trial. Your Honours took four hours and the Office
20 of the Co-Prosecutors took half an hour for a full day's hearing.
21 We took 15 minutes for a half a day's hearing. Therefore, Your
22 Honours, we in discharge of our duty under 87(1) to prove the
23 case beyond all reasonable doubt most respectfully submit that
24 these are the most directly relevant documents that could have
25 been put, had the trial been longer. And really this trial

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1 shouldn't have been longer because after all he's proving he's
2 accepting some guilt.
3 Therefore, for a proper historical record and for a completion of
4 these proceedings and for you to make an appropriate judgement,
5 matching his guilty plea with the documents on record, it will be
6 in the interest of justice that these documents are accepted, and
7 I shall say no more. Thank you.

8 MR. PRESIDENT:

9 Mr. François Roux, you may now proceed.

10 [09.45.37]

11 MR. ROUX:

12 Mr. President, I can accept that reproaches be made to the
13 defence, provided it deserves it.
14 There are rules and rules, my dear colleague, are valid for all
15 parties, and I would like to remind you that the directive
16 provides that I need answer either within five days or within 15
17 days of the French translation of your request. Your 29 August
18 request remains to be translated into French. All of the
19 documents that were conveyed to me have not yet been translated
20 into French. How do you expect me to respond?
21 And you've indicated that you yourselves are in possession of
22 these documents since the beginning of the proceedings. Would
23 you mind explaining to the Chamber why you waited until 29 August
24 to submit your request? These documents are documents which you
25 said you had spotted from the beginning of the case. You knew

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1 that you were going to use them and you waited until 29 August --
2 29 August -- to submit them to the Chamber. How do you expect
3 translation services to operate?

4 So when I receive your request in French I will then have five or
5 15 days to respond, and I'm still waiting for your request in
6 French.

7 MR. PRESIDENT:

8 Mr. Co-Prosecutor, could you please conclude your response and we
9 should wrap up this issue now because yesterday we experienced
10 the same discussion and that today's topic is not much different
11 from what we already indicated yesterday. So could you please
12 conclude this submission and that if the defence counsel wishes
13 to finish, to respond, and it would be the final response.

14 [09.48.14]

15 MR. AHMED:

16 I think Your Honour read my mind. I just wanted to rise to say
17 that I don't want to say anything. I just want to correct my
18 learned friend that it is not the 29th of August -- and he can
19 read that document. It is the 19th of August. I shall say no
20 more.

21 MR. PRESIDENT:

22 Judges of the Bench, would you wish to make any observation in
23 relation to this matter?

24 We now would like to give the floor to the defence counsel to
25 clarify on their submission to put a document, and the Chamber

18

1 would like to know whether defence counsel is still intending to
2 put this document before the Court.

3 MR. ROUX:

4 Thank you, Mr. President. The defence team had submitted a
5 certain number of documents to the Co-Investigating Judges under
6 reference D80, and the defence would like that these documents
7 now be considered as having been put before the Chamber. I will
8 list the order for you: D80/1, the book "Pol Pot: Anatomy of a
9 Nightmare" by Philip Short, which exists in French and in English
10 and which is already filed because it was filed with the
11 Investigating Judges.

12 At D80/2 we find the book of David Chandler about S-21 in French
13 and in English. Under D80/4, the book by François Bizot which we
14 mentioned during the proceedings, which is called "Le Portail",
15 "The Gateway". At D80/5, the book of Mr. Raoul Marc Jennar which
16 we already discussed during the proceedings, "Les clés du
17 Cambodge".

18 [09.52.02]

19 Under D80/6, the book of François Ponchaud, "Cambodge année
20 zero", in the French and in the Khmer versions.

21 In the same list of exhibits, which we had also filed with the
22 Investigating Judges under D88, we had entered maps originating
23 from DC-Cam. Under D80/9, satellite images originating with
24 DC-Cam, and under D80/10 more maps concerning the mass graves of
25 Cambodia, and it is a DC-Cam document. And I would like to

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1 specify that these last three documents and principles have
2 already been put before the Chamber when Mr. Raoul Marc Jennar
3 was heard by this Court.

4 Then we asked to be allowed to file new documents, which are at
5 E5/9, and that was from the outset of the proceedings. That is
6 -- and these are, for one, the book of Henry King, our witness
7 who was unable to appear since he passed away in the meantime.
8 The book of Henry King called in English "The Two Worlds of
9 Albert Speer".

10 [09.54.29]

11 And in this regard, I would like to recall that we asked that be
12 submitted. I believe it's already in the case file, but I will
13 check it. I would ask that the letter in the form of an
14 affidavit, the letter of Mr. Henry King, be filed in lieu of the
15 testimony which he has been unable to give and which is found
16 under E5/9/2.

17 In this list, E5/9, ask leave to put before the Court the
18 transcripts of the hearing of 30 October 2003 of the
19 International Criminal Tribunal of the former Yugoslavia
20 containing the pleadings of the Prosecutor versus Obrenovic.
21 Also, the video recording of that hearing, or at least excerpts
22 of it.

23 Also, the judgement handed down by the International Criminal
24 Tribunal for the former Yugoslavia on 10 December 2003 in the
25 Obrenovic case. I would like to specify the fact that it is

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1 tradition that one need not communicate jurisprudential
2 decisions, but we did that out of a concern for transparency.
3 And, lastly, in this E5/9 list, we ask that be put before the
4 Court the book of Desmond Tutu, which was mentioned during the
5 proceedings the other day, in its French and in its English
6 versions.

7 Of course, the defence wants to add to all of these documents, or
8 at least verify that the admission of the facts be put before the
9 Chamber. Normally, it's been the case, but I do not have any E3
10 number for that document; I would like that this be verified.
11 We've mentioned this admission of the facts at length and I would
12 grateful if the registrars could verify that this admission of
13 the facts has indeed been put before the Court.

14 [09.58.07]

15 And, lastly, as we said yesterday, one document which is a
16 last-minute document -- that is the interview given by Mr. Chum
17 Mey, one of the civil parties, to a French magazine. It is one
18 page long, and we have communicated a French version and a Khmer
19 version to our learned opponents.

20 As indicated, we did not wish to submit this document prior to
21 having been allowed to show the video passages which were shown
22 yesterday. These are the documents that the defence wishes to be
23 included in the documents put before the Court.

24 I also imagine that the consultation of Mr. Raoul Jennar under
25 D82 must have been put before the Court, but we will need to

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1 verify this as well.

2 That is all, Mr. President.

3 MR. PRESIDENT:

4 Judge Lavergne, you take the floor.

5 JUDGE LAVERGNE:

6 Thank you, Mr. President. The Chamber reminded the parties
7 recently that with regard to putting documents before the Court,
8 the Chamber would like to know the reasons why these documents
9 should be put before the Court. This refers particularly to the
10 books. Some of them have already been put before the Court;
11 others not yet.

12 The defence should provide us with some reasons why it wishes to
13 put some of these books, some of which are fairly voluminous
14 before the Court, and the defence should also indicate why it
15 wishes to put the other documents before the Court.

16 [10.00.54]

17 MR. ROUX:

18 Your Honour, of course all the documents we have discussed in the
19 proceedings, in particular during the hearing of witnesses -- I
20 am thinking in particular of Mr. Chandler's book, Mr. Bizot's
21 book and Mr. Raoul Marc Jennar's book -- I imagine that there
22 will be no difficulty with these works because they were used to
23 support the testimony of people who were called to testify in
24 Court.

25 Concerning Desmond Tutu's book, we discussed it with one of the

22

1 witnesses. This book contains material that the defence intends
2 to rely on. One of the witnesses was questioned with this book,
3 using this book. It doesn't appear to pose a difficulty in my
4 view.
5 We did not talk about two works, that is "Cambodge année zero",
6 written by François Ponchaud, and "Pol Pot: Anatomy of a
7 Nightmare". The defence intends to delve into these works to
8 support its pleadings. It is not the entire books that the
9 defence will use, but the defence will refer to certain passages
10 in the books, and I must say in particular Philip Short's
11 extremely well-referenced book.
12 The defence had considered calling Mr. Philip Short as a witness,
13 but in order not to extend the proceedings, it decided not to do
14 so, especially as it considered that the book having been put
15 before the Co-Investigating Judges, it would be sufficient just
16 to refer to some of its passages. That is what I have to say in
17 regard to the books. I do not think that the other documents
18 require particular comments. This applies to jurisprudence.
19 It is obvious that nothing can prevent the defence from relying
20 on jurisprudence and projecting a video or video footage of a
21 hearing, rather than reading transcripts. It would be much
22 better to view the footage which will be presented in my closing
23 remarks. I'd like to make the point now.
24 [10.04.30]
25 JUDGE LAVERGNE:

23

1 Just to shed light on this for the benefit of the Chamber, so
2 this is not new material being put before the Chamber; this is
3 not new evidence? What we're interested in is the evidence. You
4 say that you intend to rely on this material to illustrate, to
5 support your case. So this is not evidence, in fact. What is
6 it, if it is not evidence because if it is evidence we've got to
7 know exactly what we're talking about?

8 MR. ROUX:

9 I thought it was obvious; I'm sorry. You are right to raise the
10 question.

11 This is not new evidence. This is illustration of matters that
12 have already been discussed in this Chamber; this illustration
13 will rely on these works.

14 MR. PRESIDENT:

15 The Chamber would like to give the floor to the Co-Prosecutors to
16 make observations regarding the request by the defence counsel
17 for the documents to be put before the Chamber, including those
18 books as mentioned by the defence counsel. You take the floor.

19 MR. AHMED:

20 Your Honours, in the very beginning I'll remind you that I shall
21 be brief.

22 My learned friend has the experience of being this Court for
23 about two-and-half years and we in our filings are cognizant of
24 two words very particularly. One word, as Judge Lavergne pointed
25 out, is "evidence", and the other word is "authorities" in

24

1 support of a submission made by a party in its pleadings.

2 [10.06.50]

3 Those authorities can be filed. They are taken on the case
4 file, but they're not treated as evidence. In our most respectful
5 submission, Rule 87(2) and (3) pertains to evidence and not
6 authorities.

7 Now, my learned friend in one argument of about 10 to 15 minutes
8 has -- and to use his words -- "dumped" more than 1,000 of pages
9 of documents onto this Court without even filing a small motion
10 justifying, as Judge Lavergne said, the reasons for filing these
11 books. Now, clearly the prosecution will not have a disagreement
12 regarding books of Chandler, Bizot because they were heard as
13 witnesses and we most respectfully agree to acceptance of those
14 books as being put before you.

15 But it's nowhere reflected on record that you, the learned
16 defence counsel, ever asked for Philip Short to be brought before
17 Court. You didn't ask, to our awareness, the Investigating
18 Judges. Neither did you ask this Court.

19 The reason why we asked Nic Dunlop's book to be placed on the
20 record of this Court was because we had asked for him and Your
21 Honours in your wisdom did not approve it, and yet that book was
22 discussed and therefore we felt it should be before you when it
23 comes to consideration of evidence.

24 Therefore, we would respectfully submit that Philip Short's book
25 be not taken on record. We would submit that David Chandler's

25

1 book -- and he clarified at the end of his testimony that the
2 authoritative version is the English version -- be taken on
3 record, albeit along with its French version.

4 [10.09.03]

5 We also submit that Jennar's book, although very tangentially
6 relevant to the facts about S 21, may be taken on record.

7 We submit that François Ponchaud's book be not taken on record
8 because it does not add to anything that Your Honour's have not
9 held, and therefore it shall be barred under 87(3)(a) as being
10 repetitious.

11 In respect of maps of DC-Cam, satellite images and more maps, my
12 learned friend may have referred to them, but the defence never
13 extensively put these maps and documents on the record of this
14 Court or exhaustively discussed them in the proceedings either
15 before the Investigating Judges or before this honourable Court.

16 We don't know the relevance of these maps or the idea that my
17 learned friend wishes to advance through the use of those maps,
18 but because simply being maps and because we are at the end of
19 the trial, we shall not get into this argument and would accept
20 -- or leave it to Your Honours to decide on the question of maps.

21 In respect of Henry King's statement. Now, clearly Henry King
22 was a distinguished prosecutor of Nuremberg. He wrote a letter
23 to my learned friend which my learned friend sought to read and
24 Your Honours quite appropriately disallowed it.

25 We would respectfully submit that that letter be taken on record

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1 because it's a reflection of a very senior Nuremberg prosecutor.
2 However, Your Honours may consider keeping only one page of his
3 book on record, which he mentioned in his letter, and that page
4 -- or two pages -- pertained to Albert Speer, and my learned
5 friend mentioned that.

6 In our respectful submission, admitting the entire book, which is
7 available in our awareness only in English -- or I may be wrong,
8 it may be available in French -- would be inappropriate and
9 therefore Your Honours may consider accepting only that page of
10 that book.

11 [10.11.35]

12 Also, in respect of Henry King's letter, Your Honours may also
13 wish to direct my learned friend, for completion of record, to
14 place his letter to Henry King on the basis of which Henry King
15 replied and which would have found the basis of his testimony
16 before this Court, which could not happen.

17 Howsoever relevant transcripts and videos and judgements of the
18 Obrenovic decision may be for the case of my learned friend, in
19 our respectful submission, they remain legal authorities. They
20 are not evidence, they were not put to any witness, they were not
21 put to any expert.

22 If Your Honours were to put into the evidence all the judicial
23 authorities that you have referred to, we shall run into
24 thousands if not millions of pages.

25 So we would respectfully submit Your Honours may leave it open to

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1 my learned friend to use such legal authorities in his closing
2 submission or any of his pleadings that it is open to him to
3 file, but not consider as put before the Chamber.

4 In respect of the book of Desmond Tutu, once again a very
5 distinguished figure, a President of the Truth and Reconciliation
6 Commission of South Africa, the learned national and the
7 international Co-Prosecutor had made a concession and I would
8 stand by that concession and I shall add no more.

9 [10.13.16]

10 In the end comes the statement of Chum Mey. Now my learned
11 friend gave me a long lecture of how things should have been done
12 by the Office of the Co-Prosecutor and why we should have been
13 more organized and be able to come before you ahead of time.

14 Now this alleged journalistic statement taken by "Paris Match"
15 which to my recollection, is not a serious intellectual academic
16 magazine, of 26th of November 2008, exactly about 10 months ago
17 when this person is a civil party, when this person deposed
18 before you, and when this statement is only a journalistic
19 version of what he may or may not have told the journalist, would
20 not add to anything that Your Honours may wish to consider at
21 judgment.

22 Therefore, although it could be read by my learned friend in his
23 closing submission, but its admission or its being put before the
24 Chamber should be denied.

25 And I hope I have been brief. Thank you very much.

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1 MR. PRESIDENT:

2 The civil party counsel, do you have any observations to make
3 regarding the request by the defence counsel?

4 MR. HONG KIMSUON:

5 Thank you, Mr. President. Good morning, Your Honours,
6 distinguished members of the Court.

7 I am Hong Kimsuon, representing group 2 and 4 of the civil
8 parties and I would like to provide my following observations
9 regarding the request by the defence counsel.

10 [10.15.32]

11 I agree with what has been said by the international
12 Co-Prosecutor because there are several books requested by the
13 defence counsel and they are in the English language only and it
14 is inaccessible for us, the national counsel for the civil
15 parties.

16 Regarding Chum Mey's statement, at the beginning of the trial
17 proceedings, discussions have been made regarding the agreed
18 facts. I can recall that the defence counsel strongly objected
19 any interview or statement between Kaing Guek Eav and journalists
20 or the UN representative who interviewed him in Battambang before
21 his detention. And the Chamber, especially Your Honour
22 President, agreed to his objection and those documents were not
23 admitted.

24 Also, regarding the photographs and the videos made by the
25 Vietnamese soldiers were sternly objected by the defence counsel

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1 and those evidence, the evidence were not admitted by the
2 Chamber.

3 Regarding the final set of documents requested by the defence
4 counsel, that is Chum Mey's interview with the "Paris Match" from
5 the 20 to the 28th of August 2008, I recall that on the 30 of
6 June 2006, Chum Mey was a survivor and also a witness who came
7 here to provide his testimony so that the Chamber as well as
8 parties to the proceedings, including the defence counsel, to
9 question him.

10 And the question is why, at that time, that is from the 20th to
11 28th of August 2008 until the 30 of June 2009, the defence
12 counsel did not question him on that interview so that the
13 parties would have the opportunity to question or to verify those
14 interviews? So this is rather a trick used by the defence
15 counsel and I sternly object the request for submission of this
16 document made by the defence counsel.

17 [10.18.55]

18 That is all, Mr. President. Thank you.

19 MR. PRESIDENT:

20 Alain Werner, you take the floor.

21 MR. WERNER:

22 Mr. President, Your Honours, good morning.

23 Just to say group 1 supports what has been said, and in
24 particular with regard to Chum Mey, if this document were to be
25 admitted as evidence, then Chum Mey should be recalled because

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1 this is elementary. The least we can expect is that Chum Mey be
2 afforded the opportunity to express himself with regard to what
3 he may or may not have said to "Paris Match". If the document is
4 to be accepted, Chum Mey should be called and he should be able
5 to tell us whether he said or did not say what this journalist
6 recorded. It would be an elementary precaution to ask Chum Mey
7 what he thought about this.

8 Thank you.

9 MS. MARTINEAU:

10 Thank you, Mr. President, Your Honours. Just a comment.

11 If I remember correctly, when Desmond Tutu's book was mentioned
12 the defence counsel were asked to state the parts of the book on
13 which they intended to rely. And it seems to me that Mr. Roux
14 agreed to do so.

15 [10.20.53]

16 If this is the case then we would be glad to have the references.

17 MR. PRESIDENT:

18 François Roux, would you be able to respond to the question posed
19 by the civil party lawyer group 3?

20 MR. ROUX:

21 Mr. President, I did promise to provide a translation of the
22 passages that I intend to rely on in my Closing Submissions.
23 Since we have two months to prepare you will have it as I usually
24 provide it before my oral submissions.

25 MS. MARTINEAU:

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1 Thank you, Mr. President.

2 MR. PRESIDENT:

3 The Judges of the Bench, do you have any comments to make or any
4 verification to make regarding all these requests? If not, let
5 me move on. There are still civil party counsel to put their
6 requests.

7 (Deliberation between Judges)

8 MR. PRESIDENT:

9 Defence counsel, Mr. Francois Roux, I notice you're on your feet.
10 Now, before we move onto the next proceeding, I actually asked if
11 there are any comments to be made by various parties to the
12 proceedings.

13 [10.23.54]

14 But, anyway, Francois Roux, you can take the floor and please
15 consider the time for our proceedings and make your comments
16 besides. And also, you should address any new matters and do not
17 repeat on the matters which have already been discussed,
18 otherwise we would be here forever and it would be difficult for
19 us to make any decision if things go around in circles.

20 MR. ROUX:

21 Thank you, Mr. President. I just wish to be afforded the
22 opportunity to respond to what was said by the Co-Prosecutors and
23 the civil parties in respect to the applications I made. The
24 prosecutor was given the opportunity to respond to me in regard
25 to their own documents, so I would like to respond to their

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1 observations regarding my documents.

2 Very briefly, to reassure the civil party lawyers, I do not know
3 whether Chum Mey's representatives spoke on his behalf. If that
4 is not the case, that might be a problem.

5 The defence considered that it was not useful to disclose this
6 document before the footage was viewed, and it was indicated that
7 the footage would be shown during the interview of the accused
8 with regard to his character.

9 If this document is not agreeable to you, I have no problem with
10 using it only my pleadings. If you do not wish it to be included
11 in the evidence, I will not use the document as such. I will
12 refer to it and this is my formal notice that I will use it
13 during my pleadings. So there will not be reason to call Mr.
14 Chum Mey again.

15 In response to the prosecutor as regards the books, particularly
16 the book of Mr. Phillip Short, I was surprised that you objected
17 to this book being put before the Court. If this is a problem for
18 you, all right, I will use it in my pleadings. I am free to put
19 what arguments I wish to put before the Court up till the end.

20 [10.26.34]

21 If I offer to put documents before the Court, it is because I
22 want you to know beforehand what I want to use. If you don't
23 want to know, that's your problem. In any event, the Chamber is
24 now aware of some of the material on which I will rely in my
25 pleadings and the Chamber will decide to put -- consider these

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1 documents as having been put before the Court or to consider them
2 as arguments raised in the pleadings. I leave it to the wisdom
3 of the Chamber.

4 MR. PRESIDENT:

5 It is now appropriate for a break. We will take 20 minutes break
6 and we will shall return at twenty to eleven.

7 The hearing is now adjourned.

8 THE GREFFIER:

9 All rise.

10 (Court recesses from 1027H to 1054H)

11 (Judges enter courtroom)

12 MR. PRESIDENT:

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

14 The Chamber would like now to give the floor to the civil party
15 counsel group 2 and 4 to have their submissions on the additional
16 documents if they wish to do so. That includes both the
17 remaining or pending documents which have not yet been put before
18 the Chamber.

19 MR. HONG KIMSUON:

20 Thank you, Mr. President, distinguished members of the Court.

21 With the President's leave I would like to clarify on a matter.

22 [10.55.25]

23 Before the break, if I am not mistaken, the defence counsel
24 accepted the objections raised regarding Chum Mey's statement and
25 that it should be replaced by a video clip.

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1 MR. PRESIDENT:

2 Counsel François Roux, can you clarify this matter, please? Do

3 you understand the question raised by Counsel Hong Kimsuon?

4 Thank you.

5 MR. ROUX:

6 I said yesterday afternoon and this morning that yesterday we

7 showed a video of the re enactment of S-21. I said that in that

8 video we can see Mr. Chum Mey speaking. I said that we did not

9 wish to submit the interview of Mr. Chum Mey prior to showing

10 this Court the video of the re-enactment in S-21, and that this

11 was the reason why the interview of Mr. Chum Mey was submitted

12 only yesterday at the end of the afternoon because of the video

13 of the re-enactment was played only in the morning, and because

14 Judge Cartwright had said that that video would only be shown

15 when the character of the accused would be scrutinized.

16 Is that clear?

17 MR. HONG KIMSUON:

18 Thank you, Mr. President. I am now clear.

19 [10.58.09]

20 Now I would like to talk about the request that we will put

21 before the Chamber for remaining documents or new documents. For

22 civil party group 2 and 4 we do not have any new additional

23 documents. However, regarding the existing documents which we

24 actually submitted between the 27th of April 2009 to the 10th of

25 September 2009, in which when the President would make reliance

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1 on those documents in your judgment, I would like to request for
2 admission of a document in Khmer with the ERN 00369908 to
3 00372191; and in English, 00372188 to 00372191.

4 This document talks about the victim who is a civil party, E2/32,
5 and that this civil party was sexually raped by the S-21 guard.

6 And I would like this document to be relied upon in your
7 judgment, Your Honours. Thank you.

8 MR. PRESIDENT:

9 Defence counsel, do you have any response to the request for
10 document submission made by civil party counsel group 2 and 4?

11 MR. ROUX:

12 Thank you, Mr. President. We're in the process of checking
13 whether the document mentioned by my colleague is indeed -- it's
14 the affidavit, correct, which was drafted and which you would
15 like to have submitted before the Chamber?

16 MR. PRESIDENT:

17 Counsel Hong Kimsuon, can you provide proper identification of
18 the document? What is the document's title?

19 [11.01.48]

20 MR. HONG KIMSUON:

21 The title of the document is "Request for Additional Submission
22 by the civil party E2/32 into the case file", dated 18 August
23 2009.

24 MR. PRESIDENT:

25 Kar Savuth you take the floor.

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1 MR. KAR SAVUTH:

2 Thank you, Mr. President. I understand that additional complaint
3 made by the civil party seems to refer to a new fact. Because
4 the facts in the indictment did not include that fact in their
5 complaint. So we as the defence counsel for the accused believe
6 that if a guard sexually raped a medic and then the chairperson
7 of that unit was not aware of the matter then it would not be the
8 responsibility of the chairperson.

9 Because during the regime if there was an evidence proving such,
10 then the person would be beheaded or killed. Therefore, from the
11 testimonies we have heard, only an interrogator sexually raped a
12 victim and during the investigation phase the fact that a guard
13 sexually raped a victim did not emerge. And we would strongly
14 object to this newfound fact.

15 [11.04.09]

16 MR. PRESIDENT:

17 Next I would like to give the floor to the civil party counsel
18 group 3 for the opportunity to make submissions of documents.

19 MR. KIM MENGKHY:

20 Thank you, Mr. President, Your Honours. I am representing civil
21 party group 3. In relation to the submission of new documents,
22 we do not have any new documents for submission; however, the
23 documents already placed in the case file that the civil party
24 applications have properly been placed in the case file already
25 including E139 dated 13th August 09 and E161, dated 28th August

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1 2009 with its annex and E164. So, we do not have any new
2 additional documents for submission.

3 Thank you, Mr. President.

4 MR. PRESIDENT:

5 Civil party counsel, can you reiterate your position again
6 regarding the documents you mentioned? Now we are hearing any
7 request for additional documents to be considered put before the
8 Chamber. And you should provide us identification of those
9 documents, either new documents or existing documents which have
10 not yet been put before the Chamber for discussion or
11 questioning. So in adhering to the proceedings all evidence is
12 considered as evidence of the case file when they are put before
13 this Chamber for adversarial questioning. And that the Chamber
14 will be able to examine and consider those evidence for its
15 judgment.

16 [11.06.59]

17 Due to the complexity and the expansive scope of the case and
18 voluminous documents, some of the existing documents have not yet
19 been put before this Chamber for questioning and this is the
20 opportunity for parties to the proceedings to request for those
21 existing documents to be considered put before this Chamber if
22 there is no objection from any parties to the proceedings.

23 Can you reiterate your position, or you do not have any
24 submissions? Would you just restate the documents you already
25 placed in the case file?

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1 MR. KIM MENGKHY:

2 Mr. President, in fact the documents that we already submitted
3 have actually been placed or put before this Chamber and those
4 are the civil party applications and we do not have any new
5 additional documents to be submitted.

6 MR. PRESIDENT:

7 Defence counsel, do you have any observation regarding this
8 clarification by the civil party counsel group 3?

9 MR. ROUX:

10 Two sets of observations, Mr. President. We've received from the
11 groups of civil parties additional documents which the Chamber
12 had requested concerning the 24 civil parties which the defence
13 had challenged. The position of the defence with regard to the
14 additional documents we received is the following: We wish to
15 rely on the wisdom of the Chamber except for civil party E2/64
16 where Duch has explicitly recognized that that person was indeed
17 detained in S-21 after scrutiny of the document that was
18 supplied.

19 [11.10.00]

20 Apart from that and in order to bring to a conclusion the issue
21 of new documents that were submitted yesterday by my colleagues,
22 counsel Ty Srinna and Werner, documents which have allegedly been
23 recently discovered at S-21. The accused is in a position,
24 should the Chamber wish it, is in a position to give you his
25 position with regard to the substance of these documents and then

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1 the defence will make all appropriate legal comments. Thus, if
2 the Chamber so wishes, we can settle and conclude that discussion
3 this morning.

4 MR. PRESIDENT:

5 Civil party counsel group 1 you take the floor.

6 MR. WERNER:

7 Mr. President, we are grateful to the defence for that position
8 and indeed we think it would be adequate to have this discussion.
9 Now, it changes nothing to the fact that we will be submitting a
10 motion for translation, if nothing else. But if we were to have
11 a brief discussion here and now that would probably be the best
12 possible solution. Thank you.

13 MR. PRESIDENT:

14 The accused, do you have observation regarding the request for
15 submission of 18 documents by civil party counsel group 1?

16 [11.12.16]

17 THE ACCUSED:

18 Mr. President, the 18 documents were sent to me and I have
19 reviewed them all based on their form and the serial number DSL,
20 and the writing was that of Comrade Hor and it's Hor's signature
21 as well. So I submit that these documents are S-21 documents.
22 Regarding the legal side of the documents, I would give that
23 responsibility to my counsel, Mr. President.

24 MR. PRESIDENT:

25 Defence counsel, you may proceed.

40

1 MR. KAR SAVUTH:

2 Thank you, Mr. President. Regarding this matter, I still
3 maintained my position which I stated yesterday. I strongly
4 object the inclusion of these documents into the case file.

5 [11.13.21]

6 The reason is that every document relevant to S-21 should have
7 been put before this Chamber through adversarial hearing or via
8 the Co-Investigating Judges during the investigation phase. And
9 these documents have not yet put before the Chamber for
10 questioning, so I still maintain my position of objection.

11 MR. PRESIDENT:

12 International defence counsel, you take the floor.

13 MR. ROUX:

14 Things are clear. Duch says these documents do indeed come from
15 S-21, so be it, but we say on the other hand that it is legally
16 not possible to bring in documents of this kind at the last
17 minute and introduce them into the debate. This is what we are
18 challenging.

19 And I add that I have a little professional experience, only 37
20 years, but I would say that every time that I've seen documents
21 submitted at the last minute in proceedings, every time without
22 exception, it turned out that this was a totally useless
23 exercise.

24 So, yes, these documents certainly do come from S-21. No, they
25 should not be submitted to the Court today. That's very clear.

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1 MR. PRESIDENT:

2 International Co-Prosecutor, do you have any new matter to be
3 raised?

4 [11.15.27]

5 I think if you wish to talk regarding the old matter, you should
6 not stand on your feet. So if you wish to talk about the old
7 matter, you would not be allowed to be on your feet. You can
8 only speak when there is a new matter that you wish to be brought
9 before the attention of the Chamber.
10 You are reminded on this. Thank you.

11 MR. AHMED:

12 I totally accept what Your Honours have just said. It's an old
13 thing in a new form.
14 Yesterday, in respect of these very documents, we had said that
15 we don't take any position because their authenticity has not yet
16 been tested, but now that the accused has admitted you are
17 strongly urged that they may be put before the Chamber.
18 That's all, Your Honour.

19 MR. WERNER:

20 Mr. President, let me be allowed a moment to repeat what we said.
21 We have already said what we said yesterday and we have nothing
22 to add in respect of our position. Thank you.

23 MR. PRESIDENT:

24 Judges of the Bench, do you have any comments to be made? It
25 seems that there is no comments to be made by the Judges of the

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1 Bench.

2 [11.17.19]

3 Mr. Alain Werner, I already reminded the parties to the
4 proceedings if you have any new matter to be raised, you can do
5 so. This is the last stage of the proceeding for today. The
6 Chamber has received more than sufficient information regarding
7 all matters discussed yesterday and today. So if you have any
8 new matter to be raised, you may proceed.

9 MR. WERNER:

10 Thank you, Mr. President.

11 MR. WERNER (speaking in English):

12 I speak in English because I have a motion I would like to talk
13 about in English. It's just a very, very short request. It's
14 going to take me literally one minute.

15 On the 11th of May 2009, which is four months and a half, my
16 group, civil party lawyers group 1, filed a motion which was a
17 request that the Trial Chamber facilitate the disclosure of an
18 OIOS report to the parties. And in this request, one of the
19 things we were asking was for the Chamber to invite the parties
20 to make written submissions on the content of the OIOS report
21 within 21 days of its receipt; of course if you were accepting to
22 direct a formal request to the UN Secretary General for the
23 provision of the OIOS report.

24 My understanding, and we checked this morning again, is that no
25 decision has been taken four months and a half later and, as you

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1 are aware, all the civil party groups joined us in this motion.

2 So it became a motion from all the civil party groups.

3 So I'm just asking your Chamber because, as you understand, some

4 of us are going to leave the country very soon and have other

5 occupations and we would just be grateful if you can give some

6 indication on when you think you will release a decision on this

7 motion? That will really help us to organize ourselves.

8 That's my only request. Thank you.

9 [11.19.47]

10 MR. PRESIDENT:

11 Thank you. Francois Roux, I notice you're on your feet. You may

12 proceed.

13 MR. ROUX:

14 Not on this subject, but before you adjourn, we would be grateful

15 if the Chamber could inform us what time limit the parties will

16 be allowed for their pleadings. Perhaps it would be useful if

17 the Chamber could say something about that. Thank you.

18 (Deliberation between Judges)

19 MR. PRESIDENT:

20 Thank you for your question raised by Alain Werner regarding the

21 decision to be made on the request by the civil party counsel for

22 a copy of the report of OIOS.

23 You are informed that we do not put the matter aside. We

24 actually prepared a letter to be delivered to the Secretary

25 General of the United Nations for all the matters raised in that

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1 report. The UN already provided two letters to the Trial Chamber
2 through a second reminder that we sent to the UN, so we actually
3 have in hand two letters from the UN and two weeks ago the
4 Chamber agreed to make a decision to be informed or notified to
5 the parties to the proceedings. The draft has already been
6 submitted and finalized but we need to hold a meeting in order to
7 harmonize the decision in the three official languages.

8 So in due course the decision will be delivered to parties to the
9 proceedings and it will be delivered before we announce the
10 decision regarding our judgment. Otherwise the justice and
11 fairness would not be up to the standard that we expect, so this
12 is for your information. And thank you, Mr. François Roux, for
13 raising your question regarding the time limit for pleading and
14 for the final written submission.

15 [11.24.10]

16 In order to make it clear at the stage, the Chamber would like to
17 know the position of the parties to the proceedings regarding the
18 time limit. What would be the appropriate time limit for the
19 final submissions? And the Co-Prosecutors' comments are sought
20 first, so you can tell the Chamber your intention on the time
21 limit and the plan, the schedule would be from the 23rd to the
22 25th of November 2009.

23 MR. AHMED:

24 Your Honour, since this was not on the agenda of today's hearing,
25 I cannot most respectfully provide you a firm answer because I'll

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1 have to consult the Co-Prosecutors, but I undertake to do it in
2 the course of today to your greffiers. Would that satisfy Your
3 Honours?

4 MR. PRESIDENT:

5 Thank you for your comment.

6 And the civil party counsel, have you thought of the appropriate
7 time for your final oral submission, and how have you arranged or
8 made a decision on whether you should present your final oral
9 submission individually, or it's a combination of all the civil
10 party groups.

11 MR. WERNER (speaking in English):

12 Your Honour, as you understand, not all the civil party lawyers
13 are present today and therefore I think we would need some time,
14 maybe not too long but some time to consult and come back again.
15 We can do the same thing, we can come back to your greffier in
16 one way or another with a common position, but we need to
17 consult. It's difficult for us to give you any firm statement
18 without consulting. Thank you.

19 [11.26.33]

20 MR. PRESIDENT:

21 And the defence counsel, how much time do you think you need for
22 your final oral submission? You should also take into
23 consideration the final oral submission which includes the
24 submission made by the accused.

25 MR. KAR SAVUTH:

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1 Thank you, Mr. President. I personally would like to request
2 three hours of your Court time and my international colleague
3 would like to request six hours of the Court time, Mr. President.
4 So the total is nine hours.

5 MR. PRESIDENT:

6 Have you consulted with the accused yet? The total of nine
7 hours, does it also include a submission by your client?

8 MR. KAR SAVUTH:

9 Mr. President, my client wishes to make his separate submission
10 and he shall inform the President at a later stage.

11 MR. PRESIDENT:

12 François Roux, you may proceed.

13 [11.27.59]

14 MR. ROUX:

15 I will share my time with Ms. Canizares, the other counsel. I am
16 asking for six hours and I will share those six hours with Ms.
17 Canizares.

18 MR. PRESIDENT:

19 We have now come to the conclusion of the proceeding for the
20 parties to make submission on additional documents. The Chamber
21 would like to inform the parties to the proceedings and the
22 public that there will be no hearing this afternoon, and the
23 Chamber will also not be holding any proceeding next week.

24 However, the Chamber will hold several meetings on the pending
25 documents in order to make written decisions regarding various

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1 requests made by the parties to the proceedings regarding
2 yesterday's proceedings and this morning's proceedings, including
3 objections raised by various parties. If necessary, after our
4 written decision has been made and notified, then the Chamber
5 will make a new schedule to hold a hearing regarding that
6 decision.

7 Additionally, regarding the time allocation for each party's
8 final oral submission, which the schedules have already been set
9 to be conducted from the 23rd to the 25th of November 2009, the
10 Chamber will notify in writing to the parties to the proceeding
11 in due course after the Chamber receives all the notifications by
12 the various parties regarding the time allocation, and we hope
13 that parties to the proceedings would provide information to the
14 Chamber through the greffiers in due course so that we would be
15 able to make our decision accordingly. That includes our
16 decision on the appropriate time allocation for each party, or
17 whether we can reschedule the date for the final oral submission.

18 [11.31.18]

19 I would like to declare the adjournment to this morning's
20 proceeding now and, if there is a need of the Chamber for holding
21 another hearing, then you will be notified in due course.

22 Security guard, take the accused back to the detention facility
23 and you will be notified if he needs to be presented before the
24 Chamber.

25 THE GREFFIER:

- 1 All rise.
- 2 (Judges exit courtroom)
- 3 (Court adjourns at 1131H)
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