



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 26-Feb-2013, 13:55
CMS/CFO: Uch Arun

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

21 February 2013

Trial Day 160

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

The Accused: IENG Sary
KHIEU Samphan

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE FENZ	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
MR. LYSAK	English
MS. NGUYEN	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. SIMONNEAU-FORT	French
MR. VERCKEN	French

1

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

2 (Court opens at 0906H)

3 MR. PRESIDENT:

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

5 Today the Chamber will continue to hold the proceeding to hear

6 observations and remarks by parties as a consequence of the

7 decision by the Supreme Court Chamber regarding the immediate

8 appeal by the Co-Prosecutors against the severance order

9 regarding the scope of 002/01.

10 We have so far held two days of hearing regarding this very

11 matter but we have yet to conclude it. And today we will continue

12 to hold it for this morning's session so that hopefully the

13 Chamber will have all the grounds. And then we will be able - in

14 a position to make a decision and to expedite the proceedings in

15 Case 002/01.

16 We will first hear the responses by parties to supplementary

17 questions put forward by the Trial Chamber in our memorandum on

18 the 18th February 2013 where we issued it on the 19th February

19 2013, document E264. We may have additional questions to the

20 parties if deemed required.

21 [09.09.19]

22 In order to expedite today's proceeding and as we already

23 reminded all parties yesterday, please look at the main points in

24 all those questions in our memorandum carefully and please

25 respond directly to those questions in our document E264.

2

1 And we make a slight change to the process of the proceeding, so
2 all parties are instructed to respond in full for all the
3 questions raised in the memorandum not one by one, but all in one
4 time. And after one party concludes their response, then another
5 party will be given the opportunity to reply or to respond. We
6 are of the view that time allocation is necessary.

7 The Co-Prosecutors will have 40 minutes, the Lead Co-Lawyers may
8 add to what would be presented by the Co-Prosecutors so they
9 would have 20 minutes. And each defence team will have 20
10 minutes.

11 As for the response time to the last questions for the
12 Co-Prosecutors and the Lead Co-Lawyers, we will see if there is
13 needed and time will be allocated accordingly.

14 Mr. Duch Phary, could you report the attendance of the parties
15 and individuals to today's proceeding?

16 [09.11.20]

17 THE GREFFIER:

18 Mr. President, for today's proceeding, all parties to this case
19 are present except the accused Ieng Sary, who is present in the
20 holding cell downstairs due to his health concern.

21 And another Accused, Nuon Chea, is absent due to his health
22 reason and is being treated and being rested at the detention
23 facility. However, through his counsel, Nuon Chea informs the
24 Chamber, although he is not present in today's proceeding, he
25 does not object to the proceeding.

3

1 Thank you.

2 [09.12.31]

3 MR. PRESIDENT:

4 Thank you.

5 Based on the information we received on the 18th February 2013,
6 the proceeding regarding the severance of the case, we observed
7 some challenging issues; as a result, we request further
8 information from parties as follows.

9 We request that the trial – that the Co-Prosecutors to provide
10 the relevant paragraphs they deem necessary to add to the
11 extension of the scope in this case where they submit their
12 proposal besides the forced movements, phases 1 and 2, and the
13 killing at Tuol Po Chrey.

14 In document E163 dated 27 January 2013, the Co-Prosecutors
15 indicated that paragraph 192 to 204 and the relevant paragraph
16 575 of the Closing Order in Case 002 should be included in Case
17 002/01 so that S-21 can be included. Based on the scheduling of
18 the Trial Chamber, certain additional paragraphs should be added
19 in order to render coherent these proposed extensions, in
20 particular paragraphs 949 to 974 in addition to paragraphs 178 to
21 191, 207 to 209, 916 to 936, and paragraph 975 to 977.

22 At the August 2012 Trial Management Meeting, the Co-Prosecutors
23 appeared to agree that these additional paragraphs would also
24 need to be added even though the addition of further paragraph
25 may have an additional consequential impact on witnesses to be

4

1 heard and documents relevant to the trial.

2 [09.15.01]

3 Further - and should the Co-Prosecutors seek to add grave
4 breaches charges in consequence of a proposed extension to S-21
5 as was suggested on the 18th February 2013, further paragraphs in
6 the indictment; namely, paragraphs 150 to 155, paragraph 1480 to
7 1488, 1491 to 1492, 1498 to 1510, and paragraphs 1515 to 1520
8 would need to be added. And additional evidence possibly adduced
9 specifically in relation to armed conflict and its international
10 character.

11 For that reason, the Trial Chamber requests the Co-Prosecutors to
12 consider this information and provide a definitive list of all
13 indictment paragraphs proposed for inclusion.

14 And in consequence of the SCC decision, the Chamber has already
15 received numerous requests from the parties for the adjournment
16 of proceedings or relaxation of other trial datelines. All
17 parties are invited to comment on the below proposed trial
18 schedule for the following weeks and the timing of the decision
19 on severance in light of the following considerations.

20 [09.17.35]

21 1) The health of the Accused has been considered by the Trial
22 Chamber and endorsed by the Supreme Court Chamber as a
23 determining factor for any decision on the scope of the trial.
24 Medical experts are scheduled to be heard by the Chamber in mid
25 March 2013 and their expertise may affect the determination of

1 the scope of proceedings.

2 2) A written decision on severance with extensive reasoning as
3 mandated by the Supreme Court Chamber will very likely not be
4 available in two official ECCC languages for another two to three
5 weeks.

6 3) The testimony of expert Philip Short has been scheduled for
7 next week, and Elizabeth Becker, tentatively, for the week after.
8 Philip Short's availability is very limited as is Elizabeth
9 Becker's who has already been postponed twice. If these experts
10 are not heard as currently scheduled, it is likely that the
11 Chamber will lose the ability to hear them at all. Should
12 witnesses scheduled to testify prior to a written severance
13 decision be postponed or alternatively could they testify at
14 least in relation to the scope of trial as understood by all
15 parties prior to the announcement of the severance order and
16 related decisions?

17 [09.20.00]

18 The Chamber requests parties to comment in relation to the
19 following individuals whose testimony is scheduled imminently,
20 namely: Philip Short, Elizabeth Becker, TCW-724, TCW-794,
21 TCW-100, and TCW-110. And, in order to obtain the most accurate
22 assessment possible for the likely prolongation of proceedings
23 that would stem from the grant of the Co-Prosecutors request to
24 include S-21, the parties are requested to address the following
25 issues.

6

1 1) The Co-Prosecutors have calculated the time necessary to
2 extend the scope of trial to S-21, to require no more than the
3 hearing or re-hearing of five individuals, namely: Kaing Guek
4 Eav, TCCP-21, TCW-540, TCW-698, and TCW-232 entailing an
5 additional 11 trial days. They also seek to put forward
6 approximately 200 documents which would likely require an
7 additional document hearing. The Co-Prosecutors are requested to
8 confirm these projections and in addition clarify whether or not
9 the Co-Prosecutors seek to include S-24, Prey Sar, within this
10 proposed extension.

11 [09.22.14]

12 2) The premise that's the proposed extension could be
13 accomplished following only a limited number of hearing days
14 depends on the ability of the Accused to participate in trial or
15 their readiness to waive their rights to be present. The Chamber
16 notes that for the better part of the last two months, one or
17 more of the Accused have been hospitalized. The trial was able to
18 continue only because the Accused waived their right to be
19 present in relation to the hearing of a limited number of
20 individuals. Could the defence teams indicate whether their
21 client's willingness to waive their rights to be present would
22 continue in the event the Accused were unable to attend
23 proceedings and the above individuals relevant to S-21 were
24 recalled? That is the five individuals.

25 [09.23.42]

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1 The last point – that is, number 3: Could the Co-Prosecutors
2 clarify whether the estimates of time required for the conclusion
3 of a new S-21 trial segment depends on the admission of
4 transcripts from Case 001. In light of the criteria for the
5 introduction of trial transcripts from other trials, in the Trial
6 Chamber's decision -- that is, document E96/7, the defence teams
7 should address whether or not they would seek to contest the
8 admission into evidence of Case 001 transcripts concerning S-21
9 to which the Co-Prosecutors and the Lead Co-Lawyers may respond.
10 And the Co-Prosecutors and the Lead Co-Lawyers will be given the
11 opportunity to respond later to this last point.

12 I'd like now to give the floor to the Co-Prosecutor to respond to
13 all these questions put forward by the Trial Chamber. You may
14 proceed.

15 [09.25.02]

16 MR. LYSAK:

17 Thank you, Mr. President. Good morning, Your Honours, and good
18 morning to everyone. Let me start with the first question in
19 paragraph 2 of your memo, which concerns – asks us to specify the
20 additional paragraphs.

21 As is referenced in your memo and as we previously advised, the
22 Trial Chamber last year in our filing for the August 2012 Trial
23 Management Meeting, in addition to the core allegations of the
24 Closing Order on S-21, which are paragraphs 415 through 475.

25 The Trial Chamber should also include if S-21 is added the

8

1 following paragraphs: paragraph 178 through paragraph 204 --
2 that's 178 through 204; this is the section of the Closing Order
3 that sets out the JCE policy relating to security centres,
4 killing of enemies, and purges.

5 In addition, paragraphs 916 through 974 should be included --
6 that's 916 through 974. These are the paragraphs related to Nuon
7 Chea's participation in security centres and executions,
8 including S-21.

9 Similarly, paragraphs 1048 through 1089 would be included --
10 these are paragraphs relating to Ieng Sary's participation in
11 security centres and executions including S-21. And, similarly
12 for Khieu Samphan, paragraphs 1172 through 1190 should be added.
13 [09.27.10]

14 Now, the memorandum that was issued by the Trial Chamber on
15 Tuesday afternoon, that Your Honour just read, also asked whether
16 paragraphs 207 through 209 and paragraphs 975 through 977 also
17 needed to be added. The answer to that is no, and the reason is
18 that those paragraphs were already included by the Trial Chamber
19 in the scope of Case 002/01. And I would refer the Trial Chamber
20 to document E124/7.3 - E124/7.3 - where you will see that those
21 paragraphs have already been included in the original scope.

22 In regards to the Closing Order allegations regarding grave
23 breaches and the existence of an armed conflict, we agree that
24 the Trial Chamber needs to include the one page of allegations
25 regarding the armed conflict that is found at paragraphs 150

1 through 155. And, in addition, the relevant paragraphs setting
2 out the legal elements or characteristics of grave breaches
3 offences which would be the following – and I note that we have
4 some slight, minor corrections to the paragraphs that are
5 identified in your memo – the paragraphs we believe need to be
6 included would be 1480 through 1484 and 1487 through 1488.

7 [09.29.12]

8 I note here that two paragraphs that were in your memorandum 1485
9 and 186 need not be included as they relate to different crime
10 sites or events, specifically the Au Kaseng Security Centre and
11 the issue of military incursions into Vietnam. In addition the
12 Trial Chamber should include paragraphs 1491 through 1493. Again,
13 I note here just a slight correction: the memorandum had proposed
14 1491 through 92. The allegations regarding S-21 would extend
15 through 1493 and, in addition, 1498 through 1510, and 1515
16 through 1520.

17 The Chamber asks us in this question to comment on whether the
18 addition of these paragraphs would have any significant impact on
19 the witnesses and evidence needed to be heard by the Chamber
20 other than that which is already planned or proposed. And the
21 general answer to this question is no.

22 As I will show you with some examples, the evidence that the
23 Trial Chamber requires to adjudicate these issues is either
24 already before the Court; for example, witness testimony that has
25 already been heard, documents already admitted, or is evidence

10

1 that will be heard through the remaining witnesses that the
2 parties had proposed or that the Trial Chamber had already
3 planned to hear as part of Case 002/01. And because this is a
4 concern that you have expressed, I want to take a few minutes and
5 I recognize the time allocation so I will probably not go into as
6 much detail here as I had planned. But I want to take you through
7 some of these additional paragraphs to show you why - to
8 demonstrate why they would not require significant new evidence
9 beyond that which has already been heard or is planned to be
10 heard.

11 [09.31.53]

12 And I would start here with -- as an example the paragraphs that
13 I mentioned that needed to be added regarding the JCE policy of
14 security centres and execution sites. And if Your Honours review
15 those paragraphs you will see that the evidence cited is very
16 familiar. The start of the section is actually a repeat of
17 general allegations that were included in paragraphs 156 to 159
18 which were already part of the case. And they talk about the
19 general policy citing to evidence such as Duch, to David
20 Chandler, to "Revolutionary Flag" publications.

21 If you look at paragraph 179 as we proceed through this section,
22 there is a discussion of the Constitution of Democratic
23 Kampuchea; a document that is already part of these proceedings
24 and is admitted.

25 The next paragraph, paragraph 180 states: "The CPK used several

1 methods to identify those who had carried out activities against
2 the state including requiring people to write biographies and
3 attend self-criticism meetings."

4 As this Chamber knows, this is an issue that has been addressed
5 extensively in this trial in relation to the existing allegations
6 in Case 002/01.

7 [09.33.48]

8 The following parts of this paragraph describe the general
9 procedures for interrogation and torture and are all based on
10 cites to the testimony on Duch.

11 Going to the section that is titled "Dates and Participation"
12 again we say the same issue.

13 In paragraph 182 are issues that overlap with the historical
14 background of this trial and concern the pre-1975 events that we
15 have covered. The cites are to Duch, minutes of general staff
16 meetings, which is an issue I did a presentation on a few weeks
17 ago and interestingly the testimony of TCW-110, one of the
18 upcoming witnesses who was referenced in the Trial Chambers memo.

19 The next paragraph, 183, the subject of it is the July 1975
20 meeting at which many RAK members attended. The Trial Chamber
21 will recall that this was an issue that was covered by both of
22 the last two witnesses, military witnesses who testified and is a
23 meeting that was memorialized in the August 1975 "Revolutionary
24 Flag" which is an admitted document. And then there is a
25 reference to other RAK meetings which again are the general staff

1 meetings that are in evidence and that I presented to this
2 Chamber again a few weeks ago.

3 [09.35.28]

4 The next paragraph, 184, concerns Standing Committee meetings at
5 which these policies were discussed. The Standing Committee and
6 its meeting is of course an issue that was already part of Case
7 002/01 and those documents are all in evidence already. The
8 following paragraph concerns two Party circulars from September
9 1975 already admitted and the subject of testimony and presented
10 in these proceedings.

11 The next paragraph, 186, concerns the March 1976 Central
12 Committee decision regarding the authority for smashing. Once
13 again this is a document that is admitted, this is a document
14 that has been subject by witnesses including Duch and Chandler.
15 The rest of this paragraph concerns the issue of the various
16 organizations in Democratic Kampuchea and their authority
17 relating to security. This is an issue already covered as part of
18 the authority structure of Case 002/01.

19 [09.36.52]

20 Paragraph 187 concerns the People's Representative Assembly
21 meetings that were held in April of 1976, another document that
22 is already before the Chamber and an issue that has been the
23 subject of testimony with a number of witnesses.

24 And I could continue on through the remaining paragraphs. For
25 example, paragraph 190 concerns the June 1978 Central Committee

13

1 document called "Guidance" that was a revision of their policy on
2 enemies. This is a document that is admitted and the two
3 witnesses that are cited in this paragraph are both witnesses who
4 have been questioned about this document, Duch and Sao Sarun. I
5 make this presentation so that - as the Trial Chamber has
6 expressed concern over whether these additional paragraphs will
7 require new evidence.

8 And I could take you through each of the sections in fact I have
9 done that for others, but because of the time limits I will move
10 on to the next - move on to the armed conflict issue. But if the
11 Trial Chamber has any question as to whether any doubt about
12 this, I am certainly prepared to go through each of the different
13 groups of paragraphs that needed to be added to demonstrate to
14 you that they will not require significant new evidence.

15 [09.38.45]

16 And I would just add here very quickly that the reason for this
17 as I have mentioned is not because parties have been regularly
18 exceeding the scope of the Case 002/01 allegations. It is because
19 these issues are part of matters that were already included.

20 Whether they relate to historical background, they relate to the
21 authority structures, communications - and I would just note here
22 very quickly for you as an example some of the paragraphs that
23 were already part of the Closing Order that address these issues
24 and are the reason that we have already covered much of this.

25 [09.39.31]

1 For example, in the historical background section of the Closing
2 Order, paragraphs 21 and 23 that incorporated the development of
3 the CPK policy authorizing the use of revolutionary violence to
4 eliminate enemies. In the administrative and communications
5 structure section of the Closing Order were included allegations
6 regarding the arrests and execution of Central Committee members
7 -- that is, paragraphs 38, 43 and 50. It included the authority
8 of the Standing Committee to order arrests in paragraph 41. It
9 included the role of S-71 in monitoring suspected Party members
10 and conducting arrests and transfers to S-21 - that is, in
11 paragraph 53. That section included the issue of reporting to the
12 Standing Committee on enemies, traitors, and internal security
13 matters in paragraphs 76 to 77. It included the arrests of cadres
14 called to Phnom Penh for study meetings in paragraphs 87 to 88.
15 And it included the issue of broadcast of Vietnamese POW
16 confessions from S-21 in paragraph 112.

17 [09.41.03]

18 And similarly the military structure section of the Closing
19 Order, which is part of case 002/01, includes allegations
20 regarding the responsibility of the RAK for - quote - "the
21 defence of the CPK rule against perceived enemies and spies
22 within the armed forces, the Party, and the country as a whole" -
23 end of quote. That is from paragraph 117; it included the
24 responsibility of the Party's military committee, including Nuon
25 Chea, for the operation of S-21 - that is, paragraphs 122 to 123.

15

1 It included reporting to the Centre on the discovery of internal
2 enemies in paragraph 137. It included purges of internal enemies
3 that were conducted under the orders of the CPK Centre – that is
4 in paragraphs 146 to 149. And also it included the use of S-21
5 for the interrogation and arrests of alleged traitors in
6 paragraph 145.

7 And I will also just briefly note here Your Honours that there
8 are also paragraphs in the sections of the roles of the Accused
9 that related to these issues. For example, in the case of Nuon
10 Chea paragraphs 873 to 879 were already part of Case 002/01. The
11 title of that section of the Closing Order is Nuon Chea's role in
12 CPK security apparatus. So that is the reason why we submit that
13 S-21 and these issues can be tried without – why it is manageable
14 and why it will not require any substantial new evidence for this
15 Chamber to hear.

16 [09.43.03]

17 Briefly, on the issue of armed conflict, I note that the – first
18 of all, that the new paragraphs in the Closing Order are
19 relatively short but also that these are factual issues as you
20 can see if you look at the footnotes that are cited in the
21 Closing Order that are relied upon and proven by documentary
22 evidence. Most of the evidence cited in the Closing Order on this
23 issue are contemporaneous documents from the DK period that
24 reflect the existence of the armed conflict, such as telegrams
25 and reports reporting to the leaders in Phnom Penh on conflicts

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1 with Vietnamese forces. These are documents that have been put
2 before the Chamber already in our annex before. This issue is
3 also proven by a minutes of Standing Committee meetings and
4 meetings of the general staff where the conflict was discussed
5 amongst the leaders, documents that we already put before the
6 Trial Chamber through our annex three. And also cited are
7 government statements, statements of the Democratic Kampuchea
8 government and broadcasts from the government media, documents
9 which have been submitted in Annex 5.

10 [09.44.48]

11 So, Your Honour, there is already a large amount of evidence
12 before you on this issue and I can give you some specific numbers
13 here. There are already a total of 5037 documents to date that
14 either have E3 numbers and have been admitted or have been put
15 before the Chamber and subject to adversarial hearings. Of those
16 documents, 694 documents contain information relevant to the
17 armed conflict including 130 telegrams and reports sent to the
18 leaders in Phnom Penh, 15 statements issued by the Democratic
19 Kampuchea government, 83 reports from the DK media, and 63
20 international media reports. All of these are contemporaneous
21 records in evidence which document the existence of the armed
22 conflict in Vietnam, and I would note these same documents prove
23 the Accused's knowledge of that conflict because they are reports
24 sent to them and they are meetings in which they participated.

25 [09.46.12]

1 And if there are any remaining significant document relating to
2 the armed conflict we would also include them with the additional
3 documents that we would present - submit regarding S-21 and as I
4 indicated this is something we can do in a short time frame
5 should you issue an order adding S-21.

6 We do not - if you look at the evidence in the Closing Order it
7 does not rely heavily on witness testimony. We do not believe the
8 Trial Chamber would need to hear new witnesses specifically
9 relating to the armed conflict.

10 First, I would note that where the Closing Order does cite
11 witnesses, they are witnesses some of whom have already been
12 heard by this Court such as Duch, Suong Sikoeun, and, in one
13 case, a witness who has been proposed to be heard as part of
14 S-21, TCW-540.

15 And I would also note for the Chamber that there are two or three
16 upcoming military structure witnesses who the Chamber has already
17 planned to hear, TCW-110, TCW-253, TCW-398. Each of these three
18 military cadres were persons who were signed to the border
19 conflict with Vietnam in late 1977 or early 1978. So, like with
20 the other paragraphs of the Closing Order, our position is that
21 the trial of this issue would not require a significant new
22 additional evidence to be heard by the Chamber.

23 [09.48.09]

24 A couple of just quick logistical points, suggestions if you will
25 that I would make that may allow us to save some time on these

18

1 issues. The Trial Chamber's practise in the past has been to
2 separately review the footnotes of Closing Order paragraphs, to
3 review the documents cited and to assign them E3 numbers. It may
4 be possible for you not to do that here, I can tell you that in
5 submitting our document list the first thing we did was go
6 through the Closing Order and we endeavoured to include in our
7 document lists every document cited in the Closing Order. So I'm
8 not sure whether perhaps the Trial Chamber has a system worked
9 out that allows it to do this quickly but if not you can rely on
10 our document lists. We included, in our document lists,
11 everything cited in the Closing Order, therefore if it is a time
12 consuming process for you to go through footnote by footnote; you
13 can rely on our submissions of the relevant documents on that
14 issue.

15 The other logistical-

16 [09.49.50]

17 MR. PRESIDENT:

18 As for the time allocated to you, you were given 40 minutes, and
19 now we have to be specific with the time allocated by the
20 Chamber. And the Chamber envisaged that we could finish hearing
21 the views of all parties this morning.

22 Actually, what the Chamber is asking is the specific list
23 concerning specific paragraph that the Chamber seek your views
24 and the prosecutor is expected to indicate to the Chamber that
25 this paragraph are relevant to the request for the expansion of

1 the scope.

2 So please express your view as such to make the issue brief, Mr.
3 Co-Prosecutor. Can you please advise the Chamber as to how much
4 time you need to address this issue? Because we have a few more
5 question and these questions need to be addressed by the
6 Co-Prosecutors, and particularly the last question, which is
7 subject to a lot of questions as well so that the Chamber will
8 have the basis for the decision on this issue.

9 [09.51.23]

10 MR. LYSAK:

11 Thank you, Mr. President. I started at 9.25, so I'm endeavouring
12 to finish by my 40 minutes. This first question was the time that
13 I had planned to spend the most time on. The other questions are
14 more easily answered but because - because your questioning not -
15 did not just ask us about the paragraphs to include, asked us to
16 comment on whether including these paragraphs would require
17 additional evidence, that is a fairly complex question, and we
18 wanted to be absolutely certain that our - that our position was
19 clear and explained as to why we believe that - not just stating
20 our position, but explaining why.

21 So I will move on now to the next - next question that the
22 Chamber has asked, and that concerns the issue of how to proceed
23 particularly with witnesses pending the Trial Chamber's decision
24 on severance. In regard to the comments of the - that, as to the
25 effect of the medical expert testimony that is to take place, we

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1 understand that that may have an effect down the road. However,
2 the experts are likely only to be able to tell us whether the
3 Accused are currently fit, whether they are currently fit at this
4 time. It is very unlikely that medical experts can give us any
5 sort of precise time period to tell us they're going to remain
6 fit for another two months, six months, or two years. So while
7 certainly this is a consideration it's not something that I think
8 would -- you would need to delay your hearing or delay your
9 decision until.

10 [09.53.11]

11 Concerning Philip Short and Elizabeth Becker, first thing we just
12 want to note that the Trial Chamber's memorandum indicates that
13 Philip Short is scheduled for next week. Our understanding had
14 been that next week there was a planned recess and that Philip
15 Short was scheduled to arrive on the 4th of March. So we just
16 wanted to clarify with the Chamber whether that remains the case
17 that Philip Short will start on the 4th of March or whether his
18 testimony has been moved up to next week as we were un clear on
19 that.

20 However on the issue of whether there is any legitimate reason to
21 postpone hearing witnesses pending your decision our answer is
22 that there is none. To the contrary, to ensure the expeditious
23 completion of this trial, we believe that you should resume
24 testimony as soon as possible. And specifically with relation to
25 Philip Short and Elizabeth Becker, the Trial Chamber has already

21

1 authorized these experts to be examined on the full scope of Case
2 002. And I would refer you to a memorandum you issued on the 25th
3 of May 2013 which was regarding four experts, David Chandler,
4 Philip Short, Elizabeth Becker, and another expert who has not
5 been scheduled. But the Chamber explicitly stated in this
6 memorandum: "The Chamber provides advanced notice to the parties
7 that it will examine the above proposed experts on all issues on
8 which they are able to testify within the scope of the case to
9 Closing Order."

10 This is why when David Chandler came to testify he was examined
11 on the full scope of Case 002 and the Trial Chamber has already
12 authorized the same for Elizabeth Becker and Philip Short.

13 Because of that, because these are experts who will be examined
14 on the full scope of Case 002, there is no reason whatsoever not
15 to proceed with their testimony as planned.

16 [09.55.51]

17 With regard to the TCW-724 and TCW-794, we were a little
18 surprised to see that they were included on the list. These were
19 - the Chamber will recall that back in August 2012 at the Trial
20 Management Meeting, parties were invited to propose witnesses on
21 the phase 1 list who they believe need not be heard. And in
22 document E236, paragraph 2, recorded the results of that
23 proceeding. At the hearing, we suggested both of these witnesses
24 need not be heard, there was no opposition from any of the
25 parties. So for that reason we were not sure whether the

1 inclusion of these witnesses on this list was an oversight as
2 these people have not been part of the lists of upcoming
3 witnesses that we have been receiving, or whether the Trial
4 Chamber has made a determination that, and notwithstanding our
5 indication, that it has reasons it wishes to hear from these two
6 witnesses.

7 But it remains our position that these are two witnesses that we
8 do not believe need to be heard, and if they are heard, however,
9 I would note that TCW-724 is a very elderly witness and he would
10 therefore fall into the category of people that the Trial Chamber
11 has authorized examination on the full scope of Case 002.

12 [09.57.29]

13 And with respect to the other two witnesses, it is also our
14 position that the Trial Chamber should go forward. It seems
15 likely that if the Trial Chamber issues a decision in two to
16 three weeks, that these witnesses would probably come after that.
17 However, both - if not, our position would be that the parties
18 should proceed to examine on the full scope of Case 002, but
19 within the same time limits that the Court already established.
20 No additional time would be needed or granted.

21 And let me turn now to the last group of questions in your memo.

22 First, we are asked to confirm our projections for the time of
23 the proposed S-21 witnesses and the number of documents. I do
24 confirm that - I would note that the 200 number represented the
25 S-21 prisoner lists and S-21 confessions. As I indicated, 600 of

1 those documents have already been admitted; 200 remain. There is
2 another - as I said, there will be some more miscellaneous
3 documents in addition to that, so the best estimate would be
4 somewhere around 250, no more than that.

5 [09.58.55]

6 The question of whether the Co-Prosecutors seek to add S-24, the
7 answer is no, we do not. That is a separate part of the Closing
8 Order that we do not propose to be included.

9 Issue number 2 in your paragraph 4 is the concern about the
10 number of hearing dates given the sickness of the Accused. That
11 is obviously a concern to all of us, but it is true for all
12 aspects of this trial, and if the Accused, for some reason, were
13 unable to continue to participate in this trial anymore because
14 of their health, the truth is, Your Honours, we will not be able
15 to finish any part of this trial. So we certainly hope that that
16 is not the case. We will be hearing, of course, from experts. I
17 note that the last two months is the cold season in Cambodia. It
18 is a time - probably a difficult time, particularly for elderly
19 people. Khieu Samphan himself, who is a relatively healthy
20 person, was sick.

21 [10.00.14]

22 So, the bottom line, Your Honours, is that adding S-21 does not
23 fundamentally change the scenario. We simply do not know how long
24 the three Accused will be able to participate. We do know,
25 however, that we must try to make this trial reasonably

1 representative in order to comply with the Supreme Court's
2 decision.

3 The last question is: Could the Co-Prosecutors clarify whether
4 their time estimates depend on the admission of transcripts? The
5 quick answer to that is no. Our time estimates do not depend on
6 what is decided on that issue. And just, to use my last few
7 minutes, let me just explain a little bit about this issue.

8 And I go back again to the fact that when this issue was first
9 discussed back in August 2012, the Trial Chamber expressed its
10 view that no witnesses needed to be heard in Court regarding S-21
11 because the Court could rely on written records, statements, that
12 were pursuant to its decision on the admission of written
13 statements.

14 [10.01.40]

15 Now, we propose that it was necessary to hear a minimal number of
16 witnesses, and that is why we proposed Duch and the four
17 witnesses, but it remains true, as the Trial Chamber indicated in
18 that document, that the Trial Chamber will be entitled, pursuant
19 to its decision, E96/7, to rely on other witness statements not
20 for anything related to the acts or conducts of the Accused --
21 and we do not propose that -- but it is entitled to rely on other
22 witness statements where they are cumulative of issues that are
23 heard from live witnesses in Court.

24 So our position remains, as it has been, that any testimony from
25 Case 001 is subject to the same standards. Where they are

25

1 witnesses who have appeared here and testified and been examined
2 by the Accused, there is no question about their admissibility.
3 If they have not, then they are subject to that test. They cannot
4 be used for acts and conducts of the Accused. They can be used
5 where cumulative of other allegations relating to S-21.
6 So in simple, the answer to your question is no. Your ruling and
7 your admission of these documents would not affect our position
8 on the witnesses that need to be heard.

9 [10.03.30]

10 MR. PRESIDENT:

11 Judge Fenz, you may proceed.

12 JUDGE FENZ:

13 I just want to make a comment and actually ask the prosecutors if
14 they don't think this is a relevant factor. It pertains to the
15 medical experts. Obviously the main question is to provide the
16 foundations for a fitness decision, but I would guess that it's
17 also possible that they are saying, yes, they are fit, but only
18 to sit half a day, only to participate half a day or only three
19 days a week, or whatever.

20 Wouldn't the Prosecution agree that under these circumstances,
21 the medical expertise is a relevant factor for any decision of
22 the Chamber on severance, because it has -- might potentially
23 have a grave impact on the question or on the assessment of
24 prolongation or possible prolongation of time?

25 [10.04.31]

1 MR. LYSAK:

2 Well, my response to that would be yes, the experts may say that
3 our recommendation is that they only participate for half days.
4 What I am saying, Your Honour, is that there is no way those
5 experts are going to be able to tell you whether they would be
6 fit to continue doing that for six months, eight months or a
7 year, or two years. So ultimately these medical experts cannot
8 tell you that we will not be able to complete these issues. They
9 may give you guidance. They can tell you whether-

10 MR. PRESIDENT:

11 There is no translation in Khmer. Could you please check? Court
12 Officer, could you coordinate with the interpreters and check if
13 there is any technical issue?

14 The Co-Prosecutor, you may resume. Please make your response once
15 again as there was no translation of your previous part.

16 [10.06.46]

17 MR. LYSAK:

18 Thank you, Mr. President.

19 So, my response, Judge Fenz, is that, yes, it is conceivable that
20 we will learn information from this that could be relevant as to
21 how this trial proceeds, but I would maintain that it's very
22 unlikely that these experts, even if they said that the Accused
23 should only sit for half days, they would not be able to tell us
24 whether they can continue doing so for two months, six months,
25 eight months, one year. So they will not be able to give us the

1 answer as to how much time we have to complete this trial, and
2 it's for that reason that we think that their opinions, while
3 certainly of interest, will not be determinative on this issue.

4 MR. PRESIDENT:

5 The Co-Prosecutor, it seems that you haven't given any clearer
6 response to our question as during the proceeding on the 18th of
7 February 2013, the Co-Prosecutor requested to extend the scope of
8 S-21 as well as the grave breaches of the Geneva Convention
9 related to S-21 Security Centre and that you require 11 Court
10 days.

11 [10.08.40]

12 We put the follow-up questions to you regarding the different
13 observations made by the Trial Chamber and the Co-Prosecutors as
14 for your request for extension of the scope in Case 002/01, and
15 you said that additional paragraphs should be added.

16 As for the additional documents requested, on the 18th of
17 February 2013 you said that a document should be in the total of
18 200 and now you said it could be up to a maximum of 250
19 documents, and it is possible that a document hearing might be
20 held on its acceptability to be considered - put before the
21 Chamber.

22 For that reason, we request your comment on the request to extend
23 the scope of the proceeding, including S-21 and the grave
24 breaches of the Geneva Convention in relation to S-21, and
25 whether your estimated Court days - that is, the 11 estimated

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1 Court days - remain the same or there could be changes to these
2 proposed Court days, as this is also relevant to other parties'
3 responses. Because if at the moment you think that it's going to
4 take only 11 Court days, but in reality it's going to take 30
5 Court days, that's going to have an impact on the scheduling by
6 the Trial Chamber.

7 [10.10.39]

8 Could you please give us your comment on the concrete Court days
9 that you require for your request of the extension of the scope,
10 and this is the gist of what we want from you?

11 MR. LYSAK:

12 Thank you, Mr. President.

13 Let me be clear, the 11 days was the proposed total time for the
14 hearing of the five witnesses. The Court certainly has its
15 authority to establish time limits, as it has done, and to hold
16 the parties to that. So there is no reason for us to believe it
17 would take longer than that because the parties respect the time
18 limits set by this Court.

19 We would require a hearing relating to the 200 to 250 documents.

20 I note, however, that these are the exact same types of documents
21 that have already been admitted subject to argument by the
22 parties, so I don't think that this would be a lengthy hearing.

23 It would be, at most, one day and I would expect even shorter.

24 [10.11.46]

25 In terms of other time that would be required, that would depend

1 on whether the Trial Chamber -- whether the defence teams had any
2 legitimate witness proposals that the Trial Chamber deemed
3 necessary. If they did not, we would complete in a total of 12
4 days. If you wish to assign four days further for Defence
5 witnesses, it would be 16 days, but those are matters that are
6 within your determination, based on the other parties' requests.
7 In terms of what we are saying is necessary, 11 days of witness
8 hearings, one day of document hearings.

9 MR. PRESIDENT:

10 Thank you, Co-Prosecutor. You may be seated.

11 The floor is now given to the Lead Co-Lawyers for civil parties.

12 [10.12.49]

13 MS. SIMONNEAU-FORT:

14 Good morning, Mr. President. Good morning, Your Honours, and
15 everybody present.

16 I'm going to hand the floor to my colleague to answer on
17 questions 3 and 4, and after that I will take up the baton to
18 answer the other questions. Thank you.

19 MR. PRESIDENT:

20 Yes, you may proceed.

21 MS. NGUYEN:

22 If it pleases Your Honours, I will be addressing points 3 and 4
23 within paragraph 3 of your supplementary memo concerning the
24 scheduling of witnesses in relation to the timing of a full and
25 reasoned order, which Your Honours have anticipated will take

1 around two or three weeks to issue.

2 Your Honours, the real issue is the scheduling of witnesses in a
3 context where the scope and factual allegations to which the
4 witnesses can address is uncertain.

5 [10.13.47]

6 Two immediate questions arise. The first one is: What, if any,
7 prejudice is caused to any party where witnesses are heard before
8 the scope of the trial is known? And secondly: What is the effect
9 of scheduling witnesses prior to a Severance Order?

10 One possible effect would be the undesirability, inefficiency,
11 inconvenience and logistical difficulties presented by the
12 possible need to recall witnesses. On this point, the lives of
13 witnesses, particularly expert witnesses, most of whom reside
14 overseas and who have busy schedules, are greatly inconvenienced
15 every time they are scheduled and then cancelled. The expert
16 witness Elizabeth Becker has not been postponed twice. She has in
17 fact been rescheduled at least four times. Phillip Short has also
18 been rescheduled several times.

19 [10.14.47]

20 It is, of course, extremely important that the expert witnesses
21 are heard. They offer specific and specialized knowledge about a
22 distinct part of Cambodia's history and contribute to the overall
23 fact-finding outcomes which Your Honours are to engage.

24 In response to point 3 of paragraph 3 of your supplementary memo,
25 it would be an extremely disappointing outcome and a real loss if

1 the opportunity to hear the witnesses, the expert witnesses, is
2 lost.

3 In response to paragraph 4 of your memo, point 4 of paragraph 3,
4 the civil parties submit firstly that expert witnesses are to be
5 distinguished from ordinary and factual witnesses. This has
6 relevance to the scope of matters upon which they can be
7 examined. I refer to Your Honours' decision of the 5th of July
8 2012. It's decision E215 entitled "Decision on the Assignment of
9 Experts" in which Your Honours refer to your previous
10 determination that expert witnesses may be questioned on the
11 entirety of Case 002.

12 [10.16.02]

13 At paragraph 4 of this decision, Your Honours state:

14 "As these individuals, the expert witnesses, were proposed prior
15 to the severance of Case 002 into a number of trials and to avoid
16 their unnecessary recall, the Chamber had previously determined
17 that they may be questioned on all matters within their knowledge
18 or expertise relevant to the entirety of Case 002 Closing Order."

19 Your Honours then go on to say that:

20 "In light of ensuring an expeditious trial, the parties are
21 reminded that their principal focus of the examination should
22 remain on the subject matter of Case 002/01 and questioning on
23 matters beyond this scope should be limited to areas which the
24 parties consider these individuals to be uniquely qualified to
25 answer."

1 [10.16.51]

2 MR. PRESIDENT:

3 Lawyer for civil parties, please slow down for the proper record.

4 MS. NGUYEN:

5 My apologies, Your Honours.

6 So, in summary, as the Prosecution have already stated in their
7 reference to the memo of the 25th of May 2012, and in light of
8 this decision of the 5th of July 2012, all parties were put on
9 notice that they could prepare their examination relating to
10 expert witnesses on all matters relating to the entire of the
11 Closing Order in Case 002.

12 As the Prosecution has already highlighted, this has already been
13 applied in practice to David Chandler who, on the 25th of July
14 2012, gave evidence regarding the genocide of the Vietnamese.
15 Clearly, this is outside the scope of Case 002/01. It is relevant
16 to the JCE policies but more so relevant to other parts of the
17 Closing Order.

18 [10.18.02]

19 In light of all parties having known that expert witnesses may be
20 examined on all parts of the Closing Order, the prejudice caused,
21 in our submission, in scheduling these witnesses earlier is
22 reduced. However, since the focal areas upon which these experts
23 should be examined remains unknown, there will be some prejudice
24 for all parties, and this is not an ideal situation.
25 For these reasons, the civil parties submit that it would be in

1 the interests of efficient trial management and also in the
2 overall interests of justice for Your Honours to issue an
3 advanced and summary notice of your determination on the issues
4 of severance and scope, and this advance notice should be issued
5 as soon as Your Honours have come to a determination and before
6 any witnesses are scheduled.

7 [10.19.04]

8 A full and reasoned decision, as required by the Supreme Court
9 Chamber in two or three languages, can be issued at a later date
10 when it is available. This solution may not be ideal, but it is,
11 in our submission, the best solution in all the circumstances.
12 This approach will ensure that there is no undue delay between
13 the hearing of witnesses and the delivery of Your Honour's
14 reasoned decision, that no prejudice is caused to parties arising
15 from the uncertainty of the scope of examination, that the
16 examination of expert witnesses will be focused, that no factual
17 or expert witness will need to be recalled, and it is, in our
18 submission, an approach that should also be applied in respect of
19 any character witnesses to whom Your Honours consider could also
20 give factual evidence.

21 If there is to be an increased scope on the factual allegations
22 in the first trial, it would be prudent, in our submission, for
23 the timeframes allocated to parties for witness examination to be
24 revised.

25 Those are the submissions on behalf of the civil parties on these

1 points.

2 [10.20.41]

3 MS. SIMONNEAU-FORT:

4 Very briefly on the other points, Mr. President, of which I think
5 two remain, question 1 of paragraph 4 concerning the famous 11
6 days proposed by the Prosecution, I do understand your Chamber's
7 concerns in feeling that 11 days might be rather short, and it's
8 probably better to talk about that now rather than once the 11
9 days begin so as not to misuse those days when they do come up,
10 to the detriment of the interests of the civil parties and
11 others.

12 So, the Prosecution said they require 11 days to hear the people
13 they are proposing and then an extra day for the documents. We
14 have no problem with that.

15 I also heard that the prosecutor is proposing an additional day
16 for Defence documents, and since this wasn't brought up, I will
17 refer to the documents and individuals that might be proposed by
18 the civil parties. I believe that it is perfectly reasonable, and
19 out of respect for the civil parties and taking account of what
20 they can bring to the debate in factual terms, I think it will be
21 very useful for us to hear some civil parties. When I say "some"
22 I mean very few, two, perhaps three. But I don't think it would
23 be fair or acceptable, or useful, if we're going to talk about
24 S-21, not to consider two or three additional civil parties in
25 addition to those that have been suggested by the Prosecution.

35

1 [10.22.33]

2 So I would urge the Court to give due and reasonable
3 consideration to the fact that the civil parties wish to propose
4 witnesses for S-21. We are able to do so at short notice. The
5 number, as I said, will be very limited, but I think it would, at
6 a minimum, need three additional hearing days. I do not believe
7 that I am exaggerating or going beyond that to which I am
8 entitled. So I am asking for this in the interests of the trial
9 and in the interests of the parties that we defend. That, sir, is
10 my view on point number 1.

11 On number 2, that's not really our business. It's up to the
12 Defence to answer that one.

13 And on response III under paragraph 4, your Chamber has given us
14 a detailed answer in decision E97/7 on the transcripts, and so as
15 far as we're concerned, that Chamber decision simply should be
16 enforced, and I would rather wait to hear the defence teams
17 taking their positions and for us to then be able to answer them.
18 I think that is planned for in your memo, and I would imagine
19 that the Prosecution will be interested in responding to the
20 positions of the Defence as well. So on that subject, I won't say
21 anything at this juncture but ask for the right to do so at a
22 later stage.

23 Thank you.

24 [10.24.26]

25 MR. PRESIDENT:

1 Thank you.

2 The time is now appropriate for a short break. We will take a
3 20-minute break and return at a quarter to 11.00.

4 The Court is now adjourned.

5 (Court recesses from 1024H to 1049H)

6 MR. PRESIDENT:

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

8 The floor is now given to Nuon Chea's defence to respond to some
9 questions as put forward by the Trial Chamber. You may proceed.

10 [10.50.55]

11 MR. KOPPE:

12 Thank you, Mr. President, Your Honours. Good morning, Counsel.

13 We shall be brief today, Mr. President. We have no submissions or
14 observations at this point on which specific paragraphs of the
15 Closing Order to be added to the scope of the trial, so no
16 specific submissions in respect of paragraph 2 of the memorandum
17 of your Trial Chamber.

18 In respect of paragraph 3, we reiterate what we have argued
19 yesterday. Yesterday, we argued that we hold the position that no
20 witnesses should be heard until the Chamber issues a decision as
21 to the scope of the trial. Any witness already scheduled whose
22 evidence could reasonably be expected to touch upon any new
23 issues not previously included within the scope of Case 002/01
24 should, in our view, be delayed for a period sufficient to allow
25 all parties to adjust their preparation.

1 [10.52.21]

2 Concretely, Mr. President, that means that the questions raised
3 by the Trial Chamber in numbers 3 and 4 of paragraph 3 should be
4 that no testimony of experts Short and Becker and of witnesses
5 TCW-724, TCW-794, TCW-100 and 110 should be given, so no
6 testimony of those experts and witnesses until the decision has
7 been made by the Trial Chamber.

8 We do have two small points for clarification. We have read in
9 the memorandum that the Trial Chamber has indicated that there
10 might be problems with the two experts, Short and Becker, for
11 them to come here to testify. We understand it to be such that
12 they have been rescheduled so many times that they might be fed
13 up with actually wanting to appear. I don't know if that's the
14 case, but we would like to have some clarification on that point.

15 [10.53.44]

16 And further to what the Co-Prosecutor has said about the timing
17 of Phillip Short as an expert, that is, in the memorandum,
18 scheduled next week, but also, the defence team -- Nuon Chea
19 defence has anticipated that next week would be a recess and no
20 witnesses were to be -- or experts were to be heard.

21 Then I will go back now, Mr. President, to paragraph 1 of number
22 3, that is the issue of health of our client. I agree with Mr.
23 Lysak when he said this morning that experts can only determine
24 if our client is currently fit. It's not possible for them to
25 sort of give a schedule of how the fitness of our client is

1 developing and in which way.

2 What I do say – what I can say is that our client is getting
3 better. We are very happy with that. As you know, I have said
4 earlier that he has been -- he was approaching death. Well, of
5 course, we all are in this life, but the pace has considerably
6 slowed down, we are happy to say. Actually, he hopes to be fully
7 fit as soon as possible. It seems that he is recuperating in the
8 period of recovery that stands for acute bronchitis, which is
9 usually four to six weeks. And, once he is fully recovered, he
10 anticipates to fully participate in this trial.

11 [10.55.35]

12 I move on now, Mr. President, to answering the points raised in
13 paragraph 4 of your memorandum. As you know, when he was in
14 hospital, our client has waived two or three times his right to
15 be present during testimony. This might be the case in respect of
16 S-21, if that is indeed going to be your decision. It's not very
17 likely that he's going to waive, if that question arises,
18 substantial S-21 witnesses, and I think our view is that we will
19 cross the bridge when we get there.

20 In addition, what I could say is that – and it is also replying a
21 little bit the points raised by the Co-Prosecutor yesterday – in
22 August we have come up with a list of 31 potential witnesses in
23 the event that S-21 is added to the scope of the trial. We are
24 currently reviewing this list, and it's not unlikely that the
25 number of witnesses on that list will be brought down, but it was

1 simply not possible to come up with a definite answer in this
2 respect because we haven't been able to speak to our client on
3 this specific point because of the fact that he was brought back
4 to the prison. We only had limited time to speak to him, but we
5 will get back to this issue, but of course reiterating that in
6 our view, S-21 should not be part of an extension of the scope of
7 the trial at all, but if it does, we will come up with a review
8 of the witnesses fairly soon after your decision.

9 [10.57.48]

10 I will move up, Mr. President, to the last point of paragraph 4,
11 and that is the admission into evidence of Case 001 transcripts
12 concerning S-21. If we will contest the admission of those
13 transcripts, that depends, in our view, of course, on which
14 particular evidence is contained within the transcripts. We are
15 fully aware of your decision and we will review the particular
16 evidence that is related into those transcripts, and we will
17 object, if necessary.

18 Thank you.

19 MR. PRESIDENT:

20 Thank you, Defence Counsel.

21 The floor is now given to Ieng Sary's defence.

22 MR. KARNAVAS:

23 Good morning, Mr. President. Good morning, Your Honours, and good
24 morning to everyone in and around the courtroom. And again,
25 thank you very much, Your Honours, for giving us this opportunity

1 to answer these questions.

2 [10.59.04]

3 So, let me begin on paragraph 3, with the first issue. The way I
4 read the question, you're asking whether or what impact the -
5 what we hear from the doctors will have on the scheduling or the
6 scope of the trial.

7 Our position is first we have to have the medical reports - you
8 have to have the medical reports, and once you have the medical
9 reports from the doctors, then you would be in a better position
10 to at least know what their current condition is, and what is
11 projected down the road, and what recommendations they may have,
12 which is why I thought the question coming from Judge Fenz was
13 right on point concerning whether we have to have half days, or
14 three days a week, or what have you. So, until we hear from the
15 medical doctors, I don't - it is our submission, you're not in a
16 position to really fully address that issue, especially when the
17 Supreme Court indicated that that is one of the factors to be
18 determined, a factor which you, indeed, determined as one of the
19 factors in your Severance Order. So that's our answer to that
20 one.

21 [11.00.36]

22 Regarding the second question to paragraph 3 - or it's more of a
23 statement, but it's our position that two or three weeks is
24 highly ambitious, especially if you're going to have to come up
25 with a plan. We submit, whether you go with option number 1 or

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1 option number 2, you still have to have a plan. I don't want to
2 repeat myself, but you have our submissions on that. And I don't
3 think that you can simply park the issue as to the remainder of
4 the - of the Closing Order that would not be tried to some other
5 date or a year thereafter, after you render your Judgement. So I
6 would say that it's more likely going to take a month.

7 And I am of the opinion - or we are of the opinion that we want a
8 reasoned decision before anything is done, and the simple reason
9 is this. It's easy to issue a decision; it's the reason - the
10 reasoning behind the decision that - or the lack thereof, or
11 supposed lack thereof that brought us here in the first place. So
12 now to say, "Well, gee, you know, don't worry about it, we'll
13 accept your reasoning down the road" - well, not so, especially
14 if the plan that you propose, which you have to propose if you go
15 with option 1 - I daresay even number 2 - is not accepted, or the
16 reasoning is not accepted.

17 [11.02.17]

18 So to say, "Just give us a decision, then we'll go forward," your
19 reasoning is still going to -- your decision will still be
20 subject to appeal, which may be subject to more delays. And
21 therefore I don't think that is such a good idea.

22 And keep in mind, the Defence did not appeal your decision to
23 sever. In fact, we supported it. And if you read very carefully
24 my response to the appeal, I was rather critical in the manner in
25 which the Prosecution was interpreting the order and the law that

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1 they were relying on. But that's another story. But I want to
2 make sure that everybody knows where we stand.

3 With respect to Short and Becker, let me start with - by saying,
4 they're journalists that wrote books; they're not experts. You
5 can call them experts all you want, but they're not necessarily
6 experts. They may have something to contribute. We submit,
7 whatever it is, it should be based on what they actually know,
8 what - not what they've read from other academics and have
9 repackaged and put the spin to in their books.

10 But be that as it may, with respect to Elizabeth Becker, it is
11 widely known that she comes to Cambodia often, and so, while it
12 may be an inconvenience for her being rescheduled, as far as I am
13 personally aware of, she seems to enjoy coming to Cambodia and
14 comes rather often. She has some attachments to NGOs over here.
15 So I'm certain, given the fact that this is a trial that is being
16 covered around the world, her book is being discussed, which may
17 mean further sales. I am certain that both Ms. Becker and Mr.
18 Short, if they wish, will probably come.

19 [11.04.19]

20 So - and frankly, I don't think the decisions by the Trial
21 Chamber at this stage, given the magnitude of the issues -
22 because if you look at the Supreme Court Chamber, one would think
23 that it was almost midnight at the ECCC with your order to sever
24 - that we should be concerned so much about Becker, or Short, or
25 any other witness's scheduling. Right now, we need to get this

1 right. And we would submit that the best approach and the most
2 efficient approach is for Your Honours to deliberate, come up
3 with this very comprehensive reasoned decision, which is expected
4 from the Prosecution as well as from the Supreme Court - and you
5 cannot do both; if we're taking evidence, especially important
6 evidence, and at the same time drafting, with all due respect to
7 all the fine legal officers that are assisting the Trial Chamber.
8 I do not mean any disrespect by saying it will take more than two
9 or three weeks. I'm sure they're - they're very bright and
10 they're very talented, but the Judges are the ones, ultimately,
11 that have to be engaged, with the - with the support staff, in
12 reaching these sorts of decisions, which no doubt - no doubt will
13 be - the Supreme Court will be looking at rather carefully,
14 especially given the tone - the tone - of the decision itself
15 that they issued, which, might I say - and it may be a gratuitous
16 remark - it bordered on the personal.

17 [11.05.57]

18 With respect to the next question, I believe I just answered it
19 as far as other witnesses. We maintain that we should hear no
20 further witnesses, and one of the reasons was also pointed out by
21 the lawyer from the civil parties. It makes no sense - it makes
22 no sense - to call some witnesses now, take some of their
23 evidence, and then call them back later on. There is a logistical
24 - it becomes a logistical nightmare. Plus, might I add - might I
25 add that this institution, at this point in time, is barely able

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1 to pay the most important people in this institution - which is
2 our the national staff because without them we can't function -
3 on a timely basis. So have we thought about the costs of bringing
4 witnesses back to give evidence? So I think that's a - that's
5 also a logistical issue that needs to be considered.

6 [11.07.04]

7 And - but we maintain - we maintain - because I don't want to be
8 misunderstood that somehow I have come in here with a different
9 position, but we maintain that the easiest way not to lose time
10 is to try the entire case, which means that, starting - assuming
11 next week is indeed a recess, which is what I believed it was -
12 but assuming that is the case, the following Monday we can begin
13 hearing the witnesses that we have planned while the Trial
14 Chamber begins to put forward a plan for calling the rest of the
15 witnesses, hence - hence - no waste of time. In fact, if we do it
16 that way, you don't even have to draft a decision. You don't have
17 to make a choice - choice number 1 or choice number 2. And the
18 Prosecution, for a change, I hope, they will not stand up and
19 say, "Gee, you were - that wasn't - that wasn't one of the
20 options that were given to you by the Supreme Court", because you
21 have unfettered -- unfettered - discretion when it comes to the
22 entire Closing Order. And you can try it. And we submit that is
23 the only reasonable thing to do.

24 [11.08.26]

25 So, rather than lose the one month, why not begin by hearing the

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1 evidence as - that we already are scheduled to hear while making
2 plans to hear the other evidence? And, as I've indicated, since
3 the Prosecution keeps talking about their burden of proving the
4 case, which I agree, and since we've been reminded by the Supreme
5 Court, at least in their interpretation and in the manner in
6 which they extrapolate ICTY jurisprudence, dealing with
7 dismissing counts in order to justify and to interpret ECCC rules
8 that deal with severance and that we are in this adversarial
9 setting, the Prosecution should put forward - should put forward
10 their list of witnesses, their lists of documents for the entire
11 case. Now that there is this impending need to move with all
12 deliberate speed, I am sure that this might have focused the mind
13 in actually determining what are the real witnesses that they
14 need to call, the actual evidence they need to introduce in order
15 to prove their entire case, because up until the time the
16 Pre-Trial - the Trial Chamber decided to sever, the mind was not
17 focused, as far as we're concerned, from the Prosecution because
18 they assumed that they could try their entire case, throwing
19 caution to the wind, disregarding the age of the Accused,
20 thinking we had - this was going to be a walk in the park for the
21 next two or three years, only to come to find out that there was
22 a wake-up call by the Trial Chamber that one of the factors is
23 that we might need to try this case in stages because of the age.
24 [11.10.21]
25 So I would suggest that we try the entire case. We start a week

1 from Monday. There's no need for you to come up with any plans.
2 There's no need to jettison any of the – of the civil parties who
3 will be abandoned after all they went through to register a civil
4 party, after all what the Pre-Trial Chamber did to have to get
5 them reinstated after they were thrown out – or some of them were
6 – by the OCIJ. So, that's the solution.
7 Paragraph number 4. And, you know, we're told that we're going to
8 try this case with a limited amount of witnesses, a limited
9 amount of time. And I sort of hesitate to answer this particular
10 question in the way it's framed, but you seem – the Trial Chamber
11 seems to be inviting us for our opinion. And I'm reminded – I'm
12 reminded of Mark Twain, the great American author, novelist, who
13 once commented about statistics and the use of statistics,
14 because when we're talking about how many witnesses, how many
15 days, how much time, we're talking about statistics. And this was
16 his observation about statistics: There are statistics, there are
17 damn statistics, and then there are lies.
18 [11.11.44]
19 Now, what did he mean by that? What he meant was, when we're
20 dealing with numbers as statistics, they're malleable, they're
21 easy to manipulate, they're easy to misinterpret. And their
22 statistics of 11 days may be 11 actual weeks, when it comes to
23 the actual addition that they're asking. So we hesitate to simply
24 rely on statistics, but we certainly think – we certainly think
25 that the Trial Chamber must have – must have considered the

1 11-day projection that the Prosecution had already informed the
2 Trial Chamber when the Prosecution, at the very end, had asked
3 for additional expansion of the scope. This was not a figure that
4 we just heard for the first time - or that you heard.
5 Now, frankly, I cannot believe that the Trial Chamber did not see
6 that figure, did not factor that figure into its - its own
7 accounting, and perhaps, with the knowledge of what is at stake,
8 probably scratched their heads - the Judges - said, "You know,
9 something doesn't sound right; 11 days sounds a wee bit too short
10 and a wee bit too unrealistic."
11 And so that's why I'm reminded of Mark Twain's use of the - his
12 characterization of statistics. I think it is - we are on
13 perilous ground if we're going to rely on this 11-day projection:
14 everything will be happy and solved in 11 days - especially if we
15 bring in all sorts of stuff coming in from other cases or other
16 statements or other transcripts, which - we are on record - we
17 will oppose.
18 [11.13.45]
19 So, to answer the questions, on the projections, we've already
20 indicated as far as, you know, how many days each of these
21 witnesses, these are what I would call known unknowns. That's how
22 I would put it. I would borrow a phrase from Rumsfeld - not that
23 I want to. But the former Secretary of Defence from the United
24 States said that there are known unknowns, and there are unknown
25 unknowns, and we're in one of those known unknowns. I know that I

1 don't know, and neither do you, Your Honours, and so we have to
2 see how it goes. And that's why I think it is much more prudent
3 to just proceed with the entire trial.

4 Question number 2: Could the defence teams indicate whether -
5 their clients' willingness to waive their right to be present?

6 [11.14.43]

7 Well, I think we have been loud, we have been clear, we have been
8 consistent. And let me repeat myself for our position thus far.
9 We have filed written submissions with our client's written
10 waiver - I mean, written notice to the Trial Chamber that he does
11 not wish to waive, at any point in time, his presence. Now, there
12 may be the exception - there may be the exception - but I can
13 sure inform the Trial Chamber that at this point in time it is
14 his intention to not waive his right to be present. He's entitled
15 to that as much as somebody who is robust, and young, and able,
16 and willing to sit through the trial. And if we - if this
17 institution is going to abide by the so-called international
18 principles and standards which are embedded in the Cambodian
19 Constitution and are attached to the jurisprudence of the ECCC,
20 and the agreement, and what have you, then this wish has to be -
21 this exercise of his right has to be granted to him and cannot be
22 taken away. So I believe that answers that question in a rather
23 unequivocal fashion.

24 [11.16.10]

25 Then we to get to luestion number 3, whether the defence teams

1 should - whether or not they would seek to contest the admission
2 into evidence from Case 001 transcripts concerning S-21.
3 Well, let me just be very laconic on that. Yes, we will. We will
4 be contesting that. In fact, we will be contesting everything
5 that will be - that the Prosecution may try to bring in, either
6 from 001, any transcripts of testimony. I mentioned that. It
7 wasn't by coincidence and it certainly wasn't by serendipity that
8 I stood up and I asked concretely whether the Prosecution's
9 projections that we've heard on Monday, where they represented to
10 you that this is just a mere 11 more days, where they also
11 factored in the testimony. And there was a question from the
12 Bench, and if you look at the answer, it was never really
13 answered. And so I suspect that they will try to admit, and the
14 Trial Chamber may try to admit, but we will object.
15 So, no quarter sought, none given. We're going to try this case.
16 The Prosecution has a burden. They know what their job is,
17 they're prepared, they're organized, and so - but they're going
18 to have to follow the proceedings and the procedure that are
19 consistent with the international principles. And we will be
20 objecting to anything coming in where our client's right of
21 confrontation is compromised, period.
22 [11.18.03]
23 I trust my comments sufficiently answered the Trial Chamber's
24 questions. Of course, I'm available to answer any questions the
25 Bench may have. And certainly we would look - we would look

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1 forward - or we are looking forward, I should say, to replying to
2 the Prosecution's reply - so, rebuttal or rejoinder, as it's said
3 - should the Trial Chamber - should the Trial Chamber grant this
4 wish, which seems to be - to have been made by at least the civil
5 parties and perhaps the Prosecution has already anticipated to be
6 asking Your Honours.

7 Thank you very much.

8 MR. PRESIDENT:

9 Thank you, Counsel.

10 The floor is now given to Khieu Samphan's defence.

11 [11.18.58]

12 MR. VERCKEN:

13 Thank you, Mr. President. I think I can be brief here. I don't
14 intend to go over ground that's already been covered and on which
15 we agree with the other defence teams.

16 On the question of the importance of the health of the Accused, I
17 can only say that, of course, we agree on this point. My
18 colleagues from the other defence teams say that the more you
19 judge from the Closing Order, the quicker you will proceed. I
20 agree with that, in principle, and that is why yesterday I said
21 that's probably what we should have done from the start. However,
22 I'm a little more pragmatic as well, and I am bearing in mind the
23 fact that the trial did start a year and a half ago.

24 [11.20.10]

25 I am mindful of these health issues and the fact that my client

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1 is in good health and that he is entitled to an expeditious
2 trial. I also consider the fact that the assessment I have made
3 of your Chamber's opinion up to now not only through the series
4 of decisions that you handed down on the subject of severance,
5 but also the impression I, at least, seem to be having from the
6 questions that you prepared for these hearings in your two
7 memoranda that we are trying to answer for the last two days. And
8 it seems to me that your Chamber might be tempted to continue to
9 cogitate the form of things, options 1 or option 2. But as far as
10 we, the Khieu Samphan defence team, are concerned, it amounts to
11 the same thing. It signifies a succession of trials and that,
12 according to the Supreme Court, means that you have to say how
13 you plan to do it and how you intend to solve all of the legal
14 and technical questions that arise when severance takes place and
15 there are -- there is a series of trials for Mr. Khieu Samphan.
16 Now, with respect to the witnesses that you might decide to
17 summon prior to handing down a decision, well, opposition on that
18 is the same as for the other defence teams. In this, I echo my
19 learned colleagues.

20 [11.22.16]

21 I would have thought that there's quite enough wind in the sails
22 already and yesterday, with your call for prior drafting of a
23 part of the final memoranda on applicable law and that each time
24 a difficulty is encountered, then that will ricochet and have
25 consequences on the timetable that we will try and solve step by

1 step. Well, I believe that the wise course of action is to follow
2 the decision that you took for the two witnesses that were
3 planned for this week, which is not to hear witnesses until you
4 have given a complete reasoned and executive decision on what you
5 intend to do in the future.

6 I don't think it's reasonable at an early stage to give us a
7 decision that is not reasoned because that is precisely what the
8 Supreme Court criticized. If you do that, then you may end up
9 doing things acting in a manner that is contrary to what you have
10 been instructed by the Supreme Court.

11 [11.24.10]

12 As to arguments whereby Mr. Chandler was heard on the entire
13 dossier, well, I challenge that. I can remember perfectly well
14 when he came to this courtroom. Judge Cartwright began his
15 hearing by telling him what the scope of the trial was. Now, I've
16 checked this.

17 She told him what the scope was of the first trial so that that
18 particular expert could focus his remarks on the definitions
19 given in your severance decision. So I think that argument is
20 ill-founded, and to say as well that we've already been told that
21 experts Becker and Short should be heard on the whole of the
22 Closing Order, well, I'm not sure about that. Perhaps I might
23 quote a memorandum which you gave us on 8th of January, 2013, in
24 which you told all of the parties in E236/4 that the hearings for
25 Phillip Short and Elizabeth Becker that were planned for a week

1 would only, in fact, last four days and that you encouraged the
2 parties to limit their questions to points solely connected with
3 the first trial in 002.

4 [11.26.08]

5 So, all of these difficulties that come up as we go along and
6 which change the scope of the trial are going to be continuing to
7 cause us all harm and prejudice, and you have to lay a healthy
8 foundation for the continuation of the trial rather than trying
9 to plan as things come up and deal with the contestations as they
10 are expressed because that's not an efficient way to do things.
11 And my comments apply to other possible witnesses. I'm stating a
12 general position here. We believe that we have to wait for your
13 decision in its entirety on how the future will be organized
14 before we go on to hear other witnesses.

15 As for question 4(i), I think I've probably said enough already
16 yesterday about planning for the future timetable. You know my
17 views on this and I echo the views of the other defence teams. We
18 don't know exactly how such planning is done. Does it take
19 account of our different statements? This is a kind of internal
20 housekeeping, but it's not sufficiently clear to all of the
21 parties. In October 2012, as you reminded us just now, Mr.
22 President, you opposed the Prosecution's estimate of 33 days.

23 [11.28.10]

24 Let me move on to the next question: Are we prepared to waive our
25 right to be present in the trial? Answer is no, quite obviously.

1 And, finally, would we contest the acceptance of the transcripts
2 of Trial Number 1 if they were requested by the Prosecution to
3 justify their work? Then, the response is positive. Like the
4 other teams, we will review the situation and, where necessary,
5 raise objections.

6 Thank you.

7 MR. PRESIDENT:

8 Thank you.

9 Now, I hand over to the Co-Prosecutors and the Lead Co-Lawyer for
10 the civil parties to respond to the various points raised by the
11 three defence teams. You may proceed.

12 [11.29.16]

13 MR. LYSAK:

14 Thank you, Mr. President, I will be fairly brief.

15 First, in regards to the issues raised regarding the health of
16 the Accused, let me say that I appreciate very much Mr. Koppe's
17 candour regarding the health of his client. I think that is in
18 line. I had assumed after thinking about yesterday that if the
19 Defence were proposing to this Chamber that it hear the entire,
20 entire, charges of Case 002 that it was likely that their view
21 that was that their clients were at least currently fit and
22 likely to be fit for the immediate future in any event. And we
23 certainly appreciate his candour on that issue.

24 And not just on that, let me add it's refreshing to have -- to
25 hear respectful and clear submissions coming from his chair in

1 the courtroom. While we may disagree on the substance of them, we
2 do appreciate the change that is taking place.

3 And I would add I appreciate also his indication that they would
4 review the 31 witnesses that they had proposed, and I would add I
5 hope the same wisdom that led him to change his position on
6 severance yesterday would also apply in his review of the
7 witnesses that have been proposed.

8 We do disagree with all the defence teams on this issue of
9 whether the Chamber should proceed with witnesses pending its
10 decision, though it was a little unclear to me what the Ieng Sary
11 position was as he indicated that the Court could start hearing
12 witnesses a week from Monday.

13 [11.31.39]

14 The first two defence teams did not really respond to the issue
15 we raised regarding Becker and Short, which is that if the scope
16 of examination has been authorized for them for all Case 002
17 issues, there really is no reason not to proceed at this time.

18 Mr. Vercken did respond to that issue; I simply disagree with
19 him. The records are very clear that the Court authorized
20 examination on the full scope and that is also the case with the
21 other witnesses. The key word in the document he cited is that
22 the Court encourages the parties - encourages, recognizes that
23 parties are authorized to ask questions on the scope where they
24 are relevant to the witness, to what the witness knows, but
25 encouraged obviously to focus on the most significant issues.

1 [11.32.48]

2 We have obviously been preparing for both of these witnesses for
3 a long time, and I can simply tell you that there is no reason
4 not to proceed with them. They are both witnesses that fall into
5 this category I talked about yesterday of foundation witnesses,
6 witnesses whose testimony provides a general foundation on which
7 the Court can consider all crimes.

8 And nobody is proposing that additional time is needed. I think
9 it is extremely unlikely that anything would arise which would
10 result in the need to recall these witnesses, and we would
11 encourage the Court to proceed with them.

12 And the last point that I wish to address is Mr. Karnavas taking
13 issue with our time proposal. On the one hand, he has stated over
14 and over again the importance of having a specific plan and
15 schedule for going forward, but when we give a specific proposal
16 on how to go forward he quotes Mark Twain.

17 And I did not hear any counter-proposal from him. I did not hear
18 him say, we actually need more time with any of these particular
19 witnesses. I did not hear that from any of the parties, but this
20 is your - this is within your power and authority.

21 [11.34.26]

22 We have made a proposal of the time that we believe is necessary
23 for those witnesses. We believe it's consistent with the time
24 that has been required with witnesses to date. I refer you to the
25 proposal we made back in August, a specific plan that included

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1 time for all witnesses remaining to be heard in the case, which
2 is E218/2.2. If you look at those time estimates you will see
3 that our estimates have borne out to be quite accurate.

4 But, more importantly, you set the limits. You can decide that 11
5 days is too much, that we really only need nine days or you could
6 decide that we need a few more days than 11. That is your power
7 to set the time and the schedule.

8 And I think that responds to everything that the Defence said, so
9 unless the Chamber has any more questions I will cede the floor
10 to the civil parties.

11 [11.35.47]

12 MR. PRESIDENT:

13 Thank you.

14 Now I hand over the floor to the Lead Co-Lawyers for the civil
15 parties to respond to the answers as well as the points raised by
16 the three defence teams. You may proceed.

17 MS. NGUYEN:

18 Your Honours, just very quickly, in response to Counsel Michael
19 Karnavas's submissions, well, firstly, this is not a hearing
20 about the characterization of experts or factual witnesses, and I
21 don't think it's very useful to the Chamber for counsel to be
22 speculating about the willingness or not of expert witnesses to
23 attend to give evidence.

24 Yesterday, Counsel Karnavas also suggested that Your Honours in
25 the Trial Chamber have absolute discretion in respect of

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1 decisions on severance and, in fact, he reiterated just now that
2 you have unfettered discretion in relation to the whole of the
3 Closing Order. But counsel also now says that he might not accept
4 a decision of the Trial Chamber if the plan or outline or the
5 reasons don't suit his client and that nothing can proceed until
6 a full and reasoned decision is given.

7 [11.37.09]

8 We are now in a position of compromise. Efficiency and trial
9 management needs to be balanced with the rights of all parties,
10 including the rights of the civil parties to have a final
11 determination in Case 002.

12 Of course, as my learned colleague, the International Lead civil
13 party lawyer, submitted yesterday -- or the day before rather --
14 in an ideal world, yes, all of Case 002 would be tried before
15 Your Honours and the victims would have a voice and have their
16 stories heard and be given the opportunity to raise in a public
17 forum the atrocities which they have experienced. But we are in a
18 position of compromise now, all things considered, and all of
19 these things need to be balanced.

20 [11.38.07]

21 In relation to counsel for Khieu Samphan's submissions regarding
22 the Trial Chamber's memo of 8 January, E236/4, I reiterate and
23 concur with the submissions made by the learned prosecutors
24 emphasizing that the Trial Chamber encouraged experts'
25 examination to be focussed on matters within the first trial -

1 encouraged. But, of course, there are numerous rulings, oral and
2 written, that experts can speak on matters within the scope of
3 the entire of Case 002.

4 Finally, it is extremely difficult for the civil parties to see
5 the logic in counsel's submissions that -- and I'm speaking about
6 Counsel Michael Karnavas -- that it would provide the most
7 expeditiousness to try the whole of Case 002, when in the same
8 submissions counsel says, and I quote: "We will contest
9 everything. We will object." End of quote.

10 And this was just in relation to the admission of documents in
11 Case 001 relating to S-21.

12 Those are the submissions I have in rebuttal.

13 [11.39.46]

14 MS. SIMONNEAU-FORT:

15 Just a supplementary comment on the subject of transcripts.

16 Your Chamber has already issued a decision on the transcripts -

17 at least, that is based on my interpretation of E96/7. The

18 Chamber had provided reasoning for its decision and made it very

19 explicit as to how the transcripts could be used in the context

20 of Case 002. The Defence has already stated very clearly that it

21 will challenge the admission of such transcripts in Case 001.

22 Now, if the Defence does indeed intend to launch objections,

23 which it is entirely free to do, those objections must go above

24 and beyond the issues that you have already previously ruled

25 upon. I do not believe, at least based on my knowledge of the

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1 legal issues, they cannot launch objections on issues that have
2 already been ruled upon for which there is a determination. Their
3 objections simply cannot address those matters afresh.

4 Thank you.

5 [11.41.10]

6 MR. PRESIDENT:

7 It has to begin in order, starting from the defence team for Mr.
8 Nuon Chea, replying to both the Co-Prosecutors and the Lead
9 Co-Lawyers for the civil parties.

10 MR. KOPPE:

11 Thank you, Mr. President. We have nothing to reply on the
12 substance, except to say that we do appreciate the words of the
13 Co-Prosecutors. Thank you.

14 MR. PRESIDENT:

15 Counsel Karnavas, you may proceed.

16 MR. KARNAVAS:

17 Thank you, Mr. President. I'll speak slowly. Perhaps some is
18 being lost even in the English language to the English speakers.
19 First, let me be clear so the Prosecution knows exactly where we
20 stand. When I indicated that we can begin immediately - that is,
21 a week from this Monday, I believe it would be March 4 - and we
22 would lose no time, we would not have to reschedule those who are
23 already scheduled, it is on the basis that we try the entire case
24 and that you would not have to waste your time writing a decision
25 and trying to figure out a plan. So I hope that is crystal clear.

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1 [11.42.32]

2 Second of all, to my colleagues of the civil parties, who would
3 seem to have misunderstood when I said "unfettered discretion",
4 you have unfettered discretion to try the entire case. The
5 Supreme Court has not said, "You cannot try 002." They have no
6 authority to do that, they have not stated that, and the civil
7 parties ought to know that. So, you have that discretion.
8 Now, should you choose not to try the entire 002 Case, then you
9 will have to go to option 1 or option 2. And while, in option 2,
10 the Supreme Court said - has not stated that you need to come up
11 with a plan, we submit you still have to come up with a plan
12 because in this system, unlike the Anglo-Saxon system, you cannot
13 simply dismiss counts. And to suggest that they could be out
14 there suspended indefinitely while someone enjoys the right to an
15 expeditious trial, it is nonsense. I hope I'm clear on that
16 point.

17 [11.43.48]

18 As far as we will object everything - "Oh, gee, what do defence
19 lawyers do? They come and they defend their clients." Perhaps I
20 was misunderstood. Perhaps I didn't know what my function was as
21 a defence lawyer. Yes, I am here to be reasonable, to be
22 cooperative, to be of assistance, but above all, I am here as my
23 client's champion, I am here to make sure that he gets a fair
24 trial, that his rights are protected, and I am entitled to use
25 the rules and the procedures. And to suggest that I should just

1 come into court with bended knee, with cup in hand, seeking some
2 sort of justice by admitting transcripts from a previous trial
3 where the lawyer effectively took his client in, and plead him
4 guilty, and did not challenge much of the evidence, or if he did
5 challenge evidence, it may have suited his case, his strategy,
6 his theory, and then to expect the Ieng Sary defence team to come
7 in and say, "Yes, we'll accept that testimony without challenge,"
8 that would be, in my humble submission, ineffective assistance of
9 counsel. I should lose my licence, should I come and defend a
10 client this way. And I dare say, I hope other defence lawyers do
11 not do that.

12 [11.45.25]

13 Now, how can I say we will object to everything and ask for an
14 expeditious trial? What I am suggesting, Your Honours, is - we're
15 losing a lot time and we've lost a lot of ground figuring out
16 where the contours are. Yes, our clients are of an advanced age,
17 but we can proceed a week from Monday with hearing the evidence.
18 That's what "expeditiousness" means.

19 And let me be - let me - since we're on that word, how do we
20 justify and how does the Supreme Court Chamber justify parking
21 the rest of the Closing Order and at that same time afford
22 expeditiousness? It's schizophrenic. So, when I speak of
23 expeditiousness, I am talking about the entire case.

24 And yesterday we heard a rather eloquent - a rather eloquent
25 argument from the Khieu Samphan team, where they were talking-

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1 [11.46.31]

2 MR. PRESIDENT:

3 Please, Counsel, be reminded to slow down for the proper record.

4 And please be specific to the point. You're supposed to only

5 reply to the specific matters that were raised by the

6 Co-Prosecutor and the Lead Co-Lawyer for the civil parties

7 because you were given time yesterday to address matters as well.

8 So please respond - reply to only the - to the responses by the

9 two parties. So you were supposed to only respond to the last

10 responses raised by Co-Prosecutor and Lead Co-Lawyer. So please

11 confine yourself to this area. If you try to respond, I believe

12 that it will be lengthy and it may be even longer than the

13 hearing yesterday.

14 And please try to speak rather slowly for the proper record.

15 MR. KARNAVAS:

16 Thank you, Mr. President. I was responding specifically to the

17 lawyer from the civil parties who'd stood up and was flummoxed

18 about how I - on the one hand, I could say, I'm objecting to

19 everything while at the same time arguing for an expeditious

20 trial. So I just answered the role of a defence lawyer. Perhaps

21 my colleague wasn't aware what we do on this side. And so perhaps

22 - perhaps that answers the question.

23 [11.48.05]

24 As far as expeditiousness, how can I argue both? As I was

25 indicating, yesterday we heard from our colleague from the Khieu

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1 Samphan team indicate why Mr. Khieu Samphan is prejudiced because
2 he's not getting an expeditious trial. So my point was, if we
3 want to be expeditious, let's take the path of least resistance.
4 There are ways of looking at the Closing Order – the entire
5 Closing Order – and if the Prosecution had a focussed approach, I
6 am sure they would find a way to try the entire case within an
7 expeditious timeframe.

8 And, as I was indicated – as I indicated earlier, you have
9 unfettered discretion to say, since the Supreme Court, in their
10 infinite wisdom, at this stage of the proceedings, in light of
11 what is going on, in the light of all the other factors, annulled
12 your Severance Order, we are back to square one: there is no
13 Severance Order. Now, if the Prosecution then wishes to make
14 another submission seeking severance, well, they can have at it,
15 but you are within your rights, you are seized with this trial.
16 So you can begin to try the entire case, and we say: Do so, and
17 that will be expeditious.

18 [11.49.45]

19 And as far as raising other objections, when circumstances change
20 – even where matters may have been ruled upon, if the
21 circumstances require a legal objection or a procedural objection
22 – not one that is frivolous, not one that is repetitive, but if
23 the circumstances so require, I can assure the Trial Chamber that
24 the Ieng Sary defence team will not hesitate to file submissions.
25 I think the record is rather clear – that we file our submissions

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1 whenever we think it is necessary to have something resolved or
2 to, at least, make a proper judicial record. And we take to heart
3 that issues that have already been ruled upon that need not be
4 re-addressed, we will not re-address them. We have been rather
5 modest in our approach of challenging matters that we think need
6 to be challenged. And, where issues have been resolved and where
7 we are of the opinion that they've been resolved satisfactorily
8 to our beliefs of what the law and procedure is, we choose to
9 accept them and move on, such as, to give just a - one minor
10 example - your order to sever the case. We accepted it, we
11 supported it. And then, when the Prosecution moved for
12 reconsideration, we parted ways with the Prosecution because of
13 the manner in which they wished for you to - to sever the case.
14 And I believe I've answered everything that was said by the - by
15 both parties on the other side. Thank you.

16 [11.51.46]

17 MR. PRESIDENT:

18 International Counsel for Mr. Khieu Samphan, you may proceed.

19 MR. VERCKEN:

20 Thank you, Mr. President. Just two clarifications:

21 Firstly, on the subject of the hearings of the testimony of
22 Elizabeth Becker and Philip Short, it is now very clear that the
23 Co-Prosecutors and the civil parties are stating that the
24 memorandum that I had read from, dating from January 2013, would
25 only serve as impetus for the teams to focus on the subject of

1 the trial. But they seem to have forgotten that in addition to
2 fuelling this, fuelling the parties to concentrate on this second
3 trial, through that very memorandum your Trial Chamber had
4 reduced its sitting weeks from four to three days a week and that
5 we are being told to focus on the trial as it is currently being
6 defined, and yet these sitting days would be diminished.

7 [11.53.17]

8 Well, what is the state of affairs? Very obviously you are
9 preparing yourselves to question the witnesses on the scope of
10 the trial as was defined in January. I think we need to stop
11 focussing on semantics and playing with words. Let us be very
12 straightforward. Let us stand by our principles, reach a very
13 clear decision, and make progress.

14 My second clarification is as follows. My learned friend from the
15 civil parties is feigning and claiming that your Trial Chamber
16 has already reached a decision based on its last memorandum
17 regarding the admission of transcripts from -- of evidence from
18 Duch's trial. Indeed, your trial -- this Chamber has established
19 the criteria for admissibility of written statements in lieu of
20 oral testimony. However, our duty from the moment that the
21 Co-Prosecutors propose the admission of documents is to verify
22 whether or not those criteria are satisfied and that we are
23 entitled to raise objections. And this is exactly what the
24 defence team for Mr. Khieu Samphan is talking about and we'll
25 stand by.

1 (Judges deliberate)

2 [12.00.51]

3 MR. PRESIDENT:

4 On behalf of the Judges of the Bench and in my capacity as the
5 President of the Chamber, I would like to thank all the parties
6 for expressing their views in relation to the question raised by
7 the Chamber.

8 Following the hearing of the views, the Chamber will issue -
9 render a reasoned decision in due course with regard to the scope
10 of Case 002 to be heard in the first stage, based on the
11 consideration of the factors and points raised in the Decision of
12 the Supreme Court Chamber on Co-Prosecutors' Immediate Appeal of
13 the Trial Chamber's Decision Concerning the Scope of Case 002/01,
14 document E163/5/1/13, by incorporating all the submissions and
15 views of the parties concerned.

16 [12.02.02]

17 And as for the scheduling of the hearing of the expert witnesses,
18 as well as evidentiary documents, two expert witnesses and four
19 witnesses, the Chamber has asked the parties for their views on
20 paragraph 3 of the Memorandum of the Trial Chamber dated 19
21 February 2013. The Chamber will specify the date of the hearing -
22 of this issue tomorrow, the hearing of the testimony of the
23 witnesses as well as the experts following this hearing and
24 before the Chamber renders the reasoned decision on the scope of
25 the hearing in the initial stage. The Chamber cannot make the

1 decision now because the Chamber will have to take every view of
2 the parties into consideration. And the Chamber will render the
3 decision in due course to all parties, concerning the Scheduling
4 Order before the Chamber renders the new decision following this
5 hearing.

6 The Court is now adjourned, and the Chamber will notify the
7 parties for the next Scheduling Order in due course, in relation
8 to the hearing on evidence and witnesses.

9 Security guards are now instructed to bring the co-accused back
10 to the detention facility of the ECCC, and the Chamber will issue
11 an order again to bring them back to this courtroom.

12 (Court adjourns at 1204H)

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