



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
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CMS/CFO:.....

TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC
Case File N° 002/19-09-2007-ECCC/TC

22 October 2013
Trial Day 219

Before the Judges:

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YA Sokhan
Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
Claudia FENZ (Reserve)

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. KOPPE	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. SON ARUN	Khmer

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

2 (Court opens at 0904H)

3 MR. PRESIDENT:

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

5 Before I hand the floor to Nuon Chea's defence and to Nuon Chea

6 to present their closing statements, Mr. Dav Ansan, could you

7 report the attendance of the parties and individuals to today's

8 proceeding?

9 THE GREFFIER:

10 Mr. President, for today's proceeding, all parties are present.

11 It should be noted that Nuon Chea is present in the holding cell

12 downstairs pursuant to the decision of the Trial Chamber

13 concerning his health.

14 Thank you.

15 [09.06.13]

16 MR. PRESIDENT:

17 Thank you.

18 The Chamber would like now to give the floor to Nuon Chea's

19 defence and to Nuon Chea himself to present their closing

20 statements in regard to Case 002/01. Also, we would like to

21 remind the defence and Nuon Chea that the time allocation to your

22 team, including both the counsel and the accused, will total two

23 days - two hearing days.

24 And we would like to inquire from the counsel whether you - the

25 counsel wish to make the presentation first or the Accused would

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1 like to make their - his presentation first?

2 MR. KOPPE:

3 Good morning, Mr. President. Good morning, Your Honours.

4 We, the Counsel, will start with our submissions these two days

5 and then our client will use the part of the second or the half

6 day to present his submissions.

7 [09.07.34]

8 Good morning also to the parties, to counsel, and everyone in the

9 public gallery.

10 Mr. President, Your Honours, allow me to begin with a brief

11 roadmap of the analysis we will present to the Chamber over the

12 next two days. I will begin this morning by discussing questions

13 of general importance to the fairness of this Trial and the

14 legitimacy of this tribunal. I will demonstrate for the Chamber

15 that the procedures employed by this tribunal, including the

16 matter in which the present case was conceived, investigated, and

17 tried, failed manifestly to protect the fair trial standards

18 which this tribunal was ostensibly created to uphold.

19 I will establish that what has gone on in this courtroom has not

20 been a trial at all in the sense that we, as lawyers, normally

21 understand it. It has instead been a showcase of the conclusions

22 that everyone involved wanted and expected from the day the

23 tribunal was constituted.

24 [09.09.14]

25 My colleague, Son Arun, will spend the second half of the morning

1 and the beginning of the afternoon discussing our client's
2 background and his role in Democratic Kampuchea. Son Arun will
3 first explain some essential facts about Nuon Chea's background
4 and his reasons for joining and ultimately leading the Communist
5 Party of Kampuchea.

6 We will show the Chamber that Nuon Chea's role as a senior leader
7 of the Communist Party of Kampuchea was not nearly as broad as
8 the Co Prosecutors claim. Most importantly, Nuon Chea had no role
9 in the military, and a very limited role in internal security.
10 Nor did our client exercise any supervision over lower level CPK
11 cadres at the base. Instead, he interacted primarily with zone
12 secretaries, who in turn exercised substantial discretion within
13 their respective zones.

14 In the last segment of today's session I will return to the
15 podium to discuss one of the two CPK policies at issue in this
16 Trial - the alleged execution of Lon Nol soldiers and officials -
17 and I will demonstrate for the Chamber that this policy never
18 existed. And I will show in substantial detail that the
19 Co-Prosecutor's treatment of the evidence in connection with this
20 alleged policy is selective and seriously misleading.

21 [09.11.14]

22 On the second day of our presentation, on Thursday, I will focus
23 on each of the three crime sites at issue in this Trial: Tuol Po
24 Chrey, the evacuation of Phnom Penh, and the alleged Phase 2
25 population movement. I will begin on Thursday morning by

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1 discussing Tuol Po Chrey, and I will establish for the Chamber
2 that the evidence surrounding the alleged events at Tuol Po Chrey
3 is limited, inconsistent and confusing, and I will show that the
4 Co Prosecutors have failed to establish with any clarity what
5 happened at Tuol Po Chrey in April 1975. And I will then show
6 that the Co Prosecutors have failed to prove that if anything did
7 happen at Tuol Po Chrey it wasn't in any way attributable to our
8 client.

9 Instead, the evidence shows clearly that the events at Tuol Po
10 Chrey could only have been directed by local cadres from the
11 district or sector or possibly by Northwest Zone Secretary Hu
12 Nim, but in neither case was Nuon Chea's role or criminal
13 responsibility established.

14 [09.12.50]

15 And in the second part of Thursday morning's presentation, Son
16 Arun will offer this Chamber an analysis of the living conditions
17 in Cambodia in April 1975. My Cambodian colleague will establish
18 that food supplies and medical care in Phnom Penh were in crisis
19 and on the verge of a full-fledged catastrophe; and he will
20 establish, contrary to the Co Prosecutor's claims, that this
21 crisis began in 1972, long before the CPK took control of supply
22 lines to Phnom Penh; and he will also establish that by April
23 1975, Cambodia's economy had been devastated by the war,
24 especially the American bombing campaign; and he will show that
25 prior to the CPK's victory in April '75, the United States

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1 Government was already predicting widespread starvation in
2 Cambodia, and especially in Phnom Penh in the years to come.
3 And Mr. President, on Thursday afternoon I will address the
4 Chamber for the last time to discuss the evacuation of Phnom Penh
5 and the alleged Phase 2 population movement. And I will establish
6 that the policies set by the Party Centre were framed in the most
7 general terms and did not involve or contemplate the commission
8 of criminal acts. And I will then establish that the
9 implementation of those policies was the responsibility of lower
10 level cadres acting under the supervision of zone secretaries.
11 Any criminal acts that may have been committed were the
12 consequence of that implementation; they were not intended or
13 contemplated by our client, Nuon Chea.

14 [09.15.13]

15 Mr. President, Your Honours, with this overview in hand, allow me
16 to turn to the substance of this morning's discussion, and that
17 is the fairness of this Trial and the legitimacy of this very
18 tribunal.

19 Now as the Chamber knows, and the public is aware, this has been
20 a consistent and substantial focus of the Nuon Chea defence from
21 the day Nuon Chea was arrested, and with good reason. The
22 procedural irregularities during both the judicial investigation
23 and in this Trial have been so persistent and so troubling that
24 we have hardly had time to object to them all. So too, the
25 effects of the government's pervasive control over these

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1 proceedings. Now as we did in our written submissions, we intend
2 to describe these failings here this morning.
3 But before I do that, however, I would like to speak about some
4 general themes. Of course, the procedural details are important,
5 but there is a risk in focusing on those details that we miss the
6 bigger picture.

7 [09.16.48]

8 Now, the investigation – Investigating Judges and this Chamber
9 did not just make, in our views, a series of bad decisions. There
10 is a common thread here. There is an underlying cause. And that
11 underlying thread, Mr. President, is that no one at this Court is
12 interested in ascertaining the truth.

13 This Court was not established for the purpose of figuring out
14 what happened in Democratic Kampuchea. This Court was established
15 for the opposite reason, because the people who founded it
16 thought they already knew what happened. They thought they knew
17 who was responsible and so they created this Court for the
18 purpose of punishing those people. Those people, whom they had
19 already decided were guilty, before this building in which we are
20 standing here today even existed.

21 Now, even as I stand here and say these words, I can feel the
22 reaction of the public gallery and I can almost feel people in
23 this courtroom saying to themselves, well, yes, but that's
24 because they are guilty. How many are asking themselves right
25 now, why should it matter if there were some problems with the

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1 process? At the end of the day Nuon Chea is guilty anyway.

2 [09.18.40]

3 Now, there are two answers to this question. The first answer is
4 a lawyer's answer. The answer is that in a court of law
5 procedural fairness always matters. There is a reason the ECCC
6 exists. It exists because the international community, the United
7 Nations, everyone knew that no fair trial was possible within the
8 Cambodian judicial system, and the only reason we are standing
9 here today is to follow procedure, to allow the Cambodian
10 Government to proudly boast that our client was tried by a fair,
11 independent, and impartial tribunal. And if we cannot accomplish
12 that, this whole exercise is pointless. We think that is reason
13 enough.

14 But there is also a second answer to that question. The second
15 answer is that there are real and unresolved questions about Nuon
16 Chea's responsibility for the crimes charged in this Trial. Even
17 after a three-year judicial investigation and two more years of
18 trial proceedings, the real hard evidence of Nuon Chea's
19 knowledge and intent to commit crimes is astonishingly thin.

20 [09.20.21]

21 The public perception that overwhelming evidence of Nuon Chea's
22 guilt exists is just not true. No matter how many times the
23 International Co Prosecutor calls the evidence overwhelming, the
24 reality is that the Co Prosecutors continue to rely on laughably
25 unreliable evidence: newspaper articles, foreign journalists, CPK

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1 publications that talk about Communism and class theory, but
2 never, never instruct anybody to commit crimes, and instead of
3 proving our client's guilt, the supposed evidence shows the
4 absence of guilt.

5 Now Mr. President, we are, of course, going to establish this in
6 much greater detail over the next two days, as we already have in
7 our written submissions, but permit me to foreshadow one very
8 concrete example:

9 One of the most pervasive assumptions about Democratic Kampuchea
10 is that the CPK set out to systematically murder anyone
11 associated with the Khmer Republic. Now we are not sure exactly
12 when this became accepted gospel. It probably began very early on
13 when François Ponchaud first published refugee accounts from the
14 Northwest Zone describing these executions.

15 [09.22.00]

16 François Ponchaud has since testified before this tribunal and he
17 acknowledged that his conclusions about CPK policy in those early
18 writings were based on a small sample of evidence that turned out
19 not to be representative of the country as a whole. Yet once that
20 idea became imbedded in the narrative of Democratic Kampuchea, it
21 became impossible to dislodge. It entered an echo chamber. It was
22 picked up by one supposed expert, repeated by another, and then
23 another, and then another, and eventually it came to a point that
24 everyone knew that it happened. Everybody knew that there was no
25 evidence to the contrary.

1 Mr. President, Your Honours, I invite the Chamber to compare our
2 submissions about the CPK's treatment of Republican soldiers and
3 officials with those of the Co Prosecutor's, and I think the
4 Chamber will find that our submissions are far more detailed and
5 specific. It is our brief that looks at the witness statements,
6 considers what they say, and asks what it is exactly that they
7 prove.

8 [09.23.32]

9 The Co Prosecutors make sweeping claims based on virtually no
10 evidence. They invoke vague CPK political theory that says
11 nothing implicitly or explicitly about executions. They proffer
12 not a single piece of direct evidence of our client's intent.
13 Instead, as we will show later, they deliberately choose not to
14 discuss the direct evidence of Nuon Chea's intent. Presumably
15 they are reluctant to review what it actually says.
16 Their argument does little more than recycle and perpetuate
17 longstanding, baseless assumptions about what the CPK must have
18 done, what they must have done, because we all know that the CPK
19 did bad things; we all know that the CPK had a total disregard
20 for human life.

21 Now, the Co Prosecutor's final trial brief and their closing
22 submissions are dominated by this approach to prove. The actual
23 evidence of our client's responsibility for actual crimes is so
24 limited that the Co Prosecutor's strategy is instead to persuade
25 the Chamber that the senior leaders of the CPK were monsters.

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1 They tell horrifying stories about the experiences of individual
2 people without even claiming that those experiences reflected CPK
3 policy. They use inflammatory, simplistic language to summarize
4 and mischaracterize complex, historical events. They quote
5 selectively from CPK publications, failing to mention that those
6 same publications specifically instruct cadres to treat New
7 People, intellectuals, and the bourgeoisie well and with respect.

8 [09.25.51]

9 The Prosecution's selective use of evidence is perhaps most
10 evident in their misleading treatment of Nuon Chea's statements
11 to Thet Sambath. On the one hand the Co Prosecutors repeatedly
12 attack our client's credibility. They call him deceitful,
13 dishonest, and accuse him of preposterous lies designed to
14 mislead you, yet, Mr. President, they routinely quote selectively
15 from Thet Sambath's book and his films. They weaved through Thet
16 Sambath's large repository of Nuon Chea quotes, pick the small
17 handful that sound inculpatory, and play them back for you ad
18 nauseam. And then they call this "highly damaging admissions",
19 given not under pressure, which are highly reliable, yet they
20 will omit to tell you that Nuon Chea's statements to Thet
21 Sambath, made in private to a person he trusted, are consistently
22 exculpatory.

23 [09.27.14]

24 And one example -- one example of great significance to this
25 Trial concerns our client's statements in relation to the

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1 execution of Lon Nol soldiers and the evacuation of Phnom Penh.

2 We will talk about this later when we address these specific

3 allegations. Very generally, the Prosecution quotes Nuon Chea's

4 limited statement that he approved of the execution of the senior

5 most leaders of the Khmer Republic, the so called "Super

6 Traitors", yet they omit that he simultaneously denied that a

7 broader execution policy existed.

8 Now, Mr. President, with your permission, let's now watch the

9 full five minutes of the video clip without selecting pieces of

10 it.

11 [09.28.42]

12 (Presentation of audio-visual document, interpreted from Khmer)

13 "[Thet Sambath:] Please confirm one point related to what I asked

14 you earlier, that is, in relation to the Lon Nol soldiers after

15 the liberation on 17 April 1975. What were the policies toward

16 the Lon Nol soldiers, or were there only policies to deal with a

17 few top officials, because after the liberation, soldiers were

18 executed, and what did you know about that?

19 "[Nuon Chea:] As far as I know, the lines toward the defeated

20 soldiers were first to surrender their weapon, and second, they

21 were sent to their respective homes or villages. That's what I

22 recall, but in real practice I could not know.

23 "[Thet Sambath:] What were the policies towards those few

24 selected people?

25 "[Nuon Chea:] They were to be smashed, because they deserved

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1 their serious penalties as they betrayed the nation through
2 foreigners.

3 [09.30.12]

4 "[Thet Sambath:] Were you informed later -- that is, after the
5 April 17, regarding the thousands of soldiers in Pursat,
6 Battambang or Pailin to Banteay Meanchey; do you know about those
7 matters?

8 "[Nuon Chea:] Back then, I did not know about the solutions
9 toward those people, I didn't know nothing, and I only heard
10 about that after the reintegration. But during that time, I did
11 not know anything, and if I had known back then, we would have to
12 have countermeasures against it, because they did not commit
13 anything wrong, they were an ordinary soldier -- soldiers and
14 ordinary people.

15 "[Thet Sambath:] Because a few days after the liberation, they
16 were told to go and receive the prince -- that is, for those who
17 had the ranks of colonels upward or the captain upwards. So, even
18 some civilians wore military uniforms and then they were
19 transported away.

20 "[Nuon Chea:] I did not know about that. It happened at the base,
21 I presumed.

22 [09.31.50]

23 "[Thet Sambath:] If it happened, how it happened?

24 "[Nuon Chea:] I believe it caused by the revenge, because the
25 arrest or the killings were made secretly in the past. So it

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1 could happen as a result of taking revenge against certain
2 people. I deny that it did not happen but that's based on the
3 facts that I did not know it happened.

4 "[Thet Sambath:] Regarding the Lon Nol soldiers and Sirik Matak,
5 what were the policies toward them? It was alleged that after the
6 liberations, Lon Nol soldiers were executed.

7 "[Nuon Chea:] I did not know where Lon Nol soldiers were trucked
8 away, because it was not the role of the military to do so. At
9 that time, they were demobilized to go to the cooperative -- that
10 is, the Lon Nol groups and the remnants of the previous regime,
11 because there was no food supply for them in the cities.

12 "Regarding what happened, it was difficult to understand, as the
13 situation back then was chaotic. The spy war began at the time.
14 So people were accusing one another."

15 (End of presentation)

16 [09.33.42]

17 MR. KOPPE:

18 Your Honours, Mr. President, what was our client's incentive for
19 lying about this or lying about it now? Nuon Chea is 87 years
20 old. He's close to death and knows he will die in prison. He
21 concedes he was the Deputy Secretary of the Communist Party of
22 Kampuchea. He concedes he agreed with and participated in the
23 evacuation of Phnom Penh. He concedes that he agreed with the
24 decision to execute the "super traitors". He concedes that he
25 knew of the decision to execute So Phim, his oldest and closest

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1 friend. Why would he concede all of those facts and deny knowing
2 about Tuol Po Chrey, and why would he concede his role in the
3 first population movement but deny his role in the second?
4 Mr. President, Your Honours, the Prosecution also tries to
5 confuse the public and this Chamber by attaching simplistic and
6 misleading titles to complex historical events, and no more is
7 this strategy more clearly on display than in the Co Prosecutor's
8 fixation on their new favourite term about Democratic Kampuchea,
9 the so called "slave state".

10 [09.35.18]

11 After six years of proceedings, the Co Prosecutors now have the
12 gall to say the common purpose of the CPK senior leaders was to
13 create - and I quote - "a slave state". Now, this term is
14 completely useless as a means of understanding Democratic
15 Kampuchea and most especially the intent of CPK policy.

16 Allow me to remind the Chamber that although the proceedings
17 against our client have been ongoing for more than 6 years, the
18 term "slave state" entered the lexicon of this Trial less than
19 six months ago, on 8 May 2013, during the testimony of Philip
20 Short.

21 Now, we did a search on the case file for the phrase "slave
22 state". The first time it appeared in any filing of any party was
23 two days after Mr. Short's testimony, on May the 10th. And Mr.
24 Short, who invented this phrase, set foot in Cambodia for the
25 first time in 1993. He began his research on the CPK in 1999. He

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1 speaks no Khmer, he reads no Khmer.

2 [09.36.42]

3 Not a single writer, observer, academic, or first-hand witness to
4 the events in Democratic Kampuchea has ever employed this phrase.
5 Yet the Co Prosecutors now tell us that Philip Short's opinion is
6 the best description available of the CPK's purpose, not the
7 CPK's own political circulars, not Pol Pot's speeches, the
8 uncorroborated opinion of a British journalist who appeared in
9 Cambodia 20 years after the fact and who does not speak a word of
10 the language. The Co Prosecutor's recent epiphany that the common
11 purpose of the CPK senior leaders was to create a so called
12 "slave state", as such - as such doesn't even pretend to be
13 genuine.

14 [09.37.37]

15 In the Closing Order, issued in September 2010, the Investigating
16 Judges alleged that - and I quote: "The common purpose of the CPK
17 leaders was to implement rapid Socialist Revolution through a
18 great leap forward and to defend the Party against internal and
19 external enemies by whatever means necessary."

20 Even the Co Prosecutors who argued in their submissions after the
21 conclusions of the investigation that enslavement was one of the
22 policies of Democratic Kampuchea, claim that the overall intent
23 of the joint criminal enterprise was - and I quote -- "to enforce
24 a political revolution and destroy any political opposition to
25 the CPK's rule."

1 Now, obviously we quarrel with the way these formulations
2 describe the CPK's attitude towards so called enemies, but at
3 least these formulations acknowledge that the CPK had a purpose,
4 that the CPK had political objectives, that they were fighting
5 for something.

6 [09.38.55]

7 In the Co Prosecutor's final trial brief and their closing
8 submissions, all of this becomes irrelevant. Objectives no longer
9 matter, context no longer matters. The CPK is transformed from a
10 political movement into a criminal one. It becomes an entity
11 whose purpose was to enslave as such.

12 Now, this is a bad faith effort to distract from the question the
13 Chamber should be asking itself, and that question is whether
14 Nuon Chea intended that the CPK Socialist Revolution, which was
15 its true common purpose, would involve the commission of criminal
16 acts. And the clear answer to that question is that it did not.

17 Mr. President, the Co Prosecutor's analysis of the reasons for
18 the evacuation of Phnom Penh is equally incomprehensible. The Co
19 Prosecutors insist that the purpose of the evacuation was to
20 punish the residents of Phnom Penh, and they claim to be
21 surprised by our client's contention that the real purpose of the
22 evacuation was to reform Cambodian economic policy. They ask, why
23 should we believe this new explanation for the evacuation of
24 Phnom Penh after six years of proceedings. Your Honours were
25 flabbergasted by this question: Have we and the Co Prosecutors

1 been trying the same case in the same courtroom for the last two
2 years?

3 [09.40.35]

4 Our client was the deputy secretary of an entity called the
5 Communist Party of Kampuchea. He was the second in command of a
6 Communist Revolution. Communist movements restructure the modes
7 and methods of economic production. They implement collectivist
8 economic policy. That's why they exist. That's what they do. And
9 even the Closing Order alleges that the purpose of the evacuation
10 was to populate the CPK's collectivist cooperatives.

11 Like the nonsensical "slave state", the Co Prosecutor's feigned
12 surprise at Nuon Chea's explanation for the evacuation of Phnom
13 Penh, is part of a consciously dishonest effort to delegitimize
14 the CPK, to construct a fictitious one dimensional entity infused
15 with criminal intent in place of the political movement which
16 adopted and pursued lawful economic policies.

17 Now, the importance of the so called "slave state" to the
18 Prosecutor's - to the Co Prosecutor's theory of Democratic
19 Kampuchea raises another question of critical importance, and
20 that is the nature of the sources relied upon by the Co
21 Prosecutors. Now, we have remarked on and objected to this in the
22 past. The pervasive use of secondary sources to support key
23 factual allegations is a highly problematic feature of the
24 proceedings before this Chamber.

25 [09.42.28]

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1 Mr. President, an informal analysis of the evidence relied on by
2 the National Co Prosecutor last Thursday shows that in a single
3 day's submissions the Prosecution cited Philip Short's work 17
4 times. Like I said, a British journalist with no apparent
5 expertise, and this one, every 17 minutes to this one source
6 alone, over the course of an entire day.

7 And the Co Prosecutor's reliance on secondary sources instead of
8 genuine, first-hand documentary and testimonial evidence is
9 integral to their effort to simplify the story about Democratic
10 Kampuchea, because secondary sources offer pre packaged
11 conclusions and permit the Court to uncritically adopt the
12 analysis of a writer no better versed in the facts than the Court
13 itself.

14 And these dangers are substantially heightened in this case by
15 the Chamber's decision to systematically favour those so called
16 experts least sympathetic to the CPK. Elizabeth Becker and Philip
17 Short, who were selected as experts, are journalists with no
18 Khmer language skills, no academic credentials, and in Short's
19 case, no exposure to Cambodia prior to 1999. Becker and Short
20 wrote a combined two books and a selection of newspaper articles
21 about Cambodia.

22 [09.44.10]

23 By contrast, the Chamber declined to call Michael Vickery, a
24 professional academic, fluent in written and spoken Khmer, who
25 had first arrived in Cambodia in 1961 and who authored countless

1 academic publications about Cambodia and the Khmer Rouge.
2 Vickery's shortcoming would seem to be, according to François
3 Ponchaud, that he is a Communist.
4 Gareth Porter and William Shawcross, other expert witnesses
5 sought by the Defence, whose opinions did not compliment the
6 standard total view of the ECCC, have similarly been rejected.
7 Even worse is the frequency with which the Co Prosecutors used
8 these sources as a type of claims for which they are involved.
9 Another example: The Co Prosecutors repeatedly cite Sydney
10 Schanberg's testimony that the shelling of Phnom Penh was
11 "psychological warfare". And their final trial brief
12 coincidentally asserts that Sydney Schanberg denies that the
13 conditions of starvation in Phnom Penh justified the evacuation
14 of Phnom Penh.
15 [09.45.27]
16 Mr. President, this is ludicrous. Why should the Chamber care
17 about Sydney Schanberg's opinion about the intentions of the
18 Communist Party of Kampuchea? As the Chamber is aware, shortly
19 after the evacuation, an article appeared in the "New York Times"
20 by a man named William Goodfellow. Goodfellow argued that the
21 evacuation was justified because of the food crisis in the city.
22 Now, should we resolve this legal dispute through a debate among
23 "New York Times" journalists?
24 Elsewhere the Co Prosecutor's claim that in the 1960s, Pol Pot
25 was highly influenced by Chinese ultra-Maoists: Their proof, the

1 conclusions of three foreign academics, writing 30 and 40 years
2 after the fact.

3 As we have argued in the past, this is an outrageous approach to
4 prove in a criminal trial. None of these writers could possibly
5 have known what ideas influenced specific people at specific
6 times. The reality, as our brief explains, is that Nuon Chea was
7 highly distrustful of the "Gang of Four" and that he rejects the
8 Maoist label and was instead a conventional Marxist/Leninist.

9 [09.46.55]

10 Mr. President, if this were the way to conduct a criminal trial,
11 we could have saved a whole lot of money for the international
12 taxpayer. We would not have had to have spent \$200 million on
13 judges and lawyers. Mr. Short's book is available on amazon.com
14 for \$20.75. "Seven Candidates for Prosecution" by Steve Heder can
15 be purchased for \$16.50. We could have conducted this Trial for
16 about \$41.00. Now, Mr. President, Your Honours, we presume, or at
17 least we hope there was a reason we did not do that.

18 The Co Prosecutors also tried to construct a simplistic story
19 about the history of the CPK. For instance, they repeatedly claim
20 that the future leaders of Democratic Kampuchea, including Nuon
21 Chea, read publications by Stalin and Mao in their youth. Now
22 what possible relevance does that have to this Trial? Are the Co
23 Prosecutors implying that because the CPK leaders read a book by
24 Stalin in 1953, they acted like Stalin in 1975? Are they
25 suggesting that the explanation for events in Democratic

21

1 Kampuchea lie not in 22 years of intervening events but in Khieu
2 Samphan's college reading list?

3 [09.48.30]

4 These vague and irrelevant claims about the CPK's historical
5 background are especially appalling because of the facts the Co
6 Prosecutor chose at the same time not to mention. The Co
7 Prosecutors continue the grand tradition of this tribunal of very
8 nearly pretending that the American Government did not drop two
9 and a half million tonnes of bombs on Cambodian soil between 1965
10 and 1973.

11 Now, we are going to talk about this in more detail later, but
12 there are many reasons why this is of critical importance to this
13 Trial, but for now I want to draw a contrast between the kind of
14 background information that the Co Prosecutors find relevant to
15 CPK policy and the kind of information we apparently find
16 irrelevant.

17 [09.49.29]

18 Let's start by talking about the CPK's supposed policy against
19 enemies. The Co Prosecutors tell us that in 1953, Nuon Chea read
20 books by Stalin about enemies. Then they tell us that the CPK
21 developed a policy against enemies between 1960 and 1975, yet
22 they fail to mention that during these exact same years those
23 persistently identified as the CPK's primary enemy, the American
24 imperialists, was in the process - were in the process of
25 dropping more bombs on Cambodian soil than all of the bombs

22

1 dropped by all of the allies during World War II combined.
2 Apparently the Co Prosecutors think that the senior leaders of
3 the CPK were worried about American intentions, not so much
4 because the Americans spent eight years of bombing them into
5 oblivion, but because in 1953 they read a book.

6 [09.50.43]

7 Mr. President, I would like this Chamber to join me on a thought
8 experiment. Imagine that the United Nations set up an
9 international court to try former President George W. Bush for
10 crimes committed in Iraq between 2003 and 2008. Imagine Bush was
11 charged with the unlawful use of armed force, the deaths of tens
12 of thousands of innocent civilians and thousands of counts of
13 illegal detention and torture. Imagine that the defendant, George
14 Bush, was then told that the events of September 11, 2001 were
15 irrelevant because they happened 18 months before the beginning
16 of the temporal jurisdiction of the court.

17 Now, would that make sense to anybody? Would it make sense if
18 neither the indictment, nor the Prosecution's closing submissions
19 made more than a passing reference to September 11th? Would it be
20 fair if defendant, George Bush, did not get a chance to explain
21 the effect of September 11th on his intentions, to persuade the
22 court that his policies were lawful and reasonable in light of
23 the existential threats faced by his country?

24 [09.52.07]

25 Mr. President, Your Honours, the American bombing is also deeply

1 intertwined with the CPK's alleged policy of creating
2 agricultural cooperatives. According to the Co Prosecutors, the
3 point of both the evacuation of Phnom Penh and the creation of
4 cooperatives was to enslave the population. Here we are back at
5 this word "slave".

6 The Co Prosecutors seem to think that if they say the word
7 "slave" enough times it will become the purpose of CPK policy,
8 but the Co Prosecutors make no mention of the fact that the
9 overwhelming majority of people evacuated from Phnom Penh were
10 farmers from the countryside who wanted to return to their farms.
11 They make no mention of the fact that Cambodia was facing an
12 economic catastrophe due to the widespread destruction of its
13 rice paddies and the rest of its economic infrastructure by the
14 U.S. bombing.

15 The absurdity is almost impossible to fathom. How is it possible
16 to evaluate the nature and purpose of CPK policy with regard to
17 agricultural cooperatives without considering the state of the
18 country's agricultural production? How dare the Prosecution think
19 that they can reduce the formation of cooperatives into a single
20 word, let alone a word as simplistic as enslavement, without even
21 acknowledging the primary force that made those cooperatives
22 necessary?

23 [09.53.50]

24 Mr. President, Your Honours, all this pales in comparison with
25 the most blatant simplification in the story presented by the

1 Prosecution: The Prosecution's attempt to portray the Democratic
2 Kampuchea Government as a strictly hierarchical, top-down
3 organization, with cadres in all zones loyal to the Party Centre,
4 with Nuon Chea and Pol Pot at the top of a highly structured
5 pyramid. The Co Prosecutors willingly ignore the fact that they -
6 that likely from even before April '75, there were at least two
7 equally powerful factions within the CPK. So Phim and Ros Nhim
8 led a movement opposing the Party Centre, a movement which was
9 actively seeking to sabotage CPK policies from the moment the
10 evacuation from the cities was complete.

11 The full extent of the treason of these Standing Committee
12 members, So Phim, Ros Nhim, Vorn Vet, and Koy Thuon, backed by
13 the Vietnamese and supported by the first, second, and
14 third-ranking members of the present Cambodian Government, would
15 not become known until 1977 or 1978, but it began long before
16 that.

17 [09.55.24]

18 Rather than trying to establish what really happened in
19 Democratic Kampuchea, the Co Prosecutors simply accused Pol Pot
20 and Nuon Chea of paranoia, of being obsessed with enemies, and
21 conspiracy theories. Yet there is no serious question that
22 Northwest Zone Secretary, Ros Nhim, was an extremely harsh and
23 cruel zone leader, that he had no respect for the lives of
24 ordinary citizens, and that his conduct seriously deviated from
25 Pol Pot and Nuon Chea's intentions. Nor is there, for instance,

1 any serious question that Pol Pot was truly afraid of So Phim. He
2 was even afraid to enter the East Zone to visit So Phim.
3 Nuon Chea emphasizes that men like So Phim and Ros Nhim were not
4 merely autonomous warlords. The Co Prosecutors grossly
5 mis-simplified Nuon Chea's position last week. The word "warlord"
6 appeared only one time in our brief. It was not Nuon Chea's
7 description but the description used by both witnesses and
8 experts who appeared before this Chamber and whose appearances
9 were sought, I might add, by the Co Prosecutors.

10 [09.56.45]

11 It certainly is true the zone leaders acted autonomously and with
12 wide discretion, but that is not the most important fact about
13 Ros Nhim and So Phim. The most important fact about Ros Nhim and
14 So Phim is that they were leading and founding members of the CPK
15 and yet actively opposed to Pol Pot and Nuon Chea, first secretly
16 and later openly. The most important fact about Ros Nhim and So
17 Phim is that the CPK was not, at its core, a unified entity.
18 The internal disputes which ultimately destroyed the CPK were not
19 the consequence of Pol Pot's paranoia; instead Pol Pot's supposed
20 paranoia was a direct reaction to a real and ongoing struggle for
21 control within the Party. Vietnamese hegemony, and ultimately the
22 direct involvement of the Vietnamese Government was a critical
23 component of that struggle.

24 [09.57.52]

25 The simplicity of the Co Prosecutor's narrative about the

1 structure of Democratic Kampuchea is equally apparent in its use
2 of the phrase "democratic centralism". The Prosecution refers to
3 this language repeatedly in its effort to include Nuon Chea and
4 especially Khieu Samphan under the umbrella of every single
5 decision made by the Standing Committee, but their treatment of
6 the phrase demonstrates no genuine reflection about what it meant
7 in a government populated by actual human beings, rather than a
8 sentence on paper in the CPK statute. The Co-Prosecutors seem to
9 believe that there was a direct link between decisions made in
10 the ivory tower of the Standing Committee and the conduct of
11 every cadre everywhere in Democratic Kampuchea. Now, that might
12 be true in a highly functioning modern system with sophisticated
13 administrative structure, such as Australia, France, New Zealand,
14 but it was not true in a new revolutionary state. Still less, one
15 marred by such deep factional divides as Democratic Kampuchea.

16 [09.59.14]

17 Agreement to an abstract policy in accordance with an abstract
18 principle like democratic centralism often had little connection
19 to the conduct of the people within the hierarchy. The
20 Co-Prosecutors treatment of democratic centralism runs -- turns
21 from fantastical to dishonest when they claim, on the one hand,
22 that all members of the Standing Committee were equal
23 participants in every decision, yet that our client routinely
24 issued "orders and instructions" to zone leaders like So Phim,
25 and Ros Nhim, who like I said, were not mere lower ranking zone

1 leaders, but fellow members - fellow founding members of the
2 Standing Committee. The Co-Prosecutors cannot have it both ways.
3 They cannot equate Nuon Chea and Khieu Samphan with Pol Pot on
4 the basis of democratic centralism, yet insist that Ros Nhim and
5 So Phim dutifully followed their orders.

6 [10.00.23]

7 This myth of the rigidly hierarchical CPK is deeply inconsistent
8 with the Co-Prosecutor's assertion that no real governmental
9 structures existed in Democratic Kampuchea. They say there were
10 no real ministries, no real legislature, no real mechanisms of
11 government. Yet it is precisely those mechanisms of government
12 which are responsible for ensuring the consistent implementation
13 of legislative instructions in a typical western state. In
14 Democratic Kampuchea outcomes were not dictated by structure.
15 They were not dictated by the CPK statute. They were dictated by
16 the balance of power within the party. The Co-Prosecutors will
17 have this Chamber believe that it was Pol Pot and Nuon Chea who
18 held the real and compelling power in Democratic Kampuchea. Yet
19 there is no real evidence to support that. As we pointed out in
20 our brief, there's only one clear, hard fact. All of Pol Pot's
21 supposed paranoia came to pass. It came to pass in exactly the
22 way he feared that it might.

23 [10.01.43]

24 Nuon Chea was, it seems, right to have warned his fellow members
25 of the Standing Committee in March 1976 to "be vigilant for

1 another thing with people who flee to Vietnam and who do not
2 return and make propaganda, leaving others to revolt."

3 Mr. President, Your Honours, as we argued in our brief, the
4 clearest evidence that Democratic Kampuchea was divided in
5 competing factions is in the fact that conflict verging on
6 outright warfare was ongoing between the zones for almost the
7 entire period of Democratic Kampuchea. So Phim was purged, Ros
8 Nhim was purged, Vorn Vet was purged, Koy Thuon was purged. Why
9 was that necessary if Pol Pot and Nuon Chea were able to
10 effortlessly exercise control over an obedient government
11 apparatus?

12 [10.02.53]

13 Mr. President, in all of these ways the Co-Prosecutor's closing
14 submissions continue this tribunal's tradition of telling a
15 simplistic, naïve, biased, and occasionally absurd story about
16 Democratic Kampuchea. Yet, in some ways these failures are not
17 even the worst of it. These failures might at least in part
18 originate in ignorance and misguided justice. But there's of
19 course, also something more insidious at work, a conscious effort
20 by the stakeholders of this tribunal to deflect blame away from
21 anyone who might share responsibility for the suffering of the
22 Cambodian people and on to the two remaining accused seated
23 before the Chamber. There are many targets whose culpability has
24 never adequately been considered at this tribunal. These include
25 the Americans, Prince Sihanouk, Lon Nol, the French. But it is

1 clear that in terms of direct relevance to these proceedings one
2 rises above the rest and that target is, of course, the senior
3 leaders of the Cambodian Peoples' Party who continue not only to
4 steal elections, land and natural resources from the Cambodian
5 people, but also to obfuscate their direct and active role in the
6 events for which Nuon Chea presently stands charged.

7 [10.04.29]

8 If Democratic Kampuchea was a giant criminal enterprise whose
9 fundamental purpose was to enslave the Cambodian people then each
10 of the three leading members of the current government bears
11 responsibility for furthering that purpose. Prime Minister Hun
12 Sen, Senator Chairman Chea Sim and President of the National
13 Assembly Heng Samrin all took active roles in carrying out the
14 policies, which the Co-Prosecutors say, today, were criminal as
15 such. There's hardly any doubt of a simple reality. However
16 easily these men are able to shield themselves from criminal
17 prosecution, their liability rises and falls with our client. If
18 Nuon Chea is guilty, so too are they. If Nuon Chea enslaved the
19 Cambodian population, then these three men whose faces hang
20 everywhere on posters in Phnom Penh, were his loyal executioners.

21 [10.05.40]

22 Special mention must be made of Hen Samrin, whose role in
23 carrying out the evacuation of Phnom Penh is of unique
24 significance. As we have repeatedly emphasized, he is the senior
25 most military officer still living today, to have participated in

1 the evacuation of Phnom Penh. He was the deputy commander of one
2 of the three divisions which comprised the East Zone army. In
3 simple terms, he was among the two dozen most senior Khmer Rouge
4 cadres responsible for its implementation. He arrived at
5 Independence Monument for that purpose at 9 a.m. on 17 April
6 1975. Like the American bombings, the various bodies to have
7 adjudicated over these proceedings have continually found even
8 more impressive ways to conclude that these facts are somehow
9 irrelevant. But that should not and does not fool anyone.

10 [10.06.45]

11 The direct complicity of the senior leaders of the current
12 government in the crimes charged here today is of great
13 significance to Nuon Chea's alleged criminality. As we have
14 argued for years, the criminal responsibility of the senior
15 leaders of the CPK is sharply diminished by the autonomous and
16 discretionary conduct of lower level members of the Party. Heng
17 Samrin's criminal responsibility, along with that of Chea Sim,
18 and Prime Minister Hun Sen, and potentially hundreds of other
19 members of the current government, is inversely related to Nuon
20 Chea's. As the responsibility of one increases, the
21 responsibility of the other is diminished, and it is for these
22 reasons that the government's influence over the present
23 proceedings which no fair minded person could deny, is critically
24 relevant. The very individuals who have the most to gain from
25 perpetuating this tribunal's convenient and simplistic narrative

1 that criminal responsibility lies primarily with the leaders of
2 the party are the exact same individuals who have proven their
3 ability to directly impact the nature of the evidence placed
4 before this tribunal.

5 [10.08.06]

6 The government in this country does not even keep this a secret.
7 The Prime Minister is openly opposed to this tribunal
8 investigating the criminal responsibility of anyone other than
9 the defendants in Case 002. He vows that no such investigations
10 will ever go forward. How can this tribunal expect to assess our
11 client's criminal liability under these circumstances? How could
12 this tribunal ever be confident that it has an accurate
13 understanding of the responsibility of cadres who supposedly
14 reported to Nuon Chea? How could this Chamber possibly conclude
15 that the criminal conduct of cadres lower than Nuon Chea was
16 consistent with and not contrary to his intentions? Mr.
17 President, these are the general themes that need to be spoken
18 aloud about this Trial. These are the reasons why these
19 proceedings have so consistently failed to examine our client's
20 responsibility, or his defences, in any substantive way.

21 [10.09.19]

22 But as our written admissions show, this is only the big picture.
23 The failings of these proceedings are numerous and manifest, and
24 can be described in great detail. They were pervasive in the
25 judicial investigation and they continue during these trial

1 proceedings. Let me begin with a few words about the
2 investigation. The fundamental problem with the investigation in
3 Case 002 was that it was not focused on ascertaining the truth,
4 but on gathering inculpatory evidence. The Co-Investigating
5 Judges were not in substance and reality, impartial adjudicators,
6 but auxiliary prosecutors. The investigation was driven by
7 procedures prejudice against the accused and its sole objective
8 was to produce a product capable of supporting a guilty verdict.

9 [10.10.21]

10 One need look no further than former OCIJ investigator, Wayne
11 Bastin's allegation that International Co-Investigating Judge
12 Marcel Lemonde instructed his staff in 2008 that they ought to
13 search only for inculpatory evidence to understand how seriously
14 flawed their process was. Of course, Judge Lemonde denies having
15 made this remark, or claims that if he did say it, he could only
16 have been speaking in jest. But ultimately the question of what
17 transpired at Judge Lemonde's home in 2008 does not matter. The
18 investigation which followed was in fact, seriously deficient and
19 the Closing Order it produced was even worse. The design flaw of
20 the investigation was that it was shrouded in absolute secrecy.
21 Unlike the standard practice in civil law systems, defence
22 counsel was excluded from the Investigating Judges' interviews
23 completely.

24 [10.11.27]

25 Defence teams were prohibited from and even sanctioned for

1 conducting their own investigation, despite the ability of the
2 Co-Prosecutors to do the same. For more than two years of the
3 three-year investigation the Co-Investigating Judges refused to
4 provide basic information about the general direction and
5 strategy of the investigation, or the standard operating
6 procedures of its investigators. Defence teams were in effect
7 instructed to sit on their hands and wait as the Co-Investigating
8 Judges added documents and interviews to the case file in a
9 manner which, from their blind vantage point, meant little in
10 terms of a narrative of the history of Democratic Kampuchea or of
11 our client's role and responsibility. The moment basic
12 information concerning OCIJ operating procedures came to light it
13 became apparent how far short they fell from the requirements of
14 a fair and impartial investigation.

15 [10.12.34]

16 Basic investigatory methods aiming to look beneath a witness'
17 surface claims were rarely, if ever, used. These include
18 questions intended to probe the sources of witnesses' knowledge
19 and the reliability of the 30-year old recollections. Subsequent
20 analysis has furthermore shown that investigators failed to
21 employ safeguards, such as avoiding leading questions, to ensure
22 the reliability of the OCIJ statements. Numerous irregularities
23 such as off the record interviews and outright inaccuracies also
24 surfaced in those statements. Mr. President, the culmination of
25 these flaws is in the Closing Order. Not surprisingly, the

1 Closing Order does not read as a judicial document rendering
2 findings on a balance of probabilities. Instead, it is merely an
3 argument in favour of Nuon Chea's guilt.

4 [10.13.45]

5 The word "credibility" does not appear once. Almost never does
6 the Closing Order weigh conflicting evidence prior to
7 articulating its conclusions. It repeatedly makes straightforward
8 assertions of fact based on uncorroborated claims of a single
9 witness who was in no position to make the claim in question. The
10 Co-Investigating Judges never conceived of their task as a
11 judicial exercise. To them it was an attempt to gather evidence
12 to support a finding of guilt. Examples of this are abundant. One
13 concerns the Co-Investigating Judges' findings in relation to the
14 alleged crimes at Tuol Po Chrey, the only crime site to ever be
15 subject to serious adversarial analysis at the ECCC. As the
16 Defence has previously shown, nearly all of the Co-Investigating
17 Judges' most crucial findings were unsupported even on the face
18 of the evidence cited in the footnotes.

19 [10.15.00]

20 To reiterate just one example, investigators were provided
21 several estimates of the number of people allegedly killed at
22 Tuol Po Chrey ranging from 200 up to 3,000. The Co-Investigating
23 Judges own investigators described in their site identification
24 report, the killing of several hundreds, "minimum 200 up to 1,000
25 or more". Yet the Closing Order states simply, "witnesses'

1 estimates as to the number of victims range from 2,000 up to
2 approximately 3,000 corpses".

3 Another concern is the Co-Investigating Judges constant reliance
4 on Duch's testimony in support of propositions for which he could
5 not possibly have had any relevant contemporaneous knowledge.

6 These include a variety of claims about events within the highly
7 secretive Standing Committee and the personal interactions
8 between the senior leaders of the CPK, almost none of whom he had
9 ever met.

10 [10.16.13]

11 Never did the Investigating Judges think to question whether Duch
12 was an appropriate witness in relation to any of these claims
13 until January 2013 when Judge Lemonde publicly admitted that
14 during his tenure at the ECCC he had asked himself exactly that
15 question.

16 The Closing Order makes numerous other highly prejudicial
17 conclusions on the basis of a single, clearly unreliable witness.

18 It's allegation that our client decided on purges within the
19 military and belonged to a so called, purge planning committee,
20 is supported by a single ordinary soldier who, as Suong Sikoeun
21 explained to the Investigating Judges, knew nothing about the
22 tasks of Party leaders.

23 [10.17.07]

24 The Closing Order cites the statement of Norng Sophang, a
25 telegram decoder who knew nothing substantive about the work of

1 the Party centre, to conclude that Standing Committee meetings
2 were called - and I quote -- "whenever there was an important
3 matter requiring discussion."

4 The Co-Investigating Judges never even considered whether there
5 was reason to doubt the credibility of Ieng Sary's claim that it
6 was Nuon Chea and not he who was responsible for a variety of
7 tasks in Democratic Kampuchea. The Closing Order also fails to
8 put forth exculpatory evidence that is directly inconsistent with
9 the finding that it purports to make. In one egregious example,
10 the Closing Order cites to only three pieces of evidence
11 supporting Nuon Chea's alleged participation in a policy of
12 targeting former officials and soldiers of the Khmer Republic.
13 One of these is Heng Samrin's claim that Nuon Chea indicated that
14 former officials of the Khmer Republic should not be allowed to -
15 and I quote -- "stay in the framework" of the new regime. Yet
16 the Closing Order fails to consider his larger point, that Nuon
17 Chea wanted those officials to be removed rather than killed.

18 [10.18.38]

19 The Closing Order similarly ignores the numerous statements of
20 well-placed witnesses that the Party Centre specifically
21 instructed cadres not to harm Khmer Republic soldiers captured in
22 battle. Two of these witnesses, Meas Voeun and Phy Phuon, are
23 cited by the Investigating Judges a combined 121 times in the
24 Closing Order, almost exclusively for inculpatory purposes,
25 ignoring the clearly exculpatory statements. The Closing Order

1 wrongly concludes that Nuon Chea is criminally responsible for
2 and therefore intended the commission of widespread executions of
3 former Lon Nol soldiers and officials.

4 [10.19.24]

5 For a trial to be fair the investigation on which it rests must
6 also be balanced and impartial. With this – with the
7 investigation so critically compromised in the ways I have just
8 described, our client's fair trial rights hung in jeopardy even
9 before the trial proceedings began.

10 Mr. President, Your Honours, in light of these profound flaws in
11 the judicial investigation, the final opportunity to ensure the
12 fairness of the proceedings lay with this Trial Chamber. But
13 instead of remedying the prejudice caused by the investigation,
14 it is our view that this Chamber did exactly the opposite. The
15 Trial Chamber's rulings were not only consistently unfair,
16 unreasoned, illogical, and based on no relevant applicable law,
17 those rulings were also unfair specifically in ways which
18 compounded and aggravated the prejudice caused by the judicial
19 investigation.

20 [10.20.43]

21 Like the Co-Investigating Judges in the Closing Order, and the
22 Co-Prosecutors in their closing submissions, the Trial Chamber
23 dramatically narrowed its focus and carefully herded this case
24 towards its preconceived conclusion. In our view, it did so in
25 three general ways: by interfering with our efforts to present

1 exculpatory evidence, by interfering with our efforts to
2 challenge the prosecution's evidence, and by failing to take any
3 steps to alleviate persistent government interference in the
4 proceedings. And in so doing, the Chamber let lapse any hope that
5 the fairness of these proceedings could be salvaged. This
6 Chamber's failures, Mr. President, to admit exculpatory evidence
7 and explore exculpatory theories were repeated and manifest. The
8 most serious example concerns its persistent refusal to call the
9 most important witness in Case 002/01, Heng Samrin.

10 [10.22.00]

11 As we have argued repeatedly, he was the most important witness
12 in relation to both the evacuation of Phnom Penh and the
13 allegation at Tuol Po Chrey, and he was also our client's one and
14 only character witness.

15 With regard to Tuol Po Chrey, Heng Samrin is the only known
16 witness in possession of direct evidence of our client's intent
17 in regard to the treatment of Lon Nol soldiers and officials. As
18 we will explain in greater detail later, he told Ben Kiernan that
19 our client specifically instructed cadres not to kill former
20 Khmer Republic soldiers and officials. As I have already noted,
21 Heng Samrin is also the senior most military official living to
22 have participated in the evacuation of Phnom Penh. His testimony
23 would have been exculpatory in that regard as well.

24 [10.23.00]

25 He would have confirmed that the Standing Committee had no

1 effective control over the troops responsible for liberating and
2 evacuating Phnom Penh, and that no orders to commit criminal acts
3 were forthcoming from our client. Securing Heng Samrin's presence
4 at trial was clearly a minimum requirement of our client's right
5 to a fair trial, yet this Chamber denied or ignored no fewer than
6 six successive requests for his appearance, including to appear
7 as Nuon Chea's only character witness. And the Chamber, Mr.
8 President, Your Honours, did not even attempt to secure his
9 presence. As we demonstrate in detail in our brief, the Chamber
10 went so far as to prohibit us from discussing the Chamber's
11 decision not to summons him and to cut off our efforts to discuss
12 his role in Democratic Kampuchea.

13 [10.24.03]

14 The Chamber's refusal to summon two other witnesses, Chea Sim and
15 Ouk Bunchhoeun who perfectly possessed first-hand knowledge of
16 the intent of the Party Centre in relation to the treatment of
17 former Khmer Republic soldiers and officials confirmed, in our
18 view, that this Chamber was not interested in providing any
19 opportunity to corroborate Heng Samrin's testimony. As with Heng
20 Samrin, the Chamber prohibited so much as a discussion of the
21 OCIJ summonses these men have blatantly ignored. The Chamber also
22 disallowed any mention of the Chamber's refusal to place these
23 witnesses on its witness list, all the while the Chamber
24 consented to the use of their statements for inculpatory purposes
25 revealing - and I'm sorry to say this in our view - its deeply

1 ingrained bias in favour of the Prosecution.

2 [10.25.00]

3 This Chamber's refusal to summons witnesses crucial to the
4 Defence theory of the case was not limited to high ranking
5 government witnesses. Its denials extended to any witness in
6 possession of exculpatory material pivotal to the Defence theory
7 of the case. As conformation of this, one needs to look no
8 further than the Chamber's persistent refusal to summons
9 important context witnesses crucial to establishing a
10 comprehensive narrative of the circumstances surrounding the
11 Cambodian Socialist Revolution, and essential to the substance of
12 our client's defence. As we have attempted to explain time and
13 again, it is impossible to assess CPK policy outside the context
14 of how and why these policies were adopted.

15 [10.26.04]

16 The Co-Investigating Judges failed to give this issue any serious
17 consideration and this Trial Chamber proved even less responsive.
18 This Chamber repeatedly refused to hear oral submissions
19 concerning the relevance of this testimony. This Chamber ignored
20 multiple written requests identifying nearly a dozen specific
21 legal reasons why this evidence was relevant to our defence. Even
22 after we narrowed the scope of our request to just four essential
23 witnesses, this Chamber refused to hear any of them. No reasons
24 for any of the decisions have ever been forthcoming. Mr.
25 President, the decision, your decision, not to hear any of these

1 witnesses was a blatant abuse of Nuon Chea's right to a fair
2 trial.

3 [10.26.59]

4 Such testimony constituted the only opportunity, the only
5 opportunity the Defence had to investigate, let alone present
6 evidence before the Chamber in relation to a variety of crucial
7 issues. These include, for instance, the food and security
8 situation in Phnom Penh and elsewhere in Cambodia in 1975; two,
9 the details of the American bombing campaign that ravaged the
10 country; and three, most importantly, our client's knowledge and
11 intent in relation to the consequences of the evacuation. Unable
12 to call its own context related witnesses, the Defence was left
13 no choice but to pick at the scraps of those called by the
14 Co-Prosecutors and examine witnesses sought by them and chosen by
15 the Trial Chamber. None of these witnesses were able to testify
16 to the systemic factors which motivated and justified the CPK's
17 conduct.

18 [10.28.05]

19 Even under these circumstances the Chamber frequently prevented
20 the Defence from engaging in meaningful questioning in regards to
21 the pre-'75 conditions in Cambodia and the impact they had on
22 events through Democratic Kampuchea. The prejudicial effect of
23 these rulings was amplified by the overall imbalance in the
24 respective party's own opportunities to call witnesses. At the
25 close of evidence the Chamber had heard 75 substantive witnesses,

1 of these 35 were selected by either the Co-Prosecutors or the
2 civil parties without the parallel endorsement by the defence
3 teams, while only four were selected by all the defence teams
4 combined. This imbalance violated the equality of arms and
5 created the fundamentally unfair environment in which Nuon Chea's
6 case was presented at the substantial disadvantage, vis-a-vis,
7 the Co-Prosecutors.

8 [10.29.12]

9 Mr. President, this Chamber has also consistently prevented us
10 from exploring events following 1979, notwithstanding detailed
11 submissions demonstrating the relevance of those events to
12 questions at issue in Case 002/01. These included the treatment
13 and collection of documents by the PRK and Vietnam's role in
14 writing the history of the CPK to suit its political agenda.
15 Questions on these subjects during cross examination were
16 relevant and exculpatory in numerous ways. They concerned the
17 legitimacy and independence of the tribunal, the authenticity of
18 the evidence against our client and the interim bias against our
19 client produced by the inculpatory narrative fostered by the PRK
20 from the moment the CPK was ousted from power. These questions
21 were consistently disallowed by the Chamber.

22 [10.30.25]

23 Mr. President, this Chamber's blanket refusal to pursue evidence
24 exculpatory as to Nuon Chea, culminated in its treatment of Rob
25 Lemkin, the co-director and producer of the film "Enemies of the

1 People" and "One Day at Po Chrey". Mr. Lemkin, who's film is in
2 evidence and has been relied upon extensively by the
3 Co-Prosecutors, informed us in an unsolicited email that the
4 broader footage in his possession from which that film was cut,
5 established that the crimes allegedly committed at Tuol Po Chrey
6 were not ordered by the Party Centre. That footage also
7 established that a military tribunal was held prior to the
8 execution of the senior most officials of the Khmer Republic.
9 Now, upon hearing this obviously exculpatory information, this
10 Chamber, Mr. President, decided its best course of action was to
11 put its head in the sand and refuse to make even one simple
12 inquiry of Mr. Lemkin concerning the nature of that information.
13 [10.31.33]
14 Even more prejudicial to our client's right to a fair trial was
15 the maze of constantly shifting procedural rules which improperly
16 restricted our ability to meaningfully challenge the evidence
17 admitted at trial. This Chamber prohibited the use of documents
18 to impeach witnesses, a practice universally accepted under
19 Cambodian law, international practice, and at courts across the
20 world. And as a consequence our client was systematically
21 prevented from confronting the witnesses against him. This
22 Chamber allowed witnesses and civil parties to review past
23 recorded statements immediately before testifying, and as a
24 consequence the Chamber made it impossible for defence counsel to
25 identify inconsistencies in the memories of witnesses testifying

1 to 35-year old events.

2 [10.32.33]

3 This Chamber admitted well over 1,000 out of court witness
4 statements without the appearance of the witness for cross
5 examination. As we will discuss later in connection with Tuol Po
6 Chrey, a small handful of those statements are now relied upon by
7 the Co-Prosecutors for the purpose of establishing the existence
8 of a CPK policy of executing Lon Nol soldiers and officials;
9 witnesses who neither the public, not this Chamber have ever
10 seen. And as the International Co-Prosecutor recently said; that
11 justice should not only be done, but also be seen to be done. Yet
12 these witnesses, whom the Co-Prosecutors now say, after six years
13 are crucial to this case, have never been seen by anybody.

14 [10.33.24]

15 This Chamber approved the blanket admissions also of thousands of
16 documents obtained by DC-Cam without any serious investigation of
17 their chain of custody prior to the DC-Cam founding in 1995. As a
18 consequence, the Chamber based nearly this entire trial on
19 documents whose authenticity was never adequately established.
20 The Chamber did not even accede to our request the DC-Cam provide
21 information as to chain of custody of the documents in its
22 possession. In so doing, the Chamber displayed its complete
23 disinterest in assessing the authenticity of the documents
24 admitted against our client. In all of these respects it seems
25 that, Mr. President, this Chamber chose expedience over rigour.

1 It chose deliberately not to subject the allegations against Nuon
2 Chea to the kind of scrutiny which, from the perspective of
3 defence counsel, is the point of a trial to begin with.

4 [10.34.34]

5 Another serious restriction on our client's ability to challenge
6 the evidence against him was in the near absolute prohibition on
7 questioning which concerned the judicial investigation. I have
8 already demonstrated the ways in which the investigation of Case
9 002 was plagued by errors and oversights. When we complained
10 about these problems during the investigation we were told by
11 both the Co-Investigating Judges and the Pre-Trial Chamber that
12 any flaws in the method of the investigation could be remedied
13 through cross examination at trial. Yet, when we sought to hear
14 witnesses at trial to challenge the inculpatory statements on
15 record, our requests were routinely dismissed. When witnesses did
16 appear and we tried to explore the flaws in their statements
17 given to the Investigating Judges we were informed by the Chamber
18 without a hint of irony, that we should have raised those issues
19 during the investigation.

20 [10.35.38]

21 Judge Lavergne demanded to know – and I quote, "What have the
22 defence lawyers been doing over the course of the many years of
23 the judicial investigation?" Mr. President, the answer of course
24 is that we were filing well over a dozen motions demanding that
25 these flaws be remedied, without ever receiving any substantive

1 or timely relief. A wide variety of relevant and probative
2 questions about the investigations were constantly disallowed by
3 The Chamber. These included, for example, whether witnesses had
4 been fed information, coached, or shown documents, coerced,
5 intimidated, or influenced, misunderstood, or misquoted, or
6 interviewed multiple times without audio records being prepared.
7 In one of many extraordinary examples, this Chamber refused our
8 attempts to cross examine a witness as to whether OCIJ
9 investigators had said anything, off the record, during his
10 interview. Despite the revelation that investigators had done
11 just that with another witness living in the same town who was a
12 DK era colleague of the witness before the Chamber, and who had
13 been interviewed by the Investigating Judges 20 minutes prior to
14 the witness being cross examined.

15 [10.37.03]

16 In another example questions regarding an incident in which a
17 witness who was heard to ask OCIJ investigators whether he could
18 look at his notes before responding to a question where
19 disallowed. Mr. President, in this regard, we were frustrated at
20 every turn. Yet the most egregious rulings with regard to
21 examinations concerning the investigation came with the testimony
22 of Stephen Heder. For reasons that everyone in this courtroom
23 knows well, Mr. Heder was a truly exceptional witness. In 2004,
24 Mr. Heder published "Seven Candidates for Prosecution" a book
25 advocating for the prosecution of seven specific defendants,

1 including our client, Nuon Chea. When this tribunal was
2 established for that purpose, Mr. Heder was immediately hired by
3 the office of the Co-Prosecutors to help write the introductory
4 submissions. After the introductory submission were filed,
5 Stephen Heder was retained by the Investigating Judges for the
6 purpose of investigating the allegations he himself had made,
7 first in "Seven Candidates" and then in the introductory
8 submissions.

9 [10.38.32]

10 He then helped write the Closing Order, in which we were not
11 surprised to discover he agreed with his own allegations. When
12 those allegations came to trial before this Chamber, Mr. Heder
13 was summoned as a witness. He gave evidence about the allegations
14 he had laid out in "Seven Candidates" formally lodged on behalf
15 of the Co-Prosecutors, investigated on behalf of the OCIJ, and
16 then confirmed in the Closing Order. Coming full circle, the
17 Co-Prosecutors now relied on Mr. Heder's evidence extensively in
18 support of the allegations made on their behalf six years ago.
19 Now, Mr. President, no one doubts Mr. Heder's credentials as an
20 academic and a researcher, yet as a participant in this process
21 and a witness before this Chamber, there are serious questions in
22 need of answers.

23 [10.39.34]

24 Any court truly concerned with the reliability of the evidence
25 before it would demand clear and detailed explanations concerning

1 the nature and extent of Mr. Heder's role in the introductory
2 submissions and the judicial investigation that followed. In
3 light of Mr. Heder's extraordinary influence over these
4 proceedings, any court concerned with ascertaining the truth
5 would be especially motivated to probe the foundations of his
6 conclusions.

7 MR. PRESIDENT:

8 The time is now appropriate for a short break, Counsel. So we
9 will take a 20-minute break and return at 11 a.m.

10 (Court recesses from 1040H to 1101H)

11 MR. PRESIDENT:

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

13 And we once again given the floor to Nuon Chea's defence to
14 continue presenting their closing statement. You may continue.

15 MR. KOPPE:

16 Thank you, Mr. President. I shall need another half hour to
17 finish my introductory remarks.

18 And before the break, I was speaking about Mr. Heder and I was
19 saying before the break that no one doubts Mr. Heder's
20 credentials as an academic and a researcher, yet as a participant
21 in this process, and a witness before this Chamber, there are
22 serious questions in need of answers.

23 Any court truly concerned with the reliability of the evidence
24 before it, would demand clear and detailed explanations
25 concerning the nature and extent of Mr. Heder's role in the

1 introductory submissions and a judicial investigation that
2 followed.

3 [11.02.51]

4 In light of Mr. Heder's extraordinary influence over these
5 proceedings, any court -- I set out earlier before the break --
6 concerned with ascertaining the truth would be especially
7 motivated to probe the foundations of his conclusions. Yet this
8 Chamber actively sought to find out as little as possible. Even
9 though Mr. Heder was present in this courtroom and prepared to
10 testify, the Chamber prohibited any questions of any kind about
11 the investigation. The Chamber prohibited any questions
12 concerning the methodology Mr. Heder used to arrive at his
13 conclusion. The Chamber did not hold that these questions were
14 not probative, it did not hold that these questions were not
15 relevant, instead, Mr. President, the Chamber held that these
16 questions were inadmissible just because they concerned the
17 investigation. And as you know, Mr. President, this exchange
18 caused so serious a violation of our client's right to a fair
19 trial that it prompted Nuon Chea to retract his decision to
20 resume testimony.

21 I would like now to come back to something I have touched upon
22 twice, the government's continued interference with the work of
23 the tribunal. And I made reference to this during my introductory
24 remarks. I explained, as we have many times before, why the
25 government's interference bears directly on our client's right to

1 a fair trial.

2 [11.04.39]

3 I elaborated on that in explaining that government interference
4 has directly impacted Nuon Chea's ability to hear exculpatory
5 evidence, and this interference began at the tribunal's inception
6 and it continues to this day. It is well-documented and
7 undeniable.

8 It includes, one, the effort of government officials to prevent
9 the appearance of the late King Father, Norodom Sihanouk as a
10 witness; two, the failure of six high-ranking government
11 officials to appear before the Co Investigating Judges pursuant
12 to validly issue summonses, and the role of Prime Minister Hun
13 Sen and other members of the government therein; and third, the
14 prime minister's effort, aided and abetted by various members of
15 the government, to thwart Cases 003 and 004. And the Defence has
16 also raised concerns regarding the complicity of the National Co
17 Prosecutor and Co Investigating Judge, You Bunleng, and has
18 formally called upon Judge Bunleng to resign.

19 If any doubt of the government's interference could possibly have
20 existed, it was extinguished with Judge Kasper-Ansermet's
21 resignation from this Court. His departure was accompanied by a
22 10 page note detailing the government's persistent interference
23 in his work at the tribunal. As Judge Kasper-Ansermet stated -
24 and I quote: "There exists within the ECCC such serious
25 irregularities, dysfunctions, and violations of proper procedures

1 that endanger and impede due process of law." End of quote.

2 [11.06.39]

3 This evidence of interference was so clear that it prompted
4 consistent commentary and concern from the international
5 community. The Open Society Justice Initiative, and other veteran
6 tribunal monitors, called for the United Nations and donors to
7 seriously examine the institutional damage caused by government
8 interference and reconsider its commitment to the tribunal.

9 In addition to causing a per se violation of our client's right
10 to a fair trial, and preventing him from hearing crucial,
11 exculpatory evidence, the influence of the government over
12 proceedings at the ECCC has caused direct prejudice to Nuon Chea.
13 From the start of the case - Case 002 proceedings, officials and
14 agents of the government have improperly voiced their opinion on
15 the guilt of the Accused.

16 In January 2012, at an international press conference, Prime
17 Minister Hun Sen publicly announced that our client was
18 deceitful, a killer, and a perpetrator of genocide, words echoed
19 before this Chamber by the Co Prosecutors over the past three
20 days. The Defence immediately requested the Trial Chamber to
21 publicly condemn the prime minister's characterization of our
22 client as a genocidaire and demand that he refrain from making
23 such comments in the future as such commentary violated our
24 client's fundamental right to a presumption of innocence.

25 [11.08.29]

1 Now, Mr. President, instead of taking active steps to remedy that
2 bias, the Trial Chamber did what it does best, in our view,
3 answered our request with silence, allowing the prime minister's
4 comments to fester. And over a week later, the Trial Chamber
5 stated that it preferred – and I quote: "They have preferred not
6 to make any comment to react."

7 Another week later, the Trial Chamber still refused to publicly
8 condemn the prime minister's assertions of our client's guilt.

9 All the while, Prime Minister Hun Sen continued to publicly state
10 his belief in Nuon Chea's guilt.

11 And the Defence was again frustrated by the Trial Chamber when it
12 sought to bring to public attention statements prejudicial to our
13 client by Minister of Foreign Affairs Hor Namhong. The Chamber
14 caught off counsel's microphone and ruled that the issue could be
15 raised only in written form.

16 In response to our written request, the Chamber refused to
17 investigate the effect of Hor Namhong's statements on witnesses
18 appearing before the Chamber, and incredibly this Chamber
19 continued to refuse, even after a witness recanted his prior
20 testimony in an apparent direct reaction to Hor Namhong's
21 intimidation.

22 [11.09.59]

23 Yet the Trial Chamber, like the Co Investigating Judges and the
24 Pre Trial Chamber before it, declined to take any remedial
25 action, and with each additional manifestation, Nuon Chea's right

1 to a presumption of innocence and his right to be tried by an
2 independent and impartial tribunal were eroded until nothing left
3 remains.

4 Mr. President, Your Honours, this concludes our discussion of the
5 numerous procedural failures of this Trial. And before I hand the
6 floor to my colleague, my Cambodian colleague, Son Arun, to take
7 up our client's background and role in the Cambodian Socialist
8 Revolution, I have some concluding remarks about the legitimacy
9 of this tribunal.

10 These remarks reflect, in part, what we said in our brief last
11 month, that the urgency of making these comments in public before
12 this Chamber became increasingly apparent as the Co Prosecutor's
13 submissions progressed over the last three days, and especially
14 yesterday as the intensity of their rhetoric grew to an angry
15 fever pitch.

16 [11.11.24]

17 The Co Prosecutors began their presentation on Thursday morning
18 by assuring the Chamber, assuring the Chamber that this Trial is
19 not about Communism. They hold us - they told us that neither
20 Communism nor Socialism nor any other political system or
21 philosophy is on trial before this Court. And yet what we saw
22 from the Co Prosecutors, and especially the International Co
23 Prosecutor, can only be described as an all-out ideological
24 attack, an assault against Communism for Communism sake.
25 If this Trial were, as the Co Prosecutors claim, only about

1 crimes, then what we heard over the past three days would have
2 focused on facts. The Prosecution would have shown us the proof
3 of Nuon Chea's intent to execute Lon Nol soldiers. They would
4 have shown us the proof that our client intended to exterminate
5 the population of Phnom Penh. Instead, Mr. President, what we got
6 from the Co Prosecutors was their most impassioned effort to
7 delegitimize the CPK; to persuade this Chamber that the CPK was
8 not a political movement but a criminal one; to establish,
9 contrary to every shred of the evidence, that the CPK was not
10 trying to institute economic policies they genuinely believed in,
11 but instead to repeat the words "slave" and "enslavement" over
12 and over and over again.

13 [11.13.16]

14 We asked this Chamber to consider the question: Why did the Co
15 Prosecutors feel it necessary to say the word "slave" so many
16 times? The law requires something much simpler. The law requires
17 proof that our client acted with the intent to commit acts
18 considered criminal by the law of this tribunal. If evidence of
19 that intent exists, the Co Prosecutors ought to have simply
20 presented that evidence and proven Nuon Chea's criminal
21 liability. Instead, they tried to do something much larger. They
22 tried to persuade this Chamber the CPK's purpose was criminal,
23 and as we have seen, this is a claim that not even the
24 Investigating Judges made in the Closing Order and is not even a
25 claim that the Co Prosecutors themselves made in their final

1 submissions after the closing of the investigation.

2 [11.1423]

3 Mr. President, the International Co Prosecutor spoke of winners
4 and losers. We, too, agree that there are winners and losers. The
5 winners were firstly the United States and its allies. The
6 Americans won an ideological war, their war against Communism.
7 And the winners were secondly the current leaders of the
8 Cambodian Government. The leaders of the current government won a
9 war for control over Cambodia, a war which began within the CPK
10 quite possibly in the earliest days of Democratic Kampuchea and
11 continued in military form until the CPK capitulated in 1998.
12 Now, what do these two seemingly different groups have in common?
13 What they have in common is an interest in ensuring that the
14 history of Cambodia punishes the Cambodian Communists as harshly
15 as possible.

16 [11.15.30]

17 For the Americans and their allies, punishing the Cambodian
18 Communists vindicates the fundamental justice of the last half
19 century of their foreign policy. It absolves them of the horrific
20 crimes they themselves committed in the interest of protecting
21 the free world against those Communists.

22 For the leaders of the Cambodian Government, punishing Cambodian
23 Communists justifies the legitimacy of their original claim to
24 power. Indeed, it justifies their continuing claim to power, as
25 the prime minister's warnings of civil unrest for any other party

1 to win power continually prove.

2 For these reasons, international criminal justice has a long
3 tradition of prosecuting all sides of a conflict. A trial that
4 focuses on the crimes of only one party to a conflict and not the
5 other can never be free of the suspicion that they are being used
6 as a tool of political power. Such a trial could never be free of
7 the suspicion that they are being used as a method of confirming
8 one side limited, even if genuinely held narrative of history.

9 [11.16.59]

10 At no international criminal trial were these concerns more acute
11 than in the International Military Tribunal for the Far East,
12 better known as the Tokyo Tribunal. Writing in dissent, Justice
13 Pal from India recognized that a trial, which does not correspond
14 to any idea of justice, could only amount to formalized
15 vengeance, and Justice Pal further explained – and I quote:

16 "It does not quite comply with the idea of international justice
17 that only the vanquished states are obliged to surrender their
18 own subjects to the jurisdiction of an international tribunal for
19 the punishment of war crimes. The victorious states, too, should
20 be willing to transfer their jurisdiction over their own subjects
21 who have offended the laws of warfare to the same, independent,
22 and impartial, international tribunal." End of quote.

23 Observers who reflected on the Tokyo tribunal in later years
24 consistently chastised the tribunal for its numerous procedural
25 and structural defects.

1 [11.18.18]

2 Richard Minear in his book "Victor's Justice: The Tokyo War
3 Crimes tribunal" criticized the tribunal for the fact that – and
4 I quote: "All the justice of the Tokyo tribunal came from the
5 victor nations." End of quote. Defence counsel there argued that
6 – and I quote:

7 "Regardless of the known integrity of the individual members of
8 this tribunal, they cannot, under the circumstances of their
9 appointment, be impartial. Under the circumstances, this Trial,
10 both in the present day and history, will never be free from
11 substantial doubt as to its legality, fairness and impartiality."
12 End of quote.

13 Richard Minear in his book, "Victor's Justice", concludes that
14 the appointment of justices from among only the aggrieved and
15 victor nations – quote: "raises serious questions about the
16 tribunal's impartiality". End of quote.

17 [11.19.23]

18 Now, these criticisms, Mr. President, apply equally to the ECCC
19 where cases have been and are adjudicated almost entirely by
20 nationals of the victor nations. The hybrid character of the
21 tribunal reflects the victorious parties almost perfectly. The
22 CPK cadres turned CPP leaders, whose influence over national side
23 judges is pervasive, and the nationals of the United States,
24 France, and the closest allies who do and always have populated
25 the international side. Like the Tokyo tribunal, it is

1 inconceivable that a group of judges born, raised, and schooled
2 in capitalist societies could ever, no matter what their
3 individual integrity, impartially judge the lawfulness of
4 Communist collectivist policy.

5 We remind the Chamber that it is exactly the Co Prosecutor's
6 position that the CPK's decision to adopt the collectivists'
7 economic system through the formation of cooperatives was
8 criminal as such. They say that collectivization is unlawful as
9 such, that collectivization through cooperatives was an
10 inherently criminal policy. The Co Prosecutors accused the CPK of
11 abolishing markets. Can they explain to the Chamber what a
12 collectivist economy would look like that they would not consider
13 unlawful? How the CPK could have instituted collectivist economic
14 policy without creating crimes against humanity as such?

15 [11.21.15]

16 It is apparent to anyone, or should be, that judges reared in and
17 loyal to a Communist society where the absence of market is
18 normal and usual, where economic feelings, as we understand them,
19 do not exist, where the Communist Party is the manifestation of
20 the state, would approach and answer these questions very
21 differently than the judges on the Bench sitting here today.
22 Now, Mr. President, the point here is not to impugn the integrity
23 of the Bench, it is not to attack its moral character, the point
24 is to ask how can Your Honours, each loyal to a worldview
25 fundamentally incompatible with every aspect of the CPK's

1 political project, impartially adjudicate crimes explicitly
2 rooted in the policies adopted for the purpose of implementing
3 that project.

4 We respectfully submit, Mr. President, the answer is you cannot.

5 [11.22.28]

6 The Chamber's inability to possess an alternative interpretation
7 of history is apparent in its selective approach to the selection
8 of witnesses and experts in the course of this Trial. By hearing
9 only those experts who see the Democratic Kampuchea period
10 through roughly the same lens as they do, as you do, the Chamber
11 has wrapped itself in and continued to propagate an Anglo/French
12 narrative that represents and reinforces the perspective of the
13 victor nations.

14 Nuon Chea can prove to his Chamber that he was not trying to
15 enslave or exterminate, only if he can make this Chamber
16 understand what it is he was trying to do. That seems unlikely
17 with a tribunal presided over and informed by people
18 intrinsically hostile to his entire project, people who think
19 that collectivization is a criminal offence.

20 [11.23.33]

21 Only a tribunal willing to take a different or at least broader
22 perspective could afford to outline a fair trial. Only a tribunal
23 capable of seeing that the actions of a wide range of other
24 actors must be called to account could be trusted to assess Nuon
25 Chea's conduct impartially and not merely for the purpose of

60

1 winning ideological or political battles. Any other tribunal
2 could offer only the basest form of victor's justice.
3 It's for all of these reasons, Mr. President, that our client has
4 consistently demanded that the jurisdiction of this tribunal
5 canvass a far broader scope of events. But the limits on the
6 tribunal's jurisdiction was sure to distort its work and hinder
7 its effort to ascertain the truth.

8 [11.24.41]

9 You will remember Nuon Chea's first words to the Trial chamber.
10 They were - and I quote:

11 "I am of the opinion that this Court is unfair to me since the
12 beginning, because only certain facts are to be adjudicated by
13 this Court. I must say only the body of the crocodile is to be
14 discussed, not its head or the tails, which are the important
15 part of his daily activities. All it means, the root cause and
16 its consequences, are those that happened pre '75 and post '79,
17 are ignored by this Court." End of quote.

18 Only if the head and the tail of the crocodile are given their
19 due consideration could the Chamber understand just how misguided
20 and dishonest the Co Prosecutors have been over the last three
21 days. Only if the Chamber sees the larger context of our client's
22 decision and the policies the CPK adopted can it understand that
23 Nuon Chea did not intend to create a slave state in Democratic
24 Kampuchea, that he is not the deceitful killer that the Co
25 Prosecutors, taking their cue from the prime minister, believe

1 that he is.

2 [11.26.06]

3 Mr. President, Your Honours, to show the Chamber the head and
4 tail of the crocodile, I would like now to pass the floor to my
5 colleague, Son Arun.

6 MR. SON ARUN:

7 Thank you, Mr. Victor Koppe. Good morning, Mr. President. Good
8 morning, Your Honours, and good morning to everyone.

9 I am Son Arun. I am a national counsel for the defence team of
10 Nuon Chea. I would like to continue from my esteemed colleague,
11 Mr. Victor Koppe, international counsel for Mr. Nuon Chea.

12 And now I will continue this closing statement as follows.

13 Mr. President, first in my submission, I am going to present you
14 the reason why Mr. Nuon Chea was keen to involve in Revolution. I
15 am going to discuss it in two points: One is the reason why he
16 joined the Revolution in the first place; and his contribution to
17 these revolutionary efforts.

18 [11.28.11]

19 As a young man, Mr. Nuon Chea was heartbroken by the oppression
20 of ordinary Cambodians by the French. He saw the plight of the
21 poor and he was appalled.

22 These experiences created a deep-seated desire within him to free
23 Cambodia and the Cambodian people from foreign exploitation and
24 the oppressive networks of power and control.

25 Mr. Nuon Chea believed firmly that Communism was Cambodia's

1 antidote to these errors. For Nuon Chea, the crucial issues such
2 as French colonialism, the long history of Thai and Vietnamese
3 aggression and the acute destruction wrought by American
4 imperialism are parts of the head and the tail of the crocodile.
5 They are not simply the theoretical topics meant for an academic
6 discussion. To Nuon Chea, they were realities that resulted in
7 Cambodia's entrenched poverty, poverty caused by class oppression
8 and supported by violent and opportunistic foreign intervention.
9 The suffering of Cambodians under colonial control stirred Nuon
10 Chea. The people were powerless. They were exploited by the
11 French. French authorities demanded taxes from impoverished
12 peasants on threat of violence, all the while securing their own
13 privileged access to raw materials, raw materials that rightfully
14 belonged to the Cambodian people.

15 [11.30.42]

16 While the French claimed to be administering Cambodia for the
17 benefit of ordinary Cambodians, in reality, their policies
18 ensured that the masses remained docile and French profits
19 remained high. The French gave nothing in return to the Cambodian
20 people. Education and medical services were ignored and
21 electricity and running water did not exist outside Phnom Penh.
22 Over time, Nuon Chea came to understand that these inequities
23 were not limited to the relatively brief period of French
24 control. He realized that French colonialism had merely
25 interrupted centuries of domination by Cambodia's larger

1 neighbours. For hundreds of years, Siem and various kingdoms that
2 now occupy more than day Vietnam, fought for control over and
3 occupied large sections of modern Cambodian State. With few
4 exceptions, Cambodian leaders were shameless collaborators in
5 these cycles of exploitation.

6 Prince Sihanouk's effort after 1953 to present the Sangkum Reastr
7 Niyum as an authentically Cambodian government leading a newly
8 liberated state was in substance no different. Fundamentally,
9 Sihanouk's regime was as unconcerned with the lives and the
10 livelihood of the overwhelming majority of Cambodians as the
11 French had been before him.

12 [11.33.02]

13 Nuon Chea knew some things had to change. He first tried to
14 effect change within the system politically, yet he quickly
15 learned that those who tried to resist the government were
16 arrested, imprisoned and subjected to violence and brutality. He
17 learned that under Prince Sihanouk's authority Lon Nol oppressed
18 Cambodian people and the peasant at his will.

19 Finally, after many years of repression of the Socialist peaceful
20 activities, the CPK adopted an arms struggle. In 1962, cadres
21 armed themselves with sticks and knives in self-defence against
22 the violence perpetrated by Lon Nol forces. Following the
23 spontaneous 1967 peasant revolt in Samlaut, Lon Nol dispatched
24 thousands of soldiers to suppress the peasants. The victims of
25 this violence and the children of those who were killed took it

1 upon themselves to fight back.

2 On the morning of the 17th of January 1968, this small group
3 raided the police station in Bay Damram and stole seven weapons.
4 As a result of that event, the armed struggle spread from one
5 location to the next and the Socialist Revolution of the
6 Communist Party of Kampuchea began.

7 [11.35.16]

8 It was largely these domestic issues that motivated Cambodian
9 Socialism, but it was the Vietnamese fight for independence and
10 the American's disastrous involvement in it that pushed the Young
11 Cambodian Liberation Movement to the forefront of the global
12 struggle of oppressed peoples against foreign domination.

13 Over nearly two decades the United States Government had employed
14 overwhelming military, economic, and political violence against
15 Communists in neighbouring Vietnam, then the CPK's closest
16 comrades in arms. The conflict extended into Cambodian territory
17 as early as 1965. It escalated in 1969, before reaching a level
18 of unprecedented destruction over eight unrelenting months in
19 1973.

20 All together the Americans dropped 2,756,941 tonnes of bombs on
21 Cambodia. That is more than the total used by all the allied
22 forces combined during the entirety of World War II, including
23 the nuclear bombs that struck Hiroshima and Nagasaki. The CPK
24 alone lost an estimated 16,000 men and women.

25 [11.37.27]

1 Mr. Nuon Chea learned from decades of experience that anyone
2 seeking to elevate the status of the rural poor would be subject
3 to swift and violent retaliation. He understood that foreign
4 states would never have the interest of ordinary Cambodians at
5 heart. Nuon Chea and his comrades decided that the only path to
6 justice and prosperity lay in an independent and authentically
7 Cambodian state. Nuon Chea genuinely believed that Communism was
8 a path to this freedom. He believed that through Communism a
9 modern and independent Kampuchean state capable of providing for
10 its citizens could be reached.

11 This idea was neither far-fetched nor unreasonable. By the time
12 Nuon Chea joined the Thai Communist Party in 1951, at least 12
13 states representing nearly a third of the world's population had
14 adopted some form of socialist government. In Asia, the
15 continent's two superpowers, Russia and China, had already
16 adopted socialist forms of government. Both of Cambodia's
17 immediate and much more powerful neighbours had active Communist
18 movements, the North Vietnamese Communist Revolution, and its war
19 of liberation, were one and the same.

20 [11.39.31]

21 By bringing Communism to the people of Cambodia, the CPK hoped to
22 abolish unjust political and economic systems. They never wanted
23 to mistreat ordinary civilians. They sought to establish an
24 equitable society not sacrifice the rich to the poor. They wanted
25 to make Cambodia strong and independent, not isolationists and

1 reclusive. The CPK hoped to liberate the Cambodian people from
2 the forces of colonialism, imperialism and feudalism. Both the
3 theory and practice of the Cambodian Socialist Revolution
4 reflected that strategy.

5 Determining the intent behind CPK policy requires an
6 understanding of the revolutionary language employed by the CPK
7 as a matter of ordinary discourse. François Ponchaud is correct
8 that the CPK adopted new linguistic forms not typically - not
9 typical to pre revolutionary Khmer. That language was
10 distinctive, precisely in its use for warlike metaphors to
11 describe the most ordinary task. Cadres were urged to launch
12 mighty offensives, attack, and liven the combat line against the
13 rice harvest and the planting season.

14 [11.41.38]

15 The Standing Committee employed similar language even in their
16 own internal discussion. The same language was used to describe
17 the CPK's efforts to promote adherence to its political goals.
18 Viewed in light of the CPK's metaphorical use of violence
19 language, the CPK document instructing cadres to attack or smash
20 capitalists, feudalists, imperialists - and imperialists can only
21 be given the same interpretation. These documents frequently
22 describe the importance of smashing the structure of capitalism
23 and feudalism.

24 The indication - one indication of the CPK focus on systems
25 rather than people can be seen in the Co Prosecutor's effort to

1 mischaracterize documents which, on their face, say nothing at
2 all about enemies. In one instance, the Co Prosecutors read an
3 excerpt concerning the effort to smash "class regime and
4 ideology" and then summarize the document as an instruction to
5 smash these people and their class and their regime and their
6 ideology. If real evidence of the Party Centre's intention to
7 smash people existed, the Co Prosecutor would have proffered
8 those documents rather than inserting words that did not exist
9 into the documents they did present.

10 [11.43.59]

11 The CPK never sought to build Socialism through the use of
12 violence. The October 1975 issue of "Revolutionary Youth" shows
13 this. The Communist Party of Kampuchea instruct cadres to
14 continue class combat against the feudalists and capitalists in
15 the ranks of the workers in the cooperatives and specifically
16 states that - and I quote: "...the class struggle in this new
17 revolutionary period does not take the form of armed violence,
18 revolutionary war, or bloodletting combat."

19 For Nuon Chea and the CPK, defending the Socialist Revolution
20 post liberation had two principal components: they were education
21 and dismantling the networks of power of the oppressive classes.
22 Violence was never one of them.

23 [11.45.10]

24 The December 1972 issue of "Revolutionary Flag" explains that
25 bourgeoisie attitudes in the Party should be eliminated through a

1 process of "workerisation" of the Party in terms of their
2 psychological stance. The September 1974 issue of "Revolutionary
3 Youth" instructs cadres to educate youths to see the oppression
4 of the landowners' class and seek to liberate itself from
5 imperialist ideology. The August 1975 issue of "Revolutionary
6 Youth" explains that vigilance against the enemy requires a
7 strong military presence at the border together with political
8 education and a proletariat stance.

9 Philip Short is correct in his conclusion that Cambodian
10 Socialism was distinctive in its belief that class consciousness
11 was not immutable and could be constructed through education and
12 a proletarian lifestyle. The elimination of networks of power,
13 the essence of a fight against systems and not people, is equally
14 clear. The document – the October 1976 issue of "Revolutionary
15 Flag" explains – I quote:

16 "Closing remarks in 1972 was no minor matter. It was a very
17 mighty revolutionary movement that struck right at the economic
18 foundations of the capitalist and the feudalism. We did not use
19 military force to kill them. We got control of the important
20 products like rice, oil, salt, clothes, and medicine. When we
21 were able to control the strategic products we gained control
22 over the entire economy."

23 Thus, where Socialism functions properly as an economic and
24 political system, opposing ideologies are not needed or desired.

25 [11.48.05]

1 Within the context of these overt socialist struggle, Nuon Chea
2 finds himself perplexed by the Co Prosecutor's persistent effort
3 to prove that an entity which called itself the Communist Party
4 of Kampuchea was engaged in class struggle. Nuon Chea wonders in
5 what other kinds of struggle workers of the world would be
6 expected to unite. These efforts confirm Nuon Chea's deeply held
7 suspicion that he is being tried not for crimes but for
8 Communism, for beliefs and not for conduct.

9 The only question of potential relevance for this Chamber is not
10 whether CPK philosophy was based in part on class theory, the
11 only question of relevance is whether it intended to mistreat a
12 legally-recognizable group. The answer is no. As Nuon Chea has
13 explained before this Chamber, the CPK never believed that
14 peasant workers were in contradiction with any other class as
15 such. Even groups at the very top of the feudal class, such as
16 the Royal Family, included nationalists who supported the people
17 and the Revolution.

18 [11.50.00]

19 Certainly, it was not the case that those in the feudalist
20 regime, including petty officials, commune chiefs, and clerks
21 were in contradiction with the peasants. With the exception of
22 imperialists, no group was an enemy of the Party. That conclusion
23 followed from both the CPK's class analysis and the imperatives
24 of the Revolution which needed to reduce enemies, increase
25 friends.

1 Summarizing the CPK's position, Nuon Chea explained – and I
2 quote:

3 "Apart from those people who were committed to ruining the
4 country who were the foreign henchmen or imperialist henchmen,
5 they were all good people." Likewise, petty bourgeoisie,
6 intellectuals, and students were not enemies of the CPK and they
7 were viewed by the CPK as "allies of the peasant workers that
8 love revolution".

9 The CPK believed that national level capitalists were "the
10 strategic supporting force of the Democratic National
11 Revolution". These classes were viewed as united because, as
12 Cambodians, they all lived under threat of the colonialists and
13 imperialists: "Any class whatsoever in the framework of an
14 enslaved country or semi-enslaved country has their national
15 souls damaged, whether a little or a lot."

16 [11.52.13]

17 Ouk Bunchhoeun told Steve Heder that Pol Pot's policy emphasized
18 the manner in which "middle class farmers, upper class farmers,
19 petty bourgeoisie, monks, intellectuals..." were all oppressed by
20 the old society. Neither was there any animosity towards city
21 dwellers in general or those living in Phnom Penh in April 1975.
22 Khieu Samphan's broadcasts in the months prior to liberation
23 urged our brother countrymen in Phnom Penh to rise up against
24 their oppressor. An October 1975 issue of the "Revolutionary
25 Youth" describes the efforts of the cooperatives to feed and

1 support more than two million people who have just been liberated
2 from the rule of the contemptible traitors.

3 If the people in Phnom Penh had themselves been enemies there
4 would have been no sense describing the liberation. Numerous
5 witnesses testified that no distinction was made between Base
6 People and New People. Non Suon, a senior CPK official, told
7 Steve Heder that he was instructed in his sector "...to prepare
8 food, water, lodging for the evacuees, to slaughter animals, to
9 feed them and give them co op rice."

10 [11.54.25]

11 Nuon Chea similarly told Thet Sambath that "we always advise our
12 cadres to take care of the New People and to make them equal.
13 Even though they are 17 April People they still had the right to
14 work in the cooperative."

15 As a socialist movement, the CPK did, of course, attempt to
16 eliminate the position of privilege that had been previously
17 enjoyed by the feudalist and capitalist classes, but that policy
18 was not discrimination, it only required that all Cambodians be
19 afforded the same privileges and obligations irrespective of
20 class. Hence the unjust influence of the feudalist landowners was
21 diminished by -"...reducing their rice paddy to as little as the
22 other peasant have", and they were to be treated the same way as
23 everyone else.

24 The CPK's analysis of Cambodia's history of colonialism,
25 feudalism, and imperialism identifies a clear link between

1 foreign political control of the state and the economic plight of
2 the poor. Khieu Samphan's doctoral dissertation advocated for
3 self-sufficiency as a central pillar of his plan to improve the
4 lives of the peasantry.

5 [11.56.35]

6 Mr. Nuon Chea recalls that as a student in Bangkok in the late
7 1940s, he observed that Thailand was not truly independent
8 because the economy was dominated by foreign interests and the
9 poor were oppressed by the wealthy. Mr. Nuon Chea articulated
10 this idea during his testimony before the Chamber in the language
11 which the CPK would years later adopt to express it. I quote:

12 "The true nature of this Cambodian society is half colonial, half
13 feudalism; therefore, the task of the revolution of the
14 Democratic Kampuchea at that time is to eliminate the remnants of
15 the half colonialism, half feudalism, and to oppose and resist
16 the half capitalism. It means to liberate the nation and the
17 people. To liberate the nation means to eliminate remnants of the
18 colonialism at that time and to gradually eliminate the
19 feudalists."

20 The end of military hostilities in 1975, even if the CPK could
21 have been expected to believe that hostilities had indeed
22 terminated, did not mean that a further threat of foreign
23 intervention no longer existed. The CPK was acutely aware of the
24 ability of powerful states to use non military means, including
25 diplomacy and foreign aid, to exercise their will over weaker

1 states. Although the CPK was wary of foreign involvement, this
2 distrust never resulted in the near total isolation of Cambodia
3 from the rest of the world nor was it rooted in an abstract
4 ideological fixation on self-reliance.

5 [11.59.31]

6 Foreign aid was freely accepted when it was not intended as a
7 tool for the manipulation of domestic Cambodian policy. Nuon Chea
8 explains that aid from China was without any string attached,
9 meaning that it was offered without condition. Aid from other
10 friendly states was also often accepted. Only when it was
11 conditional was aid rejected.

12 The CPK never refused all foreign aid and assistance, as the Co
13 Investigating Judges and the Co Prosecutors alleged that various
14 documents show. Included within these documents are three
15 secondary sources, newspaper articles that make weight
16 unsubstantiated declaration that the CPK shunned foreign aid and
17 failed to support these claims with any specificity. Another
18 document characterizes the CPK's refusal of an offer by French
19 Embassy to loan one teacher and a few medics to the new
20 government as a denial of "foreign aid". Other documents indicate
21 that the issue of whether foreign aid was actually accepted was
22 unknown, while two others remained silent on the matter
23 completely. Others highlight the CPK's goal of self-sufficiency
24 but none come close to establishing a blanket refusal to accept
25 outside aid.

1 [12.01.51]

2 Mr. President, I look at the clock and it's now well over 12.00.

3 I don't know whether or not I should pause here. I have a few
4 more pages to go, Mr. President.

5 MR. PRESIDENT:

6 Thank you, Counsel.

7 The time is now appropriate for lunch adjournment. The Chamber
8 shall adjourn now and resume at 1.30 this afternoon. This is the
9 notice for parties and support staff to the Chamber for your
10 preparation.

11 Security guards are instructed to bring Mr. Khieu Samphan to the
12 holding cell downstairs and have him returned to his courtroom
13 this afternoon before 1.30.

14 The Court is now adjourned.

15 (Court recesses from 1202H to 1330H)

16 MR. PRESIDENT:

17 Please be seated.

18 We are now back in session and once again, we would like to hand
19 the floor to Nuon Chea's defence to continue their presentation
20 on the closing statement. You may proceed.

21 MR. SON ARUN:

22 My respects to the venerable monks who are participating in
23 today's proceeding and, once again, good afternoon, Mr.

24 President, Your Honours, and good afternoon everyone. I would
25 like now resume my presentation.

1 [13.31.49]

2 I would like now to turn to certain gross misrepresentations of
3 the Co-Prosecutors. Throughout this Trial they have suggested
4 that Nuon Chea was a monster and that his intent was to create a
5 slave state in Cambodia. Nothing could be further from the truth.
6 Nuon Chea loves his country and his people and he dedicated
7 himself to its development. To Nuon Chea, such accusations are
8 appalling and unbelievable and they reflect a complete
9 misunderstanding of who he is. As Nuon Chea has said in his own
10 words – quote: "I have devoted myself to serving the country. I
11 have put my family behind for the love of my country." End of
12 quote.

13 One needs only look at his life to understand its truth. Nuon
14 Chea never wavered from his objectives. He never became rich. He
15 never acted opportunistically to seek position or privilege for
16 himself or his family. He lived meekly in the Cambodian jungle
17 for nearly 30 years in the service of the principles in which he
18 believed. He worked clandestinely and in constant danger in Phnom
19 Penh for 20 years more. The misunderstanding of Nuon Chea's
20 intent and role within the CPK can be seen in other ways. For
21 example, Nuon Chea was never known during Democratic Kampuchea or
22 prior to 1975 as Brother Number Two.

23 [13.34.09]

24 To Nuon Chea, the origin of this is a mystery. Nuon Chea notes
25 that several witnesses to appear before this tribunal claim to

1 recall the use of this title to describe him like the experts who
2 do not even know Nuon Chea's name; these witnesses are also
3 mistaken.

4 Their testimony demonstrates the fallibility of human memory and
5 in particular, the tendency to create false memories consistent
6 with widely held misconceptions. Nuon Chea has also observed that
7 he's regularly described in the popular media as the chief
8 ideologue of the CPK. For a man who did not write a single word
9 of CPK philosophy, that title makes no sense. Nuon Chea's
10 principal role in the CPK was in political education. He
11 disseminated political and strategic lines to cadres throughout
12 the party. He also participated over time in the development of
13 CPK policy as a senior leader of the Party. But Nuon Chea was not
14 an intellectual and as he told this Chamber, he was instructed by
15 Pol Pot not to concern himself with the intellectuals in the
16 Party. It was never his role to set the direction of party
17 policy. Conventional wisdom also misstates the principle
18 influences on Nuon Chea's early revolutionary life.

19 [13.36.39]

20 Although Nuon Chea was influenced by some of Mao Tsetung's
21 writings, his philosophy was not ultra-Maoist; instead, disrupted
22 the "Gang of Four" -- that is, China's indigenous ultra-Maoist
23 whom he suspected of being interested only in power. Nuon Chea's
24 formative Communist turning was in North Vietnam and accordingly,
25 he identifies as a conventional Marxist-Leninist.

1 He points to Truong Chinh, the first general secretary of the
2 Central Committee of the Communist Party of Vietnam and second to
3 Ho Chi Minh in the Vietnamese Communist hierarchy from 1941 until
4 1957 as his primary influence. Related is the misconception that
5 Pol Pot and Nuon Chea were adherence to a sui generis philosophy
6 that marked a fundamental divide between them and the Vietnamese
7 influence Communist in the East Zone.

8 [13.38.25]

9 As Nuon Chea told Thet Sambath, his closest friend and confidant
10 within the CPK was So Phim, the origin of that friendship was in
11 their shared training in Vietnam in 1954. Thet Sambath summarizes
12 the nature and history of their relationship accurately as
13 follows -- and I quote:

14 "Nuon Chea had built up the Eastern Zone with So Phim who was
15 placed in charge of the Zone after the Khmer Rouge victory in
16 1975. The two had known each other even longer than Nuon Chea had
17 known Pol Pot. Because of their long history together, the two
18 were very close. When So Phim came to Phnom Penh, he stayed at
19 Nuon Chea's home during the Khmer Rouge years in power. So Phim
20 was like a brother to Nuon Chea. We took care of each other, Nuon
21 Chea said. I loved him and he loved me. I was the closest to him
22 because we used to struggle together and we took care of each
23 other. He used to protect me." End of quote.

24 [13.40.06]

25 Nuon Chea had great faith in So Phim's abilities as a leader

1 within the Cambodian Communist movement. Nuon Chea is accordingly
2 not surprised by the findings of some academics, notably
3 Professor Kiernan that East Zone policy was more flexible as the
4 conduct of East Zone cadres more disciplined than elsewhere in
5 the country. So Phim was a trained Communist who understood and
6 sought to further core CPK objectives; improving rice fields as
7 the living standards of average Cambodians.

8 [13.41.04]

9 As Steve Heder rightly testified, the policies of the East Zone
10 were more in line with the intent of the Party Centre than the
11 hard line attitudes found in other parts of the country,
12 especially the Northwest Zone. It must also be noted that the
13 belief that Nuon Chea was aligned with some Zone leaders against
14 the others, is simply incorrect. To the contrary, Nuon Chea
15 gained a reputation within the Standing Committee as a negotiator
16 and a peacemaker; someone who could bring warring factions
17 together.

18 So Phim's ultimate rift with Pol Pot was accordingly not rooted
19 in any deep seated ideological differences. It was instead the
20 by-product of the CPK's complicated and shifting relationship
21 with Vietnam. When So Phim was accused in 1978 of betraying the
22 CPK, by selling rice to the Vietnamese, Nuon Chea was deeply
23 conflicted. Along with Pol Pot, he tried to persuade So Phim not
24 to support the Vietnamese against the CPK.

25 [13.42.33]

1 Nuon Chea disagreed with Pol Pot's decision to send troops to the
2 East Zone but, he had no authority to stop it.
3 Regarding Nuon Chea's relationship with Vietnam, observers such
4 as Philip Short, are simply misinformed when they conclude that a
5 fundamental ideological or historical divide separated the
6 leaders of the CPK from their counterparts in Vietnam. Although
7 some of the CPK's policies varied from those implemented by the
8 Vietnamese, that difference was the product of context as a
9 smaller, more vulnerable country, Cambodia was forced to rule
10 quickly in order to protect its sovereignty and territorial
11 integrity.
12 Nuon Chea both valued and appreciated his experience learning
13 from the Vietnamese Communists. He was never resentful toward the
14 Vietnamese for giving him menial tasks during his time studying
15 in Vietnam as some authors suggest about Pol Pot. Instead, he
16 welcomed Vietnamese participation and saw the Vietnamese as his
17 allies and comrades in arms. The Vietnamese were fighting the
18 same battle against the same enemies and doing so successfully.
19 Nuon Chea admired their courage and their abilities.
20 [13.44.38]
21 Nuon Chea also had good reason not to be wary of Vietnam's
22 intentions and their claim of right on Cambodian territory. The
23 Vietnamese Communists spoke openly of an Indo-Chinese Federation
24 and of Vietnam's special relationship with Cambodia.
25 Prince Sihanouk was equally alarmed by Vietnamese designs on

1 Cambodian territory, arguing that once the war ended, a reunified
2 Vietnam would once again turn its energies to subjugating its
3 smaller neighbours. Even after 17 April 1975, the Vietnamese
4 continued to assert that they had a claim on the Cambodian
5 Communist movement and over Cambodian territory.
6 Vietnam's interference in the progress of Cambodian socialism
7 went beyond weak statements of principle. Prior to 1970, the
8 North Vietnamese openly resisted the efforts of the Cambodian
9 Communist to secure the same liberation from the Americans as
10 they were seeking in a unified Vietnamese state.

11 [13.46.09]

12 When leaders of the CPK told the North Vietnamese that the CPK
13 intended to follow its own path, Vietnamese leaders were taken
14 aback by the show of independence and became incensed. Following
15 the 1970 coup, they operated entire units on Cambodian soil,
16 subjected military and civilian personnel to the authority and
17 sent weapons and equipment captured from Khmer Republic forces
18 back to Vietnam.

19 After the Paris Peace Accords in 1973, which mandated the
20 departure of Vietnamese troops from Cambodian territory, they
21 remained in Cambodia without CPK permission. However, Nuon Chea's
22 reaction to these tensions was neither extreme nor spiteful.
23 During the entire period of the Civil War, Nuon Chea acted as the
24 CPK's emissary to Hanoi, finding political negotiated settlements
25 that disputes over territory and military command.

1 In that sense, he filled the same role in relation to the CPK's
2 relationship with Vietnam as he did within the CPK, resolving
3 tensions between friendly but competing affections. Yet, between
4 1975 and 1979, the Vietnamese threat became considerably worse.
5 As this Chamber has already heard, Vietnam and Cambodia were at
6 war from the moment the CPK liberated Phnom Penh. East Zone
7 cadres became formulating plans to revolt weeks after 17 April
8 1975.

9 [13.48.23]

10 Lauk Suy (phonetic), a messenger in the East Zone army testified
11 that Chan Chakrey, the commander of the East Zone Fourth
12 Division, was plotting to seize power back from Pol Pot on 17
13 April 1976 at a conference in Phnom Penh in May 1975. Nuon Chea
14 has reason to believe that Ros Nhim and So Phim, Chakrey's direct
15 superior, discussed an alliance against the Party Centre at the
16 same meeting.

17 Chakrey's deputy was Hang Samrin, who admits to plotting against
18 Pol Pot in 1978. Samrin of course followed through.

19 [13.49.33]

20 The CPK's fears about Vietnamese intentions were neither
21 unfounded nor exaggerated. Definitive proof of this is found in
22 the simple facts that they all came to pass. Nuon Chea takes
23 bitter satisfaction from the minutes of the 26 March 1976 meeting
24 of the Standing Committee which record his warning to be vigilant
25 for another thing with people who flee to Vietnam and who do not

1 return and make propaganda leading others to revolt. Despite
2 Vietnam's efforts to justify its invasion and 10-year occupation
3 of Cambodia by accusing the CPK's of atrocities, there is little
4 doubt that its real motivation was a question of domination,
5 control and territory of ridding Vietnam of the problem of
6 Cambodia once and for ever. The Communist in Hanoi had turned a
7 near disaster into a historic opportunity to realize what their
8 predecessors had attempted centuries earlier -- that is, control
9 over the Mekong River.

10 Nuon Chea believes that there is a strong likelihood that the
11 evidence understates the extent to which what the Vietnamese
12 sought to interfere in the internal affairs of Democratic
13 Kampuchea. The Vietnamese had 10 years of unfettered access to
14 the Cambodian government archives before any serious effort to
15 collect and organize those archives began.

16 [13.51.36]

17 David Chandler noted in testimony before the Chamber that certain
18 key documents have never been found including the confession of
19 Northeast Zone Secretary Ney Sarann alias Ya. Professor Chandler
20 hypothesis - hypothesizes that PRK authorities may have sought to
21 filter out those documents that tended to show that Vietnam was
22 subverting the DK regime.

23 Ong Thong Hoeung, who worked for the PRK at the nation Tuol Sleng
24 Genocide Museum in the summer of 1979, confirmed that some
25 documents were indeed missing. The Vietnamese government

1 conspicuously failed to respond to a request by the
2 Co-Investigating Judges, prompted by a request from the Nuon
3 Chea's defence to turn over relevant documents in its possession
4 to this tribunal.

5 [13.52.54]

6 I would like now move on to the role of Nuon Chea. Mr. President,
7 I will now turn to a discussion of Nuon Chea's role in the CPK.
8 As Your Honours have likely already observed, the Co-Prosecutors
9 have dedicated a significant amount of time and energy to the
10 discussion of Nuon Chea's alleged role in the CPK. Much of this
11 discussion concerns the seniority of Nuon Chea's position; they
12 emphasized that Nuon Chea was deputy secretary of the Party and
13 that he participated in formulating the political and strategic
14 lines of the CPK. Yet, Nuon Chea has already, himself, confirmed
15 many times in the past that these allegations are accurate. So
16 why have the Co-Prosecutors spent so much time trying to prove an
17 allegation that Nuon Chea has already told the Chamber is true?
18 Perhaps it is because in regards to Nuon Chea's role, the
19 Co-Prosecutors know there is nothing else they can actually
20 prove.

21 [13.54.51]

22 The other allegations about Nuon Chea's role are in error. The
23 Co-Prosecutors hope to convince you that just because Nuon Chea
24 held a position of significant authority within the CPK, that he
25 personally performed functions in every aspect of the Democratic

1 Kampuchea government. They seem to think that Nuon Chea's
2 position alone is enough evidence beyond a reasonable doubt that
3 Nuon Chea somehow exercised control over cadres at every level in
4 the CPK hierarchy. The Co-Prosecutors are again confusing formal
5 structure with practical realities.

6 The truth is that many of the areas the Co-Prosecutors claim Nuon
7 Chea had responsibility for, were in fact outside the scope of
8 his duties as deputy secretary. Similarly, Nuon Chea had only a
9 limited ability to exercise control over cadres at lower levels
10 of the CPK hierarchy. In order to show this more clearly, I will
11 now review several erroneous claims advanced by the
12 Co-Prosecutors in relation to Nuon Chea's role in the CPK on the
13 appointments. For example, the Co-Prosecutors claim that Nuon
14 Chea was -- and I quote: "The primary person in charge of the
15 assignment, promotion, discipline, re-education, punishment and
16 removal of party's cadre." End of quote.

17 [13.57.29]

18 That claim is at paragraph 437 of the Co-Prosecutor's Brief. But
19 the evidence relied on by the Co-Prosecutors fails to support
20 this claim in the slightest. Instead, most of the evidence cited
21 by the Co-Prosecutors is trial testimony given by witnesses who
22 could provide no actual specific evidence of Nuon Chea's role.
23 Instead, these witnesses admitted repeatedly to the Chamber that
24 they knew nothing during Democratic Kampuchea about the role of
25 the senior leaders. Those witnesses include Duch, Norng Sophang

1 and Saloth Ban. The limits of Duch's knowledge are described in
2 detail in our Brief at paragraph 120. In that paragraph, we
3 listed Duch's numerous admissions that he knew nothing of the
4 Standing Committee or the substance of Nuon Chea's role during
5 Democratic Kampuchea; and his concessions that in the years
6 since, he has closely followed these proceedings and studied a
7 broad area of secondary source material about Democratic
8 Kampuchea. It is clear that his testimony reflects no actual
9 knowledge and is, therefore, plainly irrelevant.

10 [13.59.45]

11 Norng Sophal gave similar testimony. He indicated that he knew
12 nothing about the role of the Standing Committee or of its
13 respective members. The relevant references in that regard are in
14 our brief at footnote 49.

15 The witness, Saloth Ban, testified similarly.

16 The Co-Prosecutor then cited to an interview given by Ieng Sary;
17 tellingly in that interview Ieng Sary makes a very narrow claim
18 about Nuon Chea's role in appointments. Ieng Sary states that
19 Nuon Chea and Pol Pot decided on the appointment of diplomats and
20 other senior cadres in the Ministry of Foreign Affairs. Nuon Chea
21 denies that and notes that in the interview cited by the
22 Co-Prosecutors', Ieng Sary claims that Nuon Chea was responsible
23 for these appointments as part of his effort to diminish his own
24 responsibility.

25 He made that claim in response to a question from Stephen Heder

1 about his own role in making those appointments. Nevertheless,
2 even if Ieng Sary's claim were reliable, which it is not, it
3 concerns only appointments within the ministries. It says nothing
4 about appointments in the national administrative structure which
5 were under the control of and required the cooperation of zone
6 secretaries.

7 [14.02.04]

8 Finally, the Co-Prosecutors point to two interviews with Nuon
9 Chea himself and in addition, the Prosecutor failed to mention
10 that Nuon Chea had the authority to remove anyone in the
11 structure of the Democratic Kampuchea; and if there was such a
12 case, there would have remained some evidentiary documents left
13 until today.

14 Finally, the Co-Prosecutors point to two interviews with Nuon
15 Chea; one of those interviews I would like to refer to document
16 number E3/26. Mr. Nuon Chea says nothing about his own role in
17 the appointments. Instead, he merely indicates that criminal
18 activity was punished.

19 In the second interview, document number E3/108, Nuon Chea's
20 statement is consistent with all his other testimony. It
21 indicates that he took action against cadres who deviated from
22 the Party line to the extent of his ability to do so. Yet, as the
23 statement goes on to say, his ability to do so was practically
24 limited. He explicitly says that he was, "unable to control lower
25 level cadres".

1 [14.04.08]

2 That was especially true within the national administrative
3 structure. As he has consistently stated to interviewees and
4 before this Chamber, the Party Centre failed to adequately
5 control the conduct of those lower level cadres. That failing is
6 one reason, among others, why Nuon Chea believes that he bears
7 moral responsibility for events in Democratic Kampuchea.

8 Next, the Co-Prosecutors claim that Nuon Chea had "oversight
9 responsibility" for the Ministries of Propaganda, Education and
10 Social Affairs, which regard to Propaganda and Education, that
11 claim is partially true. But with regard to Social Affairs, it is
12 not true at all. As the Chamber is aware, Nuon Chea has
13 consistently indicated that his primary responsibilities in the
14 CPK concerned Propaganda and Education. And Nuon Chea agrees that
15 he made decisions about the content of the political education
16 materials for used by the CPK within the Ministry of Propaganda
17 and Education.

18 [14.05.53]

19 He similarly does not disagree that it was sometimes present at
20 the Ministry and interacted with cadres who were there. Nuon Chea
21 clarifies only that he was at no time the minister of propaganda;
22 that role was occupied by Yun Yat throughout Democratic
23 Kampuchea.

24 With regard to the social affairs, the Co-Prosecutor relies
25 solely on the testimony of three wholly unreliable witnesses in

1 their attempt to support their claim that Nuon Chea oversaw that
2 ministry, and surprisingly, none of this testimony comes close to
3 establishing beyond a reasonable doubt that Nuon Chea had any
4 role in any capacity in this regard.

5 The first witness relied upon by the Co-Prosecutor is Duch, who
6 has no relevant knowledge of the reason I have already just
7 discussed.

8 The second is Ieng Thirith, who testified before the pre-trial
9 Chamber in February 2009 that Nuon Chea ordered the arrest of
10 students working at the Ministry of Social Affairs. That
11 testimony was given long after Ieng Thirith's mental faculties
12 were compromised and not long before this Chamber determined that
13 she was unfit to stand trial. To give the Chamber some extent of
14 her testimony, shortly after weakly blaming Nuon Chea for
15 ordering the execution of her students, she added -- and I quote:
16 "Don't implicate me with Nuon Chea because they did a lot to my
17 student and it is very unjust, so don't accuse me of murder;
18 otherwise you will be cursed to the seven hells -- or seven level
19 hells." End of quote.

20 [14.08.09]

21 Other testimony she give that day is quite similar to as -- and
22 reflects the nature and reliability of her memory at the time;
23 and the third witness, Kham Phan testified that he took Ieng
24 Thirith to meetings at K-3, two or three times each month.
25 Although he claims that Ieng Thirith met Nuon Chea in those

1 meetings, he testified that he waited outside the car and never
2 entered the building. He specifically stated that Ieng Thirith
3 did not tell him who she met at K-3, so his testimony – that she
4 met Nuon Chea is therefore based entirely on speculation. It
5 should be disregarded by this Chamber for that reason.

6 [14.09.02]

7 It is absolutely crucial to note that aside from these three
8 unreliable witnesses, the Co-Prosecutors cannot point to any
9 other shred of evidence of Nuon Chea's involvement. They cite no
10 telegram showing Nuon Chea had any role in social affairs; they
11 rely on no Standing Committee meetings showing Nuon Chea's
12 commentary on issues concerning social affairs. They do not even
13 attempt to explain to this Chamber what it is that they think
14 Nuon Chea did in relation to the Ministry of Social Affairs.
15 In the People's Representative Assembly, the Co-Prosecutor make a
16 variety of submission about Nuon Chea's role as chairman of the
17 People's Representative Assembly and I will make just one comment
18 about these submissions. That comment concerns the 8th of March
19 1976 minutes of the meetings of the Standing Committee. The
20 Co-Prosecutor has relied on the English language version of this
21 document extensively. They relied it in document presentation
22 hearings and again in this closing statement. Based on the
23 English version of the minutes of that meeting, the
24 Co-Prosecutors claim that the Standing Committee described the
25 People's Representative Assembly as "worthless."

1 [14.10.53]

2 The English translation is, however, not correct. Actually, the
3 correct translation in Khmer based on that minutes of the meeting
4 means differently and I would like to now quote that excerpts,
5 education and propaganda -- quote:

6 "If anyone asks, we must explain not to be wild and disorderly.
7 Do not let it be seen that we wanted to suppress; at the same
8 time, do not speak playfully about the Assembly in front of the
9 people to let them see that we are deceptive and our Assembly is
10 worthless." So please I refer to this portion in document E3/232,
11 ERN in English is 00182630. In this respect, that meeting did not
12 say that the People's Representative Assembly was worthless.

13 [14.12.37]

14 The Co-Prosecutor then claimed that Nuon Chea was once the acting
15 prime minister of Democratic Kampuchea for one year in 1976 to
16 1977. The Chamber is familiar with Nuon Chea's position about
17 this. He has consistently denied it and he is not familiar with
18 any of the documents that purport to describe him as the acting
19 prime minister. He does not know whether they are authentic or
20 why they describe him as the acting prime minister, but most
21 importantly, this issue is of no significance to this case and
22 the Co-Prosecutors state at paragraph 449 of their brief that
23 Nuon Chea's supposed role as acting prime minister, "confirms his
24 role and authenticity as the second highest ranking member of the
25 CPK."

1 Nuon Chea has never disputed this. It follows that if Nuon Chea
2 truly was the acting prime minister, he would have readily
3 acknowledged that role as he did in regards to his position as
4 deputy secretary, with nothing to lose from such an admission the
5 fact that Nuon Chea has consistently denied that he was acting
6 prime minister confirms that he never was.

7 [14.14.26]

8 Now Your Honours, the Co-Prosecutor have then claimed that the
9 two documents -- they refer to the documents from the
10 broadcasting service, the Phnom Penh Home Service on the 17 of
11 January 1977 when Nuon Chea delivers a speech on the Army
12 Anniversary, that was on the 17 of January 1977 and he was
13 alleged to be the acting prime minister over there. However,
14 there's two documents; if we compare these two broadcasts, they
15 were contradictory and I would like to now refer to the excerpt
16 from this broadcast -- Phnom Penh Broadcasting Service. I quote,
17 the first document, document E3/193, here and in Khmer, 00669990;
18 on page 1, paragraph 2, it reads:

19 "On this occasion and under the present circumstances, I wish to
20 make two important points: The first is that the founding
21 anniversary of our nine-year old army reminds us of the very high
22 sense of heroism of our revolutionary army." End of quote.

23 [14.16.23]

24 The second document, document E3/147 here; and in Khmer,
25 00779793; on the second page, paragraph 2, it reads:

1 "The first point is that the anniversary of our revolutionary
2 army reminds us of its great sense of heroism", based on these
3 two excerpts from the Phnom Penh Home Service. These were
4 broadcast from the same radio station, but it contained a
5 different message; it simply means that Nuon Chea was not
6 delivering the message or the speech at that time. If he had
7 participated in that anniversary, the quote "office speech" would
8 not have been this different. This difference has given rise to
9 the suspicion that this assertion is not based on any substantial
10 evidence.

11 Now Your Honours, I would like to turn to the military and
12 security issue. The Co-Prosecutor claimed that Nuon Chea was
13 responsible for military and security affairs. In fact, the
14 Co-Prosecutor have gone so far to argue in their brief that Nuon
15 Chea's responsibility for military and security affairs is so
16 clearly established by the evidence that his denial is
17 "contrived". This is nothing but pure posturing, a blatant effort
18 to misrepresent the evidence. In reality, there is almost no
19 evidence that Nuon Chea had a role in military affairs. While the
20 evidence that he had a role in security affairs is both
21 conflicted and inconsistent.

22 [14.18.49]

23 Regarding Nuon Chea's alleged role in military affairs, the
24 Co-Prosecutor claimed that the expert evidence before the Chamber
25 establishes that Nuon Chea had a role in military and security

1 affairs and that he was a member of the Party Military Committee.

2 This claim is simply not true.

3 Philip Short could not have been more blunt. I stated – no, he

4 state -- rather, he stated, "No, I don't think Nuon Chea had a

5 military role." That is on page 81 of the May 6, 2013

6 transcript. Then he stated -- and I quote: "Nuon Chea was not

7 part of the Military Committee." End of quote. That is available

8 on page 83 of the same transcript on the 6th of May.

9 Mr. Philip Short added that, "I thought at worst, undoubtedly

10 true, that Nuon Chea was not a member of the Military Committee."

11 [14.20.15]

12 Professor David Chandler testified that he could only offer

13 "speculation as to whether Nuon Chea had any responsibility for

14 military affairs".

15 And I would like to add that if the Chamber refers to paragraph

16 457 of the Co-Prosecutor's submission, the Co-Prosecutors assert

17 that Professor Chandler testified it was "hard to believe" that

18 Nuon Chea had a role in military affairs. That is not an

19 accurate rendering of the testimony cited and I will just

20 encourage the Chamber to read the excerpt in which Professor

21 Chandler says nothing of the sort.

22 Second, the Co-Prosecutors claim that other members of the Party

23 knew that they were supposed to communicate with Nuon Chea about

24 military and security matters and that this is reflected in Nuon

25 Chea's receipt of telegrams on those subjects.

1 This too, is simply false. In fact, over the entire lens of
2 Democratic Kampuchea, over nearly four years, the Co-Prosecutor
3 were only able to find six telegrams concerning military or
4 security affairs that was sent specifically to Nuon Chea. The
5 Co-Prosecutor have referred repeatedly to these telegrams, first
6 in their document presentation hearings and, now again, in their
7 closing submissions.

8 [14.22.13]

9 The Co-Prosecutors repeat over and over that these telegrams are
10 very significant because they show that other members of the
11 Party knew to communicate with Nuon Chea about military affairs.
12 In fact, they are significant because they are very nearly the
13 only ones that exist if Nuon Chea was, in reality, responsible
14 for military and security affairs.

15 All correspondence on such matters would be – would have been
16 channelled through him. Instead of the hundreds of telegrams in
17 evidence that concern military and security affairs, there were
18 almost none addressed specifically to Nuon Chea. The six
19 telegrams were all from the same specific military officer, an
20 officer named Dim (phonetic) in Division 164 and they were sent
21 in very close succession in October 1976 and they all concern
22 generally the same subject matter.

23 [14.23.38]

24 At best, they show that somebody in the Party believed that one
25 specific issue needed to be brought to Nuon Chea's attention.

1 Nuon Chea does not remember this telegram and does not know why
2 they were sent to him if in fact they were sent to him. But it is
3 obvious that they signify nothing relevant to Nuon Chea's general
4 responsibilities. And the Co-Prosecutors continued reliance on
5 this specific group of telegrams show that no other evidence
6 exists.

7 Your Honours, I will make one final comment about the telegrams
8 in evidence. I will point out that there are numerous telegrams
9 in evidence that were sent to other Party leaders, but which were
10 not sent to Nuon Chea. I will offer just a few document numbers,
11 these include document number E3/1016, IS21.6, E3/1176, E3/1186,
12 IS21.2, E3/1075, IS21.9, E3/1065 and E3/250. These telegrams were
13 sent among others to Ieng Sary, Vorn Vet and Ieng Thirith, but
14 not Nuon Chea. So these telegrams affirmatively disapprove --
15 disprove the Prosecutions' claim that Nuon Chea had a role in
16 military affairs. They show that cadres across the Party knew
17 that they were not supposed to communicate with Nuon Chea about
18 military and security affairs. They were, instead, supposed to
19 communicate with other senior leaders.

20 [14.26.15]

21 Then the Co-Prosecutors point to a single meeting of the Standing
22 Committee where Nuon Chea is allegedly recorded as having made
23 some commentary about military affairs and that is the 26th of
24 March 1976 meeting of the Committee. Yet, if the Chamber reviews
25 this document carefully, it will clearly see that it actually

1 shows that Nuon Chea had no substantive role in military affairs.
2 As the Co-Prosecutors indicate, the only reason Nuon Chea said
3 anything at this meeting is because Pol Pot was absent. In Pol
4 Pot's absence, Nuon Chea's principle instruction was to "keep
5 implementing", the weak instruction previously articulated by Pol
6 Pot at the meeting of the Standing Committee two weeks earlier.
7 So, instead of issuing an independent instruction, Nuon Chea
8 deferred to Pol Pot simply reiterating Pol Pot's past
9 instructions; and that reflects the substance of Nuon Chea's role
10 in military affairs. No other evidence exists.

11 [14.28.10]

12 Next, the Co-Prosecutor points out that Nuon Chea "presided over
13 a meeting concerning the restructuring of the Revolutionary Army
14 of Kampuchea in July 1975". The Chamber is of course very
15 familiar with this meeting. As the Chamber knows, this was a
16 seminal moment in the development of the CPK. It must have been
17 the very first time that some military units were placed under
18 the control of the Party Centre. Thousands of cadres were
19 present. Nuon Chea was the second – was the number 2 member of
20 the Party. Of course he was there and of course he was in a
21 prominent position. The same goes for all the other members of
22 the Standing Committee and numerous members of the Central
23 Committee. But his presence was entirely ceremonial. It means
24 nothing in relation to his role in the Party or the military
25 Continuing on the subject of military meetings, much more

1 relevant and compelling testimony is given by well-placed
2 witnesses who confirm that Nuon Chea had no role or
3 responsibility within the military. These witnesses say that Nuon
4 Chea did not attend military meetings. They say he did not attend
5 those meetings because he had nothing to do with the military.

6 [14.30.04]

7 One of those witnesses, Oeun Em, who was Pol Pot's chief
8 bodyguard, testified before this Chamber that military gatherings
9 in Phnom Penh were chaired by Pol Pot and Son Sen. He
10 specifically explained that Nuon Chea did not attend those
11 gatherings because he was "attached to other section"; and that
12 testimony given on the 14 of June 2012, at pages 16 and 41 of
13 that day's transcript.

14 Another witness was Meas Voeun, who was possibly the senior most
15 military officer to - to appear before the Chamber. By the end of
16 Democratic Kampuchea, he was a deputy division commander and the
17 de facto Secretary of Sector 103 and he said that Nuon Chea did
18 not attend zone-level military congresses. In fact, he said that
19 repeatedly and in saying it, he directly contradicted the written
20 records of his interviews with the Investigating Judges which
21 were apparently incorrect.

22 That testimony was given on the 4th of October 2012 between pages
23 46 and 54; and again on the next trial day -- that is, the 8th of
24 October 2012, between pages 92 and 98.

25 [14.32.07]

1 Next, the Co-Prosecutors refer this Chamber to a document from
2 the Vietnamese Korea from 1972 purporting to describe Nuon Chea's
3 role as "head of the political leadership of the army." Like most
4 of the evidence cited by the Co-Prosecutors, this document true
5 supports Nuon Chea's position that he was a civilian leader with
6 no role in military affairs. The document clearly indicates that
7 Son Sen was Chief of General Staff; that Vietnamese Korea did not
8 know well about the structure of the CPK.

9 Nuon Chea led political education sessions for troops just like
10 he educated cadres in the political goals of the Party. It is in
11 that limited sense that he had a political leadership role in the
12 military and the document clearly indicates that Son Sen was the
13 Chief of General Staff and it also clearly indicates that Pol Pot
14 was in charge of military affairs of the army.

15 Mr. President, I think it is the time for a short break. I have
16 about 20 more pages to go.

17 [14.33.52]

18 MR. PRESIDENT:

19 We - you need to continue for another five minutes and we will
20 take a break at 20 to 3.00.

21 MR. SON ARUN:

22 Next, I'd like to touch upon S-21.

23 As part of their futile effort to prove Nuon Chea's role in
24 security affairs, the Co-Prosecutors expend significant energy
25 discussing Nuon Chea's supposed role at S-21. These allegations

1 are false and supported only by conflicting and unreliable
2 evidence.

3 Indeed, the only evidence that Nuon Chea had any role at S-21 is
4 from Kaing Guek Eav alias Duch. Yet Duch had good and substantial
5 reasons to mislead this Chamber. No compelling corroborating
6 evidence exists. The Chamber, for that reason, should reject that
7 testimony in full.

8 [14.35.15]

9 As a preliminary matter, we reiterate our position that as a
10 consequence of the limitations on the scope of this Trial, the
11 Chamber is incapable of making findings of fact in relation to
12 S-21. S-21 was specifically excluded from this Trial by this
13 Chamber notwithstanding repeated request by the Co-Prosecutors to
14 include it.

15 We recognize that three short paragraphs of the Closing Order
16 including within the scope of this Trial make a small number of
17 very general allegations about Nuon Chea's role at S-21, but
18 numerous other facts of key relevance to Nuon Chea's alleged role
19 were explicitly excluded. These include 26 paragraphs of the
20 Closing Order -- that is, from paragraphs 949 through 974, which
21 concern Nuon Chea's supposed role at S-21. All of this was
22 excluded from the scope of this Trial. As we will see
23 momentarily, numerous facts of critical relevance to the question
24 of Nuon Chea's involvement are among these facts which were
25 excluded.

1 [14.37.08]

2 The limited and partial evidence as to S-21 which was included
3 within the scope of the present Trial manifestly fails to
4 establish that Nuon Chea had any role at S-21. The Co-Prosecutors
5 first tried to convince this Chamber that Nuon Chea's role at
6 S-21 is proven by the fact that he received S-21 confessions from
7 Duch; yet, according to the Co-Prosecutors' own evidence, Nuon
8 Chea supposedly saw a total of 25 confessions.

9 Our question is this: What is 25 confessions? Is 25 a lot?

10 Twenty-five of how many and how many confessions are on the case
11 file? How many confessions were found at S-21 and how many are
12 stored at DC-Cam?

13 Your Honours, according to records stored on the case file, the
14 total number of confessions available is 4,189. Now, we know that
15 when the investigation into the events during Democratic
16 Kampuchea began, the S-21 confessions were one of the most
17 important sources of historical evidence. From the very beginning
18 of the Vietnamese occupation of Cambodia, the People Republic of
19 Kampuchea had a keen interest in S-21. This Chamber has heard
20 testimony that staff members were working at S-21 reviewing
21 documents as early as the summer of 1979. Leading scholars who
22 would later play a crucial role in developing the factual
23 allegations at this tribunal spent years reviewing and analyzing
24 those documents. Those scholars wrote long books about Democratic
25 Kampuchea. Some of them have been qualified as experts by this

1 tribunal and after all of that work, this is what they came up
2 with, 25 confessions.

3 [14.40.17]

4 Your Honours, if you would permit me, I would like to quote a
5 sentence from the Closing Order. According to the Closing Order:
6 "The primary function of S-21 was to extract confessions from
7 detainees." That is at paragraph 455.

8 Now, if the primary function of S-21 was to extract confessions,
9 wouldn't the direct supervisor of the chairman see those
10 confessions on a regular basis? And after three decades of
11 reviewing the evidence, wouldn't there be some substantial proof
12 that he saw them?

13 Yet, even if we accept as true every fact the Prosecution claims
14 to be true, we would conclude that Nuon Chea was sent just over
15 half of one per cent of the confessions in existence.

16 [14.41.42]

17 The testimony or evidence before the Chamber is equally clear
18 that Nuon Chea received only a very small number of S-21
19 confessions. As the Co-Prosecutors rightly observed, one witness
20 who appeared before this Chamber testified that he picked up
21 envelopes from Duch and delivered them to Nuon Chea. However, the
22 Co-Prosecutors left out a rather important detail; they left out
23 the facts that this witness, Saut Toeung, testified to delivering
24 documents from Duch to Nuon Chea a total of five times.

25 Now, the Co-Prosecutors observed that according to Duch, only two

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1 messengers were responsible for delivering confessions to Nuon
2 Chea. He identified those two messengers by name. One of them was
3 Saut Toeung; the same Saut Toeung who testified that only five
4 times did he ever deliver any material from Duch to Nuon Chea.

5 [14.43.22]

6 Your Honours, this affirmatively proves that Nuon Chea received
7 virtually no material from S-21 and in our view, Your Honours,
8 all of this raises an important question. The question is: Why
9 was this small selection of documents apparently sent to Nuon
10 Chea? The Prosecution says they were sent to Nuon Chea because
11 they were from S-21 and Nuon Chea was in charge of S-21. But if
12 that were true, many confessions would have been sent to Nuon
13 Chea.

14 MR. PRESIDENT:

15 Counsel, thank you.

16 The time is appropriate for a short break. We will take a break
17 now and we will resume at 3 p.m.

18 (Court recesses from 1444H to 1501H)

19 MR. PRESIDENT:

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

21 I now hand over the floor to the defence team for Nuon Chea to
22 resume his closing statement. You may proceed.

23 MR. SON ARUN:

24 Thank you, Mr. President.

25 I shall now resume my closing statement. It take - it will take

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1 approximately 1 hour from now for me.

2 Your Honours, Mr. Nuon Chea ask whether this Chamber recall that
3 he was the Deputy Secretary of the Party in political power. If
4 he had that authority, people from many other departments would
5 have sent him documents. Actually, he did not ask for them and he
6 did not always see those documents. Certainly, he was not
7 directly in charge of every entity that sent them.

8 My blunt question would be whether the Vice President of the
9 United States or vice president of a state in charge of every
10 government department that forwards him a memorandum. The
11 confession themselves are proof of nothing. I would invite the
12 Chamber to observe that with only one exception, none of the
13 confessions presented by the Prosecution contain any identifying
14 information aside from the very bare facts that a copy was sent
15 to Brother Nuon.

16 [15.04.39]

17 All of the important questions are left unanswered. Why was that
18 copy sent to Nuon Chea? Who decided that that copy should be
19 sent? Was the person who sent it correct in thinking that Nuon
20 Chea wanted to or was supposed to see it and did Nuon Chea ever
21 receive it?

22 Your Honours, Nuon Chea has already given some answer to some of
23 these questions. As he explained in a videotaped statement on the
24 case file, he used a small number of confessions for the purpose
25 of education. Thirty-five years later, he does not remember

1 exactly which ones, but that does explain why some small sample
2 of the confessions may have been sent to Nuon Chea. That
3 explanation is much more consistent with the documentary evidence
4 than the Prosecution's outlandish claim that he was directly
5 involved in S-21.

6 The Co-Prosecutors have also previously observed that 13 out of
7 the 25 confessions that were allegedly sent to Nuon Chea appear
8 to concern a single military unit. It is far more likely that
9 these confessions were sent to Nuon Chea not because they
10 happened to have come from S-21, but because they all had to do
11 with a military unit in which, for some reason, Nuon Chea has
12 long forgotten he had some interest.

13 [15.07.10]

14 And indeed the Co-Prosecutors have previously taken exactly that
15 position. They have argued that the reason these confessions were
16 sent to Nuon Chea is that he "had a role relating to the military
17 and regarding to the purge of this unit."

18 That is a quote at page 59 of the transcript of the 27 of June.

19 Now, Your Honours, to be absolutely clear, Nuon Chea does not
20 concede his role in any purges in the military unit, in the
21 Central Zone or otherwise, but we bring this to your attention to
22 the point - to point out that even the Prosecution cannot come up
23 with a consistent explanation for why they think these documents
24 were sent to Nuon Chea. Were they sent because they came from
25 S-21 and Nuon Chea had a role at S-21? Were they sent because

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1 they were about a military unit in the Central Zone and Nuon Chea
2 was involved in that military unit in the Central Zone or were
3 they sent for some other reasons?

4 [15.09.11]

5 The documents do not say. The Prosecution does not know and this
6 Chamber is unable to decide.

7 The Co-Prosecutors then claim that Nuon Chea told Thet Sambath
8 "that he received so many confessions that he could not read them
9 all".

10 This is simply false. What he actually told Thet Sambath was that
11 it would not have been possible to read all of the S-21
12 confessions because too many of those confessions existed. He
13 never admitted to receiving those confessions and as the evidence
14 shows, he did not receive those confessions.

15 Unable to prove anything of substance to Nuon Chea's receipt of
16 S-21's confession, the Co-Prosecutor claimed that Nuon Chea's
17 role at S-21 is established by the annotation he supposedly made
18 on those confessions and the Co-Prosecutor claimed that six
19 confessions in evidence contain annotations made by Nuon Chea.

20 [15.11.10]

21 Your Honours, let me begin by examining that claim at face value.
22 Mr. President, let us assume, just for a moment, that Nuon Chea
23 annotated six S-21 confessions. What would that show about Nuon
24 Chea's role at S-21? It would simply show that he had almost no
25 role at all. It would show that of the 4,183 (sic) [says counsel]

1 confessions on record, Nuon Chea did not annotate 4,183 of them.

2 Is this the keen interest in S-21?

3 This Chamber has heard testimony that staff members were working
4 at S-21 reviewing document as early as the summer of 1979 leading
5 - actually - yet even this allegation that Nuon Chea annotated
6 all of the six S-21 confession is unsupported by any evidence of
7 any kind. Indeed, the evidence that Nuon Chea annotated the six
8 confessions is so preposterously weak that the Co-Prosecutor
9 continued efforts to rely on - it is perplexing and a telling
10 indication of the quality of evidence against Nuon Chea.

11 [15.13.14]

12 The Co-Prosecutor repeatedly claimed that Duch has identified
13 Nuon Chea's handwriting on S-21 confession. Is that true? What is
14 Duch's actual testimony about those annotations? His actual
15 testimony was that, during Democratic Kampuchea, the confession
16 he sent to his superiors were never returned to S-21; hence, the
17 first time he ever saw an annotation on an S-21 confession was in
18 April 1999 when it was shown to him by Nate Thayer.

19 His testimony in that regard was very clear and let me read you a
20 short excerpt from Duch's testimony before this Chamber on the
21 4th of April 2012.

22 Question: "Just to be sure about the date, when did you first see
23 confession annotated by your superior?"

24 Answer: "That was in April 1999."

25 That was on page 82 of the 4th of April transcript.

1 [15.14.57]

2 So Duch has admitted that he had no contemporaneous knowledge
3 from the Democratic Kampuchea period of any annotation on any
4 S-21 confessions. In fact, he explicitly told the Investigating
5 Judges that he was unable to identify Nuon Chea's handwriting.
6 When the Investigating Judges showed Duch one of the six
7 annotations that the Co-Prosecutor today say were made by Nuon
8 Chea, Duch stated as follows - and I quote:

9 "I don't know who wrote that, but it was not that of Pol Pot
10 whose handwriting was similar to mine, like Son Sen's and Vorn
11 Vet's. Perhaps Nuon Chea wrote it, but it was just my assumption
12 because I did not see his handwriting often." End quote."

13 That was in one of Duch's interview with the Investigating
14 Judges. It is document E3/355.

15 In spite of this clear evidence that Nuon Chea had no role at
16 S-21, the Co-Prosecutors claim that
17 Nuon Chea admitted that role to Thet Sambath. That claim is
18 demonstrably false. Not once in Thet
19 Sambath's more than 1,000 hours of audio and video recordings of
20 Nuon Chea, did Nuon Chea make any such admission.

21 [15.17.21]

22 Nuon Chea spoke to Thet Sambath candidly for years. They
23 discussed the issue of so-called enemies extensively. They even
24 discussed S-21 confessions. Through all of these discussions,
25 Nuon Chea never stated, hinted or suggested that he was Duch's

1 superior at S-21. That is compelling evidence that no such
2 relationship existed.

3 The Co-Prosecutors claimed that one single paragraph from Thet
4 Sambath's book entitle "Behind the Killing Field" constitutes an
5 admission that Nuon Chea supervised S-21, yet in the paragraph
6 they cite, there is one very important thing missing: an actual
7 statement from Nuon Chea.

8 What that paragraph contains is only the opinion of the authors.
9 Thet Sambath's book is filled with the supposed direct quotes
10 from Nuon Chea. There are dozens of them; maybe hundreds, yet in
11 the paragraph which the Co-Prosecutor says constitute an
12 admission from Nuon Chea about his role at S-21, there is not a
13 single direct quote from Nuon Chea himself.

14 [15.19.06]

15 I ask the Chamber to consider the following: If Nuon Chea had
16 admitted to Thet Sambath that he had had a role at S-21, the
17 notorious crime site in the Democratic Kampuchea, would Thet
18 Sambath not have clearly said so? If Nuon Chea had told Thet
19 Sambath that he had a role at S-21, would that supposed admission
20 not have found its ways into "Enemies of the People"?

21 Obviously, it would have, but it did not. And why? Because it
22 never happened. If the Chamber verifies the sources relied upon
23 in Thet Sambath's book, it will find that their source is one
24 very familiar to this Chamber. Their source is Duch's testimony
25 in Case 001.

1 That testimony is of course in evidence and we will deal with its
2 probative value momentarily, but the excerpt cited from Thet
3 Samath's book does nothing more than recycle that testimony. For
4 this reason, it is of no relevance or probative value.

5 [15.21.22]

6 Having found no documentary or physical evidence of Nuon Chea's
7 role at S-21, the Co-Prosecutors tried to prove that role
8 circumstantially. They argue that Son Sen, who was initially in
9 charge of S-21, was dispatched to the East Zone in August 1977 to
10 deal with the military conflict with Vietnam. They imply that
11 because Son Sen was no longer in Phnom Penh, he could not have
12 continued to supervise Duch; yet the Co-Prosecutors failed to
13 mention that multiple former S-21 guards, who worked at S-21
14 every day, specifically told the Investigating Judges that they
15 personally saw with their own eyes that Son Sen come to S-21
16 right up until the Vietnamese entered Phnom Penh in January 1979.
17 None of these witnesses testified in Case 002/01 because S-21 is
18 not a part of this Trial. This is a perfect example of why the
19 Chamber may not make findings with regard to Nuon Chea's role at
20 S-21 in Case 002/01.

21 Son Sen's presence at S-21 after August 1977 is a question of
22 critical importance in relation to Nuon Chea's alleged
23 responsibility. The exclusion of this evidence from this Trial
24 was a self-imposed restriction decided upon by this Chamber.

25 [15.23.52]

1 Having decided not to hear this critical exculpatory evidence,
2 the Chamber cannot now find beyond a reasonable doubt that Nuon
3 Chea was responsible for S-21, and I will note for the Chamber
4 that we have previously argued that these specific facts, whether
5 Son Sen was present at S-21 throughout 1978, was one reason why
6 this Chamber may not make findings of facts in relation to S-21
7 in this Trial. We made that argument in document number E284/1 -
8 4/1.

9 The only evidence left that Nuon Chea had a role at S-21 is in
10 Duch's uncorroborated claims that he reported to Nuon Chea. There
11 are numerous reasons why this testimony is unreliable and cannot
12 be accepted by this Chamber.

13 [15.25.10]

14 First, as I have just shown, it is inconsistent with all of the
15 documentary evidence. It is inconsistent with the evidence that
16 Nuon Chea received only a very small number of S-21 confessions.
17 It is inconsistent with the evidence that Nuon Chea's messengers,
18 whom Duch says were responsible for delivering S-21 confessions
19 to Nuon Chea, delivered those confessions very rarely. It is
20 inconsistent with the evidence that Nuon Chea made no annotations
21 on any S-21 confessions; a fact considered by the Co-Prosecutors,
22 except as to six lonely documents. It is inconsistent with the
23 testimony of S-21 guards who indicate that Duch's superior, Hun
24 Sen - Son Sen was at S-21 regularly through the entirety of the
25 DK regime.

1 Second, Duch consistently proved willing to make outlandish
2 claims about the senior leaders of the CPK. As we described at
3 paragraph 120 of our brief, Duch frequently spoke as if he had
4 first-hand knowledge of the responsibilities of CPK's senior
5 leaders when in fact he was in possession of no such information.

6 [15.27.15]

7 That is specifically true in relation to Duch's claim about Nuon
8 Chea's role at S-21. As the Co-Prosecutors observed, Duch
9 repeatedly testified that he was able to identify Nuon Chea's
10 handwriting on confessions and other documents; yet as - as we
11 have already shown, Duch sheepishly conceded on cross-examination
12 the very first time he saw the annotation of a senior leader on
13 an S-21 confession was in April 1999.

14 Third, Duch has always had and continues to have a substantial
15 interest in deflecting responsibility for his acts during
16 Democratic Kampuchea. The notion that Duch reported to Nuon Chea
17 and was required to appear at his office on a regular basis
18 conveniently serves his interest in claiming that he was just
19 following orders.

20 It is crucial to recognize that if Duch did not report to Nuon
21 Chea after Son Sen took control over military operations in the
22 East Zone, it would follow that he was left to make
23 semi-independent decisions with minimal supervision. From Duch's
24 perspective, responsibility lay either with Nuon Chea or with
25 himself. We are not surprised to find that Duch picked Nuon Chea.

1 [15.29.28]

2 In Case 001, the Supreme Court Chamber recognized that Duch
3 testimony was unreliable precisely because of his tendency to
4 blame others rather than accept responsibility himself.

5 In the Case 001 appeals judgement, the Supreme Court Chamber held
6 as follows - and I quote:

7 "Kaing Guek Eav failed to offer a complete picture of his factual
8 knowledge of this case in order to minimize his role in the
9 crimes. He carefully avoided responding in full when confronted
10 with allegations related to this personal involvement, seeking to
11 attribute the responsibility for the crimes to others and uttered
12 statements which are inconsistent with available evidence." End
13 of quote.

14 Fourth, despite these obvious problems with Duch's credibility,
15 this Chamber repeatedly prevented the Nuon Chea defence from
16 exploring questions of direct relevance to his credibility during
17 cross-examination. As we explained in detail in our brief and
18 will elaborate upon later today, the Chamber made a series of
19 unreasonable and baseless rulings in the course of our
20 cross-examination.

21 Those rulings prevented defence counsel from showing Duch
22 admissible documents which directly contradicted his testimony
23 and which would have further diminished his already doubtful
24 credibility. The Chamber gave no reasons for these rulings and
25 repeatedly interrupted defence counsel, including by turning off

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1 our microphones when we – when we tried to ask relevant and
2 admissible questions.

3 [15.32.17]

4 As we demonstrate in our brief, the Chamber later reversed these
5 rulings; again without reasons, permitting the Co-Prosecutors to
6 do that which it had not allowed the Nuon Chea defence to do
7 during its examination of Duch.

8 Now, I'd like to touch upon the supervision of zones and
9 autonomous sections – sectors.

10 Mr. President, I will now address the Co-Prosecutors' claim that
11 Nuon Chea – and I quote: "was responsible for monitoring and
12 directing the implementation of the Party political line by all
13 zone, sector and Party organizations." End of quote.

14 [15.33.13]

15 Nuon Chea does not dispute this assertion outright. Indeed, he
16 agrees that Standing Committee policies were implemented by
17 zone-level officials. He also agrees that the Standing Committee
18 monitored the extent to which their high-level objectives were
19 being met. It is, however, not accurate that Nuon Chea "directed"
20 the implementation of those policies. His ability to monitor
21 zone-level implementation was similarly limited and dependent on
22 the cooperation of zone-based officials.

23 The Co-Prosecutors alleged that Nuon Chea supervised the zones in
24 three ways: by holding meetings with zone and sector leaders in
25 Phnom Penh, through his receipt of telegrams and reports and by

1 making trips to the provinces.

2 In each of these respects, the Co-Prosecutors' categorization of
3 Nuon Chea's role is incomplete and misleading. The Co-Prosecutors
4 have not presented sufficient evidence to establish that
5 supervision beyond a reasonable doubt.

6 [15.35.05]

7 Now, on the issue of meetings: First, I will address the claim
8 that Nuon Chea met regularly with zone and sector level
9 officials. As the Co-Prosecutors' note, Nuon Chea did hold
10 meetings with key zone leaders especially Ta Mok, So Phim, Ros
11 Nhim and, to some lesser extent, Ke Pauk. Nuon Chea does not
12 recall exactly how often those meetings took place, but estimates
13 they took place several times each year. Nuon Chea reminds this
14 Chamber that all four men were members of the Standing Committee.
15 It was in that capacity that they travelled to Phnom Penh for
16 meetings with other members of the Standing Committee including,
17 among others, Nuon Chea. They did not, however, come to Phnom
18 Penh to report to or receive instructions from Nuon Chea. They
19 came to discuss matters of importance to their zone and the
20 country in their capacity as members of the CPK highest governing
21 body.

22 [15.36.43]

23 Nuon Chea respectfully reminds the Chamber that the
24 Co-Prosecutors continually assert that the CPK governed through
25 "collective decision-making".

1 According to the Co-Prosecutors, collective decision-making meant
2 that Pol Pot did not issue orders to Nuon Chea, but rather
3 discussed CPK policy until an agreement was reached. This was
4 equally true of Pol Pot's relationship with powerful zone
5 leaders. Zone leaders had their own power base within their
6 respective regions and controlled significant military forces.
7 The Standing Committee could not and did not issue detailed
8 orders to zone leaders. They agreed on broad policy outlines
9 which were implemented at the whim of zone leaders. That was the
10 nature of the meetings between zone leaders, especially Ta Mok,
11 So Phim and Ros Nhim, and to the other members of the Standing
12 Committee who were based in Phnom Penh.

13 [15.38.12]

14 Nuon Chea also occasionally met with secretaries of the
15 autonomous sectors. Autonomous sector secretaries were not
16 members of the Standing Committee and had less power than the
17 zone secretaries. They came to Phnom Penh far less often and only
18 when a specific matter was in need of discussion.

19 Nuon Chea did not meet with other officials including
20 non-autonomous sector and district-level cadres. Instead, these
21 cadres came to Phnom Penh only to participate in large political
22 gatherings.

23 Nuon Chea cannot recall any single instance of meeting in a small
24 group with officials at that level. If that did happen, it was a
25 rare and exceptional occurrence.

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1 The evidence strongly supports Nuon Chea's account. The evidence
2 cited by the Co-Prosecutors, which I will review in detail
3 momentarily, shows that Nuon Chea met only with zone and
4 autonomous sector secretaries.

5 [15.39.43]

6 The minutes of Standing Committee meetings in evidence revealed
7 that an aggregate of three cadres from any part of the national
8 administrative structure attended any of the 19 Standing
9 Committee meetings on record. Only one witness from within the
10 national administrative structure testified that he participated
11 in any meetings with the senior leaders in Phnom Penh. As the
12 Co-Prosecutors note, that witness was Sao Sarun, the Secretary of
13 autonomous Sector 105 for more than a year.

14 Over that period, Sao Sarun participated in only three meetings.
15 Each of those meetings had a specific purpose. The first followed
16 the death of his predecessor -- that is, Ta Laing. The second was
17 for the purpose of formally appointing him Secretary of Sector
18 105. Only once over the course of more than one year did Sao
19 Sarun travel to Phnom Penh for the purpose of discussing
20 developments within the sector. Sao Sarun's evidence, therefore,
21 shows that autonomous sector secretaries did not attend regular
22 meetings or even occasional meetings in Phnom Penh.

23 Three witnesses cited by the Co-Prosecutors described standing
24 guard at K-1 and K-3 during meetings between zone-based officials
25 and senior leaders based in Phnom Penh. All three witnesses

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1 testified that they did not recognize any of the zone-based
2 officials whom they saw attend meetings at K-1 and K-3. They were
3 accordingly unable to testify as to their identity.

4 The Chamber can find the testimony of the first witness, Sa Vi,
5 in the 8 January 2013 transcript at pages 23 through 25, and it
6 can find the testimony of the second witness, Saut Toeung, in the
7 18 April 2012 transcript at pages 53 through 54.

8 [15.42.33]

9 The third witness, Oeun Tan, testified that it was the same small
10 group of individuals who attended all of these meetings. The
11 Chamber will find that testimony in the transcript of 13 June
12 2012 at page 53. That testimony proves that Nuon Chea was not
13 meeting with a rotating group of cadres at different levels of
14 the CPK hierarchy. Instead, he met with the senior most leaders
15 of each zone and autonomous sector, most of whom were themselves
16 members of the Standing Committee.

17 Other evidence – evidence cited by the Co-Prosecutors is
18 consistent with these conclusions. The Co-Prosecutors gathered
19 this evidence at footnote 1846 of their brief.

20 Pean Khean indicated that meetings of the zone committees took
21 place annually at K-3. Nuon Chea believes that Mr. Pean is
22 mistaken, but does not deny meeting with zone leaders. This
23 disagreement is therefore immaterial.

24 [15.44.18]

25 Kham Phan, TCW-596, and document E3/366 all testified before the

1 Co-Investigating Judges that the Secretary of autonomous Sector
2 105 travelled for meetings to Phnom Penh. That testimony is
3 equally consistent with Nuon Chea's assertion that he met only
4 with zone leaders and autonomous sector secretaries.

5 Phy Phuon's statement concerns a meeting in May 1975 with zone
6 and autonomous sector secretaries.

7 Norng Sophang testifies that zone leaders attended meetings in
8 Phnom Penh. Mr. Norng, a telegram decoder, does not explain how
9 he knew that – the habits of zone leaders. His testimony is not
10 nevertheless consistent with Nuon Chea's claim that he met only
11 with zone and autonomous sector secretaries.

12 [15.45.38]

13 Witness E3/464 described attending political education sessions
14 at the Olympic Stadium and Borei Keila with hundreds of cadres.

15 Nuon Chea readily agrees that he delivered political education at
16 large gatherings.

17 Prak Yut confirmed that district-level cadres in the Southwest
18 Zone did not attend meetings of any kind in Phnom Penh.

19 Now, on the issue of telegrams and reports: Second, the

20 Co-Prosecutors assert that Nuon Chea supervise activity in zones
21 and administrative structures through his receipt of telegrams
22 and reports. However, Nuon Chea's receipt of telegrams concerning
23 activity in the zones is not at all probative of his supposed
24 supervision.

25 [15.46.58]

1 To begin with, the Co-Prosecutors are correct that Nuon Chea
2 received telegrams and other communications only from zone and
3 autonomous sector secretaries. That means that Nuon Chea had no
4 direct communication from Phnom Penh with any cadres below the
5 leadership in each zone or autonomous sector. That means he was
6 told only what the zone leadership knew and only what they wanted
7 him to know.

8 In fact, the evidence conveyed to Nuon Chea by the zone leaders
9 was systematically inaccurate. As we demonstrated at paragraph
10 203 of our brief, cadres overstated production results and
11 downplayed work hours and executions.

12 The Co-Prosecutors have shown only that reports were regularly
13 sent to the senior leaders of the CPK. They have not shown that
14 these reports were accurate. And in fact, they were not.

15 Furthermore, Nuon Chea almost never responded to these telegrams.
16 He did not supervise the base in any substantive way because he
17 provided no instructions about how they should implement the way
18 political lines of the Party.

19 [15.49.06]

20 The Co-Prosecutors' claim that Nuon Chea did respond to these
21 communications and issue instructions to zone leaders is
22 incorrect. The only evidence they cite in support of that claim
23 is the testimony of telegram decoder, Norng Sophang. In reality,
24 Norng Sophang testified before both the Co-Investigating Judges
25 and this Chamber that he very rarely sent outgoing telegrams from

1 Nuon Chea.

2 In his testimony before this Chamber, he recalled doing that only
3 twice over four years. He also testified that usually they
4 concerned the delivery of goods requested by zone level
5 officials. I will respectfully direct the Chamber to our brief at
6 paragraph 204 in that regard. The Chamber will find similar
7 testimony if it verifies the reference to Norng Sophang's
8 statement provided by the Co-Prosecutors at footnote 1863 of
9 their brief.

10 [15.50.34]

11 On the issue of trips to the provinces: Third, the
12 Co-Prosecutors' claim that Nuon Chea supervised the zones through
13 his trips to the provinces. As a preliminary matter, we note that
14 most of the evidence cited by the Co-Prosecutors shows nothing at
15 all about Nuon Chea's so-called supervision over the zones.
16 Notably, it shows that Nuon Chea met many with zone and
17 autonomous sector secretaries which is again consistent with his
18 account.

19 It also purports to show that Nuon Chea knew that CPK policies
20 were causing hardship to people at the base. Nuon Chea strongly
21 disputes that, but for these purposes right now, I will emphasize
22 that this fact is irrelevant to the question that the
23 Co-Prosecutors say that it relates to. Even if it were true that
24 Nuon Chea witnessed hardship at the base, which it is not, that
25 would have no bearing at all on his ability to supervise the

1 zone-based cadres.

2 [15.52.05]

3 Next, the Co-Prosecutors described political education sessions
4 given by Nuon Chea in various base areas. This is at paragraphs
5 479 through 482. This is yet again consistent with Nuon Chea's
6 evidence that he met only with zone and autonomous sector
7 secretaries. He interacted with other cadres only through large
8 political education sessions in which he articulated the general
9 political line of the Party.

10 The Co-Prosecutors try to make these speeches more relevant to
11 Nuon Chea's supposed supervision of the base by identifying two
12 specific instances in which a series of arrests were made
13 following a speech given by a member of the CPK. These two events
14 include a speech in Sector 103 in Preah Vihear and one in the
15 Western Zone. We are not sure exactly what the relevance of this
16 claim is supposed to be. We assumed the Co-Prosecutors are urging
17 the Chamber to conclude that there is some causal link between
18 the speech in question and the arrest which allegedly followed;
19 yet the evidence manifestly fails to prove this.

20 [15.53.49]

21 To begin with, in one of the two examples put forward by the
22 Co-Prosecutors, the speech in question was not even given by Nuon
23 Chea and that evidence is not someone other than Nuon Chea gave a
24 speech, nor there is evidence of any connection between the
25 speeches in questions and the arrest which allegedly followed.

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1 I would ask the Chamber to recall that according to the
2 Co-Prosecutors, hundreds of thousands of people were executed at
3 – at hundreds of security centres across Cambodia. They also
4 assert that Nuon Chea regularly delivered political education to
5 cadres at the base; yet, they are unable to find a single example
6 of a single instance in which a sequence of arrest followed a
7 speech given by Nuon Chea.

8 The Co-Prosecutors tried to link Nuon Chea to the arrests in
9 Preah Vihear and the West Zone by claiming that Nuon Chea
10 annotated the confessions of certain cadres allegedly arrested in
11 the course of those purges. We have already dealt with these
12 confessions. We have shown the Chamber that there is no basis
13 whatsoever on which to conclude that Nuon Chea annotated these
14 documents. This evidence must accordingly be rejected fully and
15 completely.

16 Thank you, Mr. President.

17 MR. PRESIDENT:

18 Thank you, Counsel for the defence.

19 The time is appropriate for today's adjournment. The Chamber will
20 adjourn now and will resume on Thursday, the 24th of October 2013
21 commencing from 9 a.m.

22 [15.56.12]

23 And the Chamber would like to inform the parties and the general
24 public that the proceeding on Thursday, the Chamber will cede the
25 floor to Nuon Chea's team again to continue their closing

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1 statements in Case 002/01. This information also applies to the
2 support staff.

3 And tomorrow is a national holiday -- that is, the 23rd October
4 2013.

5 Security guards, you're instructed to take the accused, Nuon Chea
6 and Khieu Samphan, to the detention facility and have them
7 returned to participate in the proceeding on Thursday the 24th of
8 October 2013 before 9 a.m.

9 Khieu Samphan shall be brought to the main courtroom and Nuon
10 Chea shall be taken to the holding cell downstairs, which is
11 equipped with audio-visual equipment for him to participate in
12 the proceeding remotely.

13 The Court is now adjourned.

14 (Court adjourns at 1557H)

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