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..... **SAMN RADA**


E342/3

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា Kingdom of Cambodia
 Extraordinary Chambers in the Courts of Cambodia Nation Religion King
 Chambres Extraordinaires au sein des Tribunaux Cambodgiens Royaume du Cambodge
 Nation Religion Roi

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 25 May 2015

FROM: NIL Nonn, President of the Trial Chamber 

CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer

SUBJECT: Decision on Co-Prosecutors' Request to Admit Excerpt of Book relevant to Case 002/02 pursuant to Rules 87(3) & 87(4)



1. On 3 March 2015, the Co-Prosecutors filed a request to admit into evidence a book titled “Brothers in Arms: Chinese Aid to the Khmer Rouge, 1975-1979”, authored by Andrew Mertha (“Book”, and E342 “Original Request”). The KHIEU Samphan Defence objected to the Original Request on the basis that the Co-Prosecutors failed to exercise diligence in filing the Original Request so late and, in the alternative, should have selected the specific passages he deemed relevant for admission in Case 002/02 (E342/1, paras 3-5, 10-17). On 31 March 2015, the Trial Chamber directed the International Co-Prosecutor to submit a new request identifying the relevant excerpts sought for admission (E1/285.1, p. 41). The Co-Prosecutors complied with this direction and seised the Trial Chamber of a new request, filed on 13 April 2015 (“Request”), to admit into evidence an excerpt from the Book and further to place the entire Book on the Case File (E342/2, paras 1, 5, 9 and Annex A, E342/2.2).

2. The excerpt now before the Chamber consists of one paragraph on page 7 of the book starting with “But the domestic politics ...” (“Excerpt”, see E342/2.2). The Co-Prosecutors submit that the Excerpt is relevant to the proceedings in Case 002/02 and in particular to the Tram Kak Cooperatives crime site as it addresses a trip by a Chinese dignitary to Democratic Kampuchea and describes his meetings with Democratic Kampuchea officials as well as his visits to the Tram Kak district, including the Leay Bo model commune (E342/2, para. 5). The other parties did not respond to the Request.

3. According to Internal Rule 87(4), the Trial Chamber may admit any new evidence that it deems conducive to ascertaining the truth. The Chamber will determine the merit of a request to admit new evidence in accordance with the criteria in Rule 87(3). Rule

87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial Chamber that the proposed evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to material already before the Chamber and where the proposed evidence is exculpatory and requires evaluation to avoid a miscarriage of justice, or where the other parties do not object to the evidence (E276/2 referring to E190 and E172/24/5/1).

4. The Trial Chamber notes that the Book was published in March 2014 and that the Excerpt was accordingly not available before the opening of the trial in 2011 (See <https://olinuris.library.cornell.edu/content/book-talk-brothers-arms-chinese-aid-khmer-rouge-1975-1979> (consulted on 21 April 2015); See also E342/2, para. 7). However, the Excerpt was available before the start of Case 002/02. Despite this, the Original Request was not filed until March 2015, approximately one year after the book was published and publicised in the media (See E342/1.1.2, E342/1.1.3; See also E342/1, para. 9). In these circumstances, the Trial Chamber considers that the request to admit the Excerpt is not timely.

5. Nonetheless, the Trial Chamber considers that it is in the interests of justice to admit the Excerpt. In this respect, the Trial Chamber notes that the Co-Prosecutors have complied with its oral direction to identify the relevant excerpt(s), thus facilitating translation requirements in Case 002/02 (See e.g., E131/1, p. 3; E305, fn. 11). The Trial Chamber further notes that the Excerpt comes from a book, which is a study authored by an academic, relying on multiple sources and providing an analysis reflecting the point of view of its author. The Excerpt contains information concerning events which occurred during the Democratic Kampuchea at the Leay Bo model cooperative, which is part of the evidence on the Tram Kak cooperatives (Closing Order, paras 168-177). In light of this, the Trial Chamber considers that it is in the interests of justice to admit the Excerpt which is relevant and *prima facie* reliable and whose probative value will be assessed in conjunction with other material already before the Chamber.

6. Regarding the Co-Prosecutors' other request to place the entire Book on the Case File, the Chamber finds that, while it could be useful to put the Excerpt into a broader context, the Co-Prosecutors failed to identify the relevance of other parts of the book in relation to the topics dealt with in Case 002/02. In addition, the Trial Chamber recalls that all documents introduced at trial should be available in all ECCC official languages (See E131/1; Practice Direction ECCC/01/2007/Rev.8, paras 2.2, 7.1 and 7.3 read together; E185/1, para. 16). Bearing in mind the limited translation resources available at the court and with a view to minimise the presence of documents not available in all three ECCC official languages on the Case File, the Trial Chamber therefore invites for the time being the Co-Prosecutors to place the Book on the Shared Material Drive and submit new 87(4) request(s) should they wish to have more excerpts of the Book they identify as relevant to Case 002/02 to be admitted, if any.

7. This constitutes the Chamber's official response to E342/2.