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du dossier: Sann Buda

E326/1

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ


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


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

សាធារណៈ / Public

TRIAL CHAMBER

TO: All Parties, Case 002 **Date:** 22 December 2014

FROM: NIL Nonn, President of the Trial Chamber 

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

SUBJECT: Decision on Nuon Chea Rule 87 Request Concerning an Audiovisual Recording of an 11 January 1979 United Nations Security Council Meeting

1. The Trial Chamber is seised of a request by the NUON Chea Defence to place on the Case File a video containing film footage of highlights from an 11 January 1979 meeting of the UN Security Council and admit it into evidence under Internal Rule 87(4) (E326). The NUON Chea Defence has previously submitted in its initial document list for Case 002/02 official minutes of the same meeting, concerning the Vietnamese invasion of Cambodia, in English (E307/5.2.2). In the video, speakers address the Security Council in English, French, and Chinese. The NUON Chea Defence submits that this video relates to matters central to its defence (E326, para. 5). The NUON Chea Defence submits that the video satisfies the five criteria for admission enumerated in Internal Rule 87(3). It does so without specific elaboration except to state that the video is not irrelevant, repetitious, or frivolous since the video is in a very different form than E307/5.2.2 (E326, para. 5).
2. The NUON Chea Defence submits that its application is timely: it first became aware of this footage in June 2014 and soon after ordered a copy through the ECCC Library (E326, para. 6). It submits that it did not obtain the video until October 2014 due to delays caused by the UN Audiovisual Library and by the process of converting the original film to video (E326, para. 6). It also submits that it could not file its request upon receiving the video because NUON Chea had instructed his Defence to abstain from trial proceedings (E326, para. 6). No party filed a response to E326.
3. According to Internal Rule 87(4), the Trial Chamber may admit any new evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability, and authenticity required under 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 earlier with the exercise of reasonable diligence.

4. In certain cases the Trial Chamber will admit evidence that does not strictly satisfy this criteria when the interests of justice so require (E190, paras 19-21; E289/2, para. 3). These instances include where evidence relates closely to material already before the Trial Chamber and where the interests of justice require the sources to be evaluated together, 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 (*see e.g.* E190 and E172/24/5/1).

5. The Trial Chamber finds that the NUON Chea Defence submission is not sufficiently reasoned as required by Rule 87(4). Additionally, the Trial Chamber finds that the Defence refusal to attend the proceedings, based on NUON Chea's instructions, constitutes an obstruction of the proceedings (*see also* E320, para. 6) and does not amount to a valid reason for additional delay. However, the Trial Chamber finds that it is in the interests of justice to place the video on the Case File and admit it into evidence. The video relates closely to the minutes of the Security Council meeting (E307/5.2.2), material already before the Chamber. The minutes of the meeting and the video of the meeting should be evaluated together. The Trial Chamber also notes that the NUON Chea Defence considers this video to be central to its case and that no party objects to it.

6. The minutes of the Security Council meeting, while an official UN record, are not a sworn or certified transcription of the meeting. Therefore, use of this video at trial is contingent on the NUON Chea Defence providing a transcript in the working languages of the ECCC for any part of the video on which the NUON Chea Defence will rely.

7. This constitutes the Chamber's official response to E326.