

DEPARTMENT OF DEFENCE

**HEADS OF ARGUMENT
IN THE ARMS PROCUREMENT COMMISSION**

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INDEX

Preamble.....	6
A SYNOPSIS	7
THE RATIONALE FOR THE SDPP	13
Overview of the issue	13
The Constitutional Imperative	15
The 1996 White Paper on Defence and the 1998 Defence Review	16
The SAN's need for submarines	20
The SAN's need for surface vessels.....	22
The SAAF's need for fighters and trainers	25
The Three-Tier / Two-Tier strategy and the need for the LIFT	27
The SAAF's need for helicopters	30
UTILISATION	32
General perspectives.....	32
The SAN.....	34
The corvettes: utilisation.....	35
Overview	35
Key aspects of corvette utilisation.....	36
Force Preparation.....	39

Force Employment	40
Difficulties experienced with the corvettes impacting on utilisation.....	45
Criticisms and responses in relation to corvette utilisation	46
The Submarines: utilisation	47
Trials and Initial Training	48
Force Preparation.....	49
Operations.....	51
Difficulties with the submarines impacting on utilisation.....	52
Criticisms in relation to the utilisation of the submarines.....	53
Conclusion on the utilisation of the naval vessels	54
The SAAF.....	54
The Hawks and the Gripens: utilisation.....	58
Actual hours flown	58
Training and force preparation.....	60
Operations.....	61
Defects in the Hawks and the Gripens.....	62
Conclusion on the utilisation of the Hawk and the Gripen	64
The Agusta: utilisation	65
Role and capabilities of the LUH	65
Flying hours, exercises and participation in operations.....	69
Current status and austerity measures	70

ALLEGATIONS OF IMPROPER INFLUENCE IN THE LIFT PROGRAMME:-

HAWK OR MB-339 FD	73
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ALLEGATIONS OF IMPROPER INFLUENCE IN THE CORVETTE

PROGRAMME	82
The contracting model	83
The allegations regarding the re-entry of the Germans	85
The ship platform: the critical performance filter	88
The combat suite databus: the alleged nomination of C ² I ²	92
The combat suite databus: the commercial risk of retaining C ² I ² 's IMS	95
The combat suite databus: the decision that the IMS was in category B and the powers of the PCB to make that decision	99
The combat suite databus: the alleged disclosure of C ² I ² 's price for the databus	101
The combat suite SMS (System Management System): the reasons for the rejection of C ² I ² 's bid	103
The combat suite SMS: the alleged disclosure of C ² I ² 's price for the SMS	104
The combat suite IPMS Simulator: the reasons for the rejection of C ² I ² 's bid	106
The combat suite: the alleged manipulation of the price by R300 million for the purposes of paying bribes	111
DR YOUNG'S LACK OF CREDIBILITY	113
Dr Young's reckless public pronouncements	113
Dr Young's motives	117
Dr Young's unjustified reliance on pilfered documents	119
Dr Young's refusal to withdraw unsupportable allegations	120
Dr Young's duplicitous standards - the BaeSEMA and ASM Alliance	121

THE GERMAN INVESTIGATIONS	128
MR CRAWFORD-BROWNE, MS DE LILLE AND DR WOODS	139
Mr Terry Crawford-Browne's evidence	139
Ms de Lille's evidence	140
Dr Gavin Woods' evidence	143
CANCELLATION OF THE SDPP CONTRACTS?	147
CONCLUSION	152

Preamble

Please find submitted at the end of this document a list of abbreviations used during the evidence and which may assist the Commission, although it may not be a complete record of all abbreviations used during the evidence. We use these abbreviations where appropriate, without redefinition.

In these heads of argument the underlining / bold print in quotations constitutes an added emphasis.

A SYNOPSIS

1. The reality is that when large amounts of public funds are expended, broad inferences that someone may have unlawfully benefitted tend to be drawn and believed.¹ This is a consequence of the nature of humankind, and the fear that all human beings, regardless of nationality, are capable of corrupting and being corruptible. Such misconduct is to be deplored and has no place in defence procurement.

2. However, when such inferences are not justifiable and yet multiply in a perpetual self-replicating cycle of public reports, the fulfilment of the Department of Defence's ("the DoD") constitutional mandate is placed in jeopardy. The risks include the inability to obtain the necessary equipment and that poor decisions are made. Decision-makers may become crippled with a debilitating fear that unless they refrain from acquisitions or buy the cheapest equipment on offer, they will be accused of corruption. At risk is an undermining of the constitutionally-endorsed prerogative that South Africa is to have an effective defence force i.e. one that is able to defend and protect the nation.

3. The DoD thus welcomed the investigation which this Commission was mandated to carry out. It co-operated and participated as fully as it could. It declassified and produced the relevant documents, often under enormous time pressure. It furnished detailed witness statements for high-ranking

¹ Kasrils: transcript pp7090. Ms Taljaard: transcript p7826 lines 19 - 22.

witnesses of great experience. It made its officials and experts available for oral testimony, which they gave with integrity, furnishing evidence of the highest calibre.

4. In so doing, the DoD was determined to ensure that if any of its officials were responsible for any misconduct that improperly influenced the award or conclusion of the contracts in the SDPP, they were exposed and made answerable to the law. It retains the stance that those implicated in wrongdoing in the SDPPs should be prosecuted. Of equal importance, is that those who have been wrongly accused should be publically exonerated and that those allegations with no substance which have for years cast a pall over the SDPPs, and over the reputations of individuals, be finally laid to rest.

5. All this made the Commission of fundamental importance to the DoD:
 - 5.1. if there is any evidence of corruption, those implicated should be identified and be made to answer to the nation in accordance with the law. It is the triumph of the rule of law in the context of defence acquisitions that will constitute a guarantee of the constitutionally-endorsed prerogative that South Africa is to have a defence force that is able to defend and protect the nation;

 - 5.2. it is only by eliciting the facts and subjecting them to expert, forensic

analysis that the sources of the negative, broad inferences may be scrutinised and their validity tested and reasoned conclusions drawn. When those advancing inferences of corruption refuse to subject themselves to this analysis, and refuse to participate, it is proper to infer that the inferences they sought to draw cannot withstand this process;

- 5.3. of fundamental value is the differentiation between the reckless repetition of unsubstantiated hearsay from the facts. The facts affecting the DoD's participation in the SDPPs must be established from those with personal, expert knowledge, and as corroborated by the documents. What is merely unsubstantiated hearsay must be exposed as such.
6. The terms of reference of the Commission were in themselves designed to test the fundamental question: were the best decisions made and for the right reasons during the SDPP? The answer to this question will be addressed by answering those of the questions posed by the terms of reference that pertain to the DoD's role: the rationale for the SDPP, whether the equipment acquired under the SDPP has been underutilised or not utilised at all, and whether any person improperly influenced the award or conclusion of contracts in the SDPP.
7. Since defence acquisitions involve large amounts of public funds, the

process is meticulously governed and strict oversight is imposed at each level of the process.² The broadness of the participation in the selection and decision-making process, including technical and defence experts, financial and industrial experts, and those entrusted in our democracy with the strategic interests of the nation, in itself is a safeguard against any single individual being able to contaminate the entire process.³ The suggestions that this indeed took place were shown to be mere suspicion based on hearsay. The selection process is a sure mechanism to ensure that the best decisions are made for the right reasons. Thus the robustness of the process and compliance therewith was examined during the course of this Commission with tireless attention to detail. That enormous task, carried out in such depth, exposed no devil. On the contrary, what emerged was a robust process. What also emerged was that the DoD fastidiously implemented that robust process. It was a new, democratically-endorsed process that was prescribed for international acquisitions.⁴

8. A noteworthy, but not frequently publicised fact, is that of the six items of equipment purchased under the SDPPs, four were the cheapest on offer. Those were the Saab Gripen advanced light fighter aircraft (i.e. the Gripens), the GSC Type 209 1400mod submarines, the Agusta A-109 light utility helicopters (“LUH”) and the AgustaWestland Super Lynx 300 Mark 64

² See Modac pp7; 25 & p38.

³ As recognized by Ms Taljaard: transcript p7774 lines 10 – 13.

⁴ As was confirmed by the Armscor witnesses, Messrs Griesel and Esterhuyse, and also by Cpt Jordaan.

maritime helicopters. In respect of those items that were the cheapest, and in relation to which the prescribed processes were applied, it can hardly be suggested that their acquisition was the result of improper influence in the SDPP procurement process. Given the evidence before this Commission in relation to these four items, it would surprise the DoD if there were to be any suggestion during argument to the contrary. Nonetheless, if made, the DoD will deal with it once it emerges. Little point would be served by traversing the entire acquisition process of each of these four items of equipment at this stage without knowing whether such a suggestion will be made, and if so, what it pertains to. It is submitted that it is safe to conclude that no such allegations have survived the rigorous examination that this Commission has conducted in relation to the four cheapest items on offer.

9. That leaves two items of equipment that were not the cheapest on offer i.e. the GFC Meko A200 SAN Corvettes and the British Aerospace Hawk Lead-In-Fighter-Trainers "LIFT". There is no requirement that a proper adjudication of tenders necessarily means that the cheapest offer should win.⁵ However, in such instances, an examination of why the offer that was not the cheapest did win is appropriate.
10. In considering this question, best value for money includes taking into account long-term strategic alliances and the broader national interests in a

⁵ Defence Review p128 paragraph 56. Modac p14 paragraph 3.1.2.

global context.⁶ Best value for money also required considering industrial development and transformation imperatives.⁷ Best value for money required a consideration of DoD requirements, life-cycle costs, local technology and industrial development, social responsibility, transformation, financing, and strategic international relations.⁸ It also required taking into account the national objectives of job creation, wealth generation, trade balance, and counter trade.⁹

11. In relation to the competition between the cheaper Italian MB-339 FD and the Hawk, this complexity of factors and balancing of SA's broader interests was the role of the Minister of Defence, the ministers in the Cabinet subcommittee set up to oversee the acquisition process, led by the then Deputy President, (later President) Thabo Mbeki and the Cabinet, led by President Mandela.¹⁰ The decision to acquire the Hawks and the criticisms directed at that decision are dealt with in detail below.

12. The selection of the GFC corvettes, rather than the cheapest on offer - the Spanish Bazan – was the result of the IP scores awarded to the GFC's tender being higher than those achieved by the Spanish bid. Whilst the DoD

⁶ As required by DoD Policy Directive 4/147, paragraph 10.

⁷ Defence Review p128 paragraph 56.

⁸ Defence Review p128 paragraph 56.

⁹ Modac p14 paragraph 3.1.2.

¹⁰ See Modac p40 "*The Minister of Defense has the final authority on all acquisition matters and has the right to defer decision[s] on acquisition to cabinet level.*"

does not traverse the IP processes, the DoD does deal with the allegations of unlawfulness pertaining to the choice of the GFC as the main contractor and the conclusion of sub-contracts by the GFC for the supply of parts of the combat suites.

THE RATIONALE FOR THE SDPP

Overview of the issue

13. The Commission must consider whether there was actually a necessity to:
 - 13.1. restore the SAN's capability to patrol South Africa's territorial waters and Exclusive Economic Zone ("EEZ") by acquiring new corvettes with helicopters and replacing the 33 year old Daphne submarines;
 - 13.2. retain a fighter capability and replace the ageing and soon-to-be technically obsolete Cheetah-C with a new fighter;
 - 13.3. replace the obsolete Impala jet trainers acquired from 1966 with a trainer that was matched perfectly to the new generation of fighters;
 - 13.4. replace the over 40 year old Alouette III helicopters.

14. It is submitted that no one who believed that South Africa should have an effective defence force could suggest anything other than that the acquisitions were, if anything, long overdue.¹¹ The SAAF and the SAN were facing block obsolescence. Some doubt was expressed in relation to whether the Gripen were superfluous as the Cheetahs were not in immediate need of replacement, in particular by Mr Steyn.¹² Generals Malinga, Bayne and Hechter put the issue into proper perspective,¹³ and after their explanations were accepted by Mr Steyn,¹⁴ any doubt in this regard was decisively dispelled. By the time the Cheetahs' operational capacity expired during 2012, the Gripens had been delivered and were operational. Far from being prematurely acquired, the timing proved to be accomplished.

15. The DoD's experts testified that the equipment acquired constituted the minimum or core requirement, without which the constitutional mandate could not be fulfilled. A modern navy and air force, equipped to fulfil this mandate, was acquired to defend and protect the territorial integrity of the nation's land and seas.¹⁵

16. We explore these themes in more detail below.

¹¹ See Kasrils: transcript pp7088 – 7092. Adm Green: transcript p101 lines 5-14 and line 18 et seq.

¹² Steyn's statement paragraph 8.7.

¹³ Gen Malinga: transcript p803 lines 13 – 20 / Bayne: transcript p696 lines 16 – 19; p876 line 22 / Hechter: transcript p1777.

¹⁴ Steyn: transcript pp6734 – 6735.

¹⁵ Kasrils: transcript pp7088 – 7089.

The Constitutional Imperative

17. The functions of the SANDF were described in the 1993 Interim Constitution as:

- *Service in the defence of the Republic and the protection of its sovereignty and territorial integrity.*
- *Service in compliance with international obligations of the Republic with regard to international bodies and other states.*
- *Service in the preservation of life, health or property.*
- *Service in the provision or maintenance of essential services;*
- *Service in the upholding of law and order in support of the South African Police Service; and*
- *Service in support to any department of state for the purpose of socio-economic upliftment*¹⁶

18. The Constitution embraced the first of these priorities as being the primary objective of the SANDF, namely to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force.¹⁷

¹⁶ Section 227(1) Interim Constitution. Adm Green: transcript p99 lines 11-24. The provisions are also reflected in Chapter Four of the White Paper on Defence (p27 in Commission Bundle B). See also Gen Shoke's statement, paragraphs 7 onwards. Gen Malinga's statement paragraph 9.

¹⁷ Section 200(2) of the Constitution. See also Gen Shoke's statement paragraph 4; Adm Green's statement paragraphs 5, 8 & 9; transcript p98 line 17; p128 line 1 onwards.

19. The requirement to “defend and protect” was described by Adm Green as the capability to engage in military operations other than war, including peace support missions and being effective and efficient in preparation for the defending and protecting, so that any other collateral activity is done with the confidence that the SANDF can perform, as required by Government from time to time.¹⁸
20. In conclusion, the Strategic Objectives of the SANDF are:
- 20.1. to defend and protect South Africa, its sovereignty, its territorial integrity, its national interests and its people;
 - 20.2. to contribute to freedom from fear and want, including the promotion of human security, both nationally and internationally;
 - 20.3. to contribute to a better life for the people of South Africa.¹⁹

The 1996 White Paper on Defence and the 1998 Defence Review²⁰

21. The SANDF’s constitutional mandate was taken up by way of the 1996 White Paper on Defence, formulated through a wide consultation process involving civil society, and unanimously adopted by Parliament in May

¹⁸ Adm Green: transcript p 99 line 25. See also Adm Higgs: transcript p196 line 8.

¹⁹ Gen Malinga’s statement paragraph 42. Also Adm Green: transcript p124 lines 16 onwards.

1996.²¹ In the foreword to the White Paper, the Minister of Defence set out that:

“The constitutional function of Defence has, as its primary objective, to loyally defend and protect the sovereignty, territory and people of our country against external aggression, and, as its secondary object, to assist our civil authorities in maintaining the rule of law where necessary.

*Defence must serve to uphold peace and security in a democratic society, so as to create a stable environment for the improvement of our people’s lives and for the development and progress of our country”.*²²

22. The White Paper recognised that the greatest threats to South Africa were socio-economic problems such as poverty, unemployment and lack of housing and that there was a compelling need to reallocate state resources to the Reconstruction and Development Programme.²³ At the same time, it recognised that:

The challenge is to rationalise the SANDF and to contain military spending without undermining the country’s core defence capability in the short or the long term.

²⁰ Both documents are in Bundle B before the Commission and are also annexures “RWH4” and “RWH5” to Adm Higgs’ statement. See Adm Higgs: transcript p202 line 14 onwards for a general discussion on these documents.

²¹ Adm Green: transcript p107 line 2; see the forward by the Minister of Defence.

²² White Paper piii (Bundle B p6).

²³ 1996 White Paper on Defence p3 & p26.

*The SANDF may be employed in a range of secondary roles as prescribed by law, but its primary and essential function is service in defence of South Africa, for the protection of its sovereignty and its territorial integrity.*²⁴

*Deterrence requires the existence of a defence capability which is sufficiently credible to inhibit potential aggressors. Although South Africa is not confronted by any foreseeable external military threat, this capability cannot be turned on and off like a tap. It is therefore necessary to maintain a core defence capability.*²⁵

The SANDF has to maintain a long-term capability to fulfil its primary function. It is not possible to create such capability from a low level of preparedness if the need suddenly arises. It is therefore imperative to retain a sustainable core force and to upgrade and, where necessary, replace obsolete equipment.

The SANDF should be a balanced, modern and technologically advanced military force.

*South Africa is expected to play an active role in regional defence cooperation and peace support operations in Africa.*²⁶

23. Fully alive to the “guns versus butter” dilemma,²⁷ it was recognised that

²⁴ 1996 White Paper on Defence p3 (p14 in Commission Bundle B); Adm Green: transcript p111 line 16 – p112 line 14.

²⁵ White Paper p17 (Bundle B p28). See also Adm Green: p121 lines 6 et seq; Adm Schoultz: transcript p576 line 13; Adm Green: transcript p121 line 24; p129 line 4. See also Defence Review p120 paragraphs 2.2 & 2.3.

²⁶ 1996 White Paper on Defence p26.

²⁷ Adm Higgs: transcript p214 line 23 to p215 line 24. Also Adm Higgs: Transcript p328 line 9 et seq.

defence planning in the new democracy had to be “*needs driven and cost constrained*”.²⁸ This imperative was further developed by way of the Defence Review – during which process the size, type and staffing of the SANDF, its command and control, as well as its primary equipment and related budgetary requirements, were determined, again including a public consultation process.²⁹

24. The Defence Review detailed four options for the force design,³⁰ with Option 1 being recommended.³¹ The nation’s vast territorial expanse, extended borders and maritime jurisdiction³² were properly taken into account. The extent of that jurisdiction was vividly presented during Adm Higgs’s testimony.³³ He explained the concepts and extent of the territorial waters and related air space, the contiguous zone, the maritime cultural zone, the exclusive economic zone, the continental shelf and the maritime search and rescue area.³⁴ In addition, South Africa’s Defence Cooperation

²⁸ The Defence Review p4 paragraph 19. Gen Malinga’s statement paragraph 44. Adm Green’s statement paragraph 22; transcript p125-6; p132 lines 6 – p 134.

²⁹ Defence Review p1 paragraphs 6 & 7; p3 paragraph 16. Adm Higgs: transcript p218 line 18. Adm Green: transcript p 112 lines 22-25.

³⁰ Defence Review p47, Bundle B p96. See also Adm Higgs: transcript p290 line 9 et seq.

³¹ Adm Green: transcript p132 line 20.

³² Adm Green: transcript p157 line 22 to p158 line 9.

³³ Exhibit “A”. Adm Higgs’s statement p2, paragraph 9. Adm Higgs: transcript p 239 line 5 to p240 line 1; p248 line 19; p346 line 11 et seq; transcript p384 line 16. See also Gen Shoke’s statement paragraph 14 and Annexure “SS2”.

³⁴ Adm Higgs: transcript p384-392. See also Adm Green: transcript p157 lines 22 – p158. See also Adm Higgs: transcript p239 lines 5 et seq; p245 line 22, commenting on the Republic’s natural resources.

Agreements with other countries and its international commitments, particularly in the African region, to support operations under the auspices of the United Nations and other organisations such as the OAU/AU and SADC, were also considered.³⁵ It was recognised that defence capabilities and expertise that were lost would take a longer time to re-establish than the period in which a military threat could emerge, and that maintenance of that capacity and expertise as part of deterrence was prudent.³⁶

25. Yet notwithstanding these weighty considerations, the SDPPs resulted in the acquisition of less equipment than was recommended as being necessary to constitute a core force.³⁷ It is difficult to conceive of any credible contention to the effect that without the equipment obtained under the SDPPs, the Republic would still have been in a position to protect its sovereignty and honour its international obligations, as required by the Constitution.

The SAN's need for submarines

26. The SAN faced a particular problem if it was to maintain its submarine capability. Once lost, the submarine capability would be extremely difficult

³⁵ Gen Malinga's statement paragraph 11. Adm Higgs: transcript p307 line 18 et seq. Gen Shoke's statement paragraphs 15-16.

³⁶ Defence Review p11 paragraphs 8.5 and 8.6.

³⁷ Adm Green: transcript p133 lines 7-17 / Defence Review p47.

and costly to recover, especially in terms of vessel infrastructure and expertise.³⁸ The Daphne Class submarines had been obtained in the early 1970s, they faced block obsolescence and were no longer cost-effectively and economically supportable. As a result of a failure to acquire new submarines in the 1980s, the SAN completed a Submarine Life Extension Programme in 1989 to seek to ensure that the capability could be retained until replacement submarines could be acquired.³⁹ However, without a plan to replace the Daphne submarines the SAN faced the real possibility of the demise of its entire submarine capability.⁴⁰ The last Daphne Class submarine was decommissioned towards the end of 2003. Both the White Paper and the Defence Review confirmed the requirement for a submarine capability, and recommended that four submarines were required.⁴¹

27. In September 1999 Cabinet announced that three new submarines would be acquired under the SDPP and the Preliminary Staff Requirement 1/99 was submitted in November 1999.⁴² By this time the existing submarines were between 27 and 29 years old and were well due for replacement. Spares were no longer available and by 2005 the submarines would have

³⁸ Adm Schoultz's statement Annexure "PS-6" paragraph 7(c) (p70 of Adm Schoultz's bundle).

³⁹ Adm Schoultz's statement paragraph 11.

⁴⁰ Adm Howell's statement paragraph 14; paragraph 35. See also paragraph 43. Adm Higgs's statement paragraph 13. Adm Higgs: transcript p255 line 19 .

⁴¹ Adm Schoultz's statement annexure "PS-6", p68 of his bundle. Adm Schoultz: transcript p461-462.

⁴² Adm Schoultz's statement paragraph 11 and Annexure "PS6" (p68 of Adm Schoultz's bundle).

become prohibitively costly to maintain and thus obsolescent.⁴³

28. The first of the three submarines ordered under the SDPPs arrived in April 2006 and the last arrived during May 2008.⁴⁴ By that time, the SAN had been without any submarine capability for nearly four years. Under the SDPPs, only three submarines were acquired, they were long overdue, and this was less than was recommended as being necessary to constitute a core force.⁴⁵

29. Submarines are understood internationally to be extremely cost effective force multipliers. Because of their ability to remain unseen for long period, potential opponents – whether pirates, terrorists, hostile states, or others wishing ill upon SA – cannot ever be sure whether they will be able to operate within SA waters without being detected and having action taken against them. They are thus capable of providing a deterrent over vast areas of ocean and form an essential element of maritime defence, particularly for a small navy like the SAN.

The SAN's need for surface vessels

30. Historically, the SAN's surface capability consisted of:

⁴³ Adm Schoultz's statement – Annexure "pS-6" paragraph 6 (p69 of Adm Schoultz's bundle). Adm Schoultz: transcript p462 lines 20 to p463 line 6 / transcript p463 lines 7 – 12.

⁴⁴ Adm Schoultz's statement paragraph 12.

⁴⁵ Adm Green: transcript p133 lines 7-17 / Defence Review p48.

- 30.1. three Type 12 corvettes, which had arrived in 1960 - 1963,⁴⁶ and had been withdrawn from service and decommissioned in 1985.⁴⁷ The need to replace these corvettes was first raised in 1980.⁴⁸
- 30.2. nine strike craft, which were all old and nearing the end of their designed lifespan.⁴⁹
31. By the time of the SDPPs, the SAN had lost its capability to operate effectively and all its craft were old and facing the end of their designed life. The concern was block obsolescence.⁵⁰
32. Once the corvettes were decommissioned the only combat vessels that the SAN had were the strike craft.⁵¹ They lacked anti-submarine warfare capability, the ability to carry a helicopter to provide over-the-horizon surveillance, scouting, targeting or attack and they were severely limited in the adverse sea conditions frequently prevalent around much of the South

⁴⁶ Adm Schoultz: transcript p432 line 5.

⁴⁷ Adm Schoultz's statement paragraph 9; transcript p435 line 6. Adm Green: transcript p 104 line 15.

⁴⁸ Adm Schoultz's statement paragraph 9; Adm Schoultz: transcript p439 line 7.

⁴⁹ Adm Howell's statement paragraph 13. Adm Higgs: transcript p260 line 15 / p261 lines 21 – 23. Adm Schoultz, statement paragraph 6 & transcript p441 line 25 – p442 line 15.

⁵⁰ Adm Schoultz: transcript p459 lines 3 – 17.

⁵¹ Adm Green: transcript p105 line 11.

African coast due to their small size.⁵² Without these capabilities the SAN was vulnerable.⁵³ The SAN's requirement for a better surface vessel capability was a priority, and was described by Adm Schoultz as follows: surface missile attacks, subsurface attacks, offensive and defensive mine laying if required, use at sea as training platforms for young officers and sailors, a self-defensive capability to defend themselves and limited intelligence gathering.⁵⁴

33. Naval Staff Target 6/80 specified the need for six surface vessels to be acquired between 1987 and 1991.⁵⁵ The White Paper and Defence Review confirmed the necessity for four corvettes as part of the core force.⁵⁶ The time required to acquire new vessels could run to ten years, and accordingly it would have been proper for replacement acquisitions to have been considered 20 years after the acquisition of the previous platforms in the early 1960's.⁵⁷ The corvettes contemplated in Naval Staff Target 6/80 were ultimately only commissioned in 2006 and 2007.⁵⁸ By that time, the SAN had been without an adequate surface capability for over ten years.

⁵² Adm Schoultz's statement paragraph 7.

⁵³ Adm Schoultz: transcript p441 line 12. Adm Schoultz's statement paragraph 7; Adm Green's statement paragraph 26.

⁵⁴ Adm Howell's statement paragraph 13. Adm Schoultz's statement, paragraph 10; transcript p435 line 18.

⁵⁵ Adm Schoultz's statement paragraph 9.

⁵⁶ Adm Schoultz's statement 10; Annexure "PS-4"; Adm Schoultz: transcript p462 line 16. Defence Review, p48.

⁵⁷ Adm Schoultz: transcript p431 line 1.

⁵⁸ Adm Schoultz's statement, paragraph 10 (at end) / transcript p456 line 2.

34. South Africa's EEZ includes both that next to the African mainland and that around the Prince Edward Islands, and totals 1 535 538 km², 314 501 km² more than South Africa's land mass.⁵⁹ The integrity, safety and security of these waters are the direct responsibility of the SAN, which requires the capacity to ensure these effectively. The SAN's surface ships form an integral and vital part of this capacity.

The SAAF's need for fighters and trainers

35. In 1980 the SAAF had about 350 jet trainer, fighter, bomber and reconnaissance aircraft.⁶⁰ In the early 1990s an urgent need to replace major systems within the SAAF was identified.⁶¹ The defence budget was cut drastically in the early 1990s, many squadrons were closed and many aircraft were phased out.⁶² In 1997 further defence budget cuts were made, shrinking the SAAF even more, with further aircraft being phased out.⁶³

36. The Impala jet trainer and ground attack aircraft had a life to a maximum of 2003. Because of a lack of funds, no mid-life or half-life updates had been

⁵⁹ Adm Higgs: transcript p239 lines5 – 10. See also, for example, http://self.gutenberg.org/articles/exclusive_economic_zone#South_Africa.

⁶⁰ Gen Bayne's statement paragraph 16.

⁶¹ Gen Hechter's statement paragraph 13. Gen Malinga's statement paragraph 51.

⁶² Gen Bayne's statement paragraph 19.

⁶³ Gen Bayne's statement paragraph 20.

carried out on the Impalas.⁶⁴ It was envisaged that the Cheetah fleet would undergo an upgrade by 2008 for the dual-seater and 2012 for the single-seater.⁶⁵ The ageing Impala Trainer and Light Fighter were clearly in need of replacement. The Cheetah/Mirage F1AZ medium fighter fleets would be in need of replacement by 2012.⁶⁶

37. The need for replacement of the old fleets commenced in the early nineties. The SAAF rationale in 1996 was to replace the Impala fleet, which had become obsolete, with 48 Advanced Fighter Trainers as soon as possible and to replace the Cheetah fleet with 32 Future Medium Fighters by around 2008 to be operational by 2012. Cognisance was taken of the replacement programme of the Harvard basic trainer fleet with the Pilatus ASTRA.⁶⁷

38. It was recognised that even during peacetime it was important to retain a credible deterrent capability - the fighter component was a key component of this capability. Moreover, the Republic had become an important part of the region, and the continent as a whole, and a credible fighter component was required to project stability, assist in peace enforcement and to carry

⁶⁴ Gen Hechter's statement paragraph 12.3.

⁶⁵ Gen Bayne's statement paragraph 20. Gen Malinga's statement paragraph 36. Gen Hechter's statement paragraphs 12.1 and 12.2.

⁶⁶ Gen Malinga's statement paragraph 50.

⁶⁷ Gen Malinga's statement paragraph 51. Gen Bayne's statement paragraph 23

out other required actions.⁶⁸

39. The 24 Hawks were delivered from May 2006 over 12 months.⁶⁹ Handover of the Hawk system was in 2012, though some project activities were only to be completed by 2015.

40. The Gripen System was still in the final stages of handover when the SAAF officials gave their evidence in this Commission during late 2013. The 26 Gripens were delivered from April 2008 over 30 months, and final handover was expected to take place in 2015.⁷⁰ The former Secretary for Defence, Mr Steyn, conceded that his criticisms regarding the acquisition of the Gripens being premature were not well-founded. In particular, he conceded that by the time most of the Gripens were delivered in 2012, the life cycle of the Cheetahs had expired.⁷¹

The Three-Tier / Two-Tier strategy and the need for the LIFT

41. The SAAF retained a three-tier combat-training system throughout its history.⁷² However, as a result of a reduced budget the SAAF was forced

⁶⁸ Gen Bayne's statement paragraph 27.

⁶⁹ Gen Bayne's statement paragraph 33.

⁷⁰ Gen Bayne's statement paragraphs 34; 37 and 39.

⁷¹ Gen Steyn: transcript pp6734 – 5. (Some of the Gripens had been delivered earlier and had been used in the 2010 World Cup.)

⁷² Gen Malinga's statement paragraph 50; Gen Bayne's statement paragraphs 7 and 16. The three tier system is explained by Gen Hechter: statement paragraph 15.

to review its strategy due to cost, and not due to operational requirements.⁷³ Studies showed that the Future Medium Fighter would be completely unaffordable within the national budget.⁷⁴ The result was a lowering of the requirement from a Future Medium Fighter to an Advanced Light Fighter (“ALFA”) which would also have to carry out the roles of the envisaged Advanced Fighter Trainer (“AFT”) aircraft. This in effect changed the strategy from a three-tier to a two-tier training approach. The new, two-tier strategy was approved in principle on 5 August 1997.⁷⁵ By this time the package approach to replacing ageing SANDF main equipment was underway, and the ALFA was included in the SDPP programme.⁷⁶

42. Once the responses to the ALFA Request for Information (RFI) were received, it became apparent that the SAAF would still require a Lead-In Fighter-Trainer (“LIFT”).⁷⁷ Studies showed that the two-tier system was not in the best interests of the SAAF or the SANDF.⁷⁸ Its problems included the fact that the Astra had no weapons training capability and could not be modified to do basic and advanced weapons training. The gap between the basic trainer and the ALFA was huge. It would be very expensive to do basic and advanced weapons training on the ALFA, which was at the top of

⁷³ Gen Bayne’s statement paragraph 25. Gen Malinga’s statement paragraph 53.

⁷⁴ Gen Hechter’s statement paragraph 16.

⁷⁵ Gen Hechter’s statement paragraph 18.

⁷⁶ Gen Malinga’s statement paragraph 53. Gen Bayne’s statement paragraph 25. See also Annexure “JWB-2” to Gen Bayne’s statement – Project Ukhozi Revised Staff Target, paragraph 3

⁷⁷ Gen Bayne’s statement paragraph 26. Gen Hechter’s statement paragraph

⁷⁸ Gen Hechter’s statement paragraph 20

the range of combat capability and the flying hours were very expensive.⁷⁹ The chances of losing ALFAs being flown by inexperienced pilots was too high a risk to accept.⁸⁰ A further disadvantage was that the SAAF had had to undertake to the supplier of the Astra that it would not be used for anything but training.⁸¹ It therefore became obvious that the SAAF had to revert to its three-tier approach, consisting of the Pilatus Astra as the basic trainer, followed by advance fighter training on the LIFT, and then the graduation to the advanced light fighter (the ALFA).⁸²

43. In November 1997 the SAAF decision to retain the three tier system was presented by the then Chief of the SAAF to the Armaments Acquisition Council (“AAC”), which accepted the SAAF’s recommendation.⁸³ The decision was the start of Project Winchester to deliver 24 LIFT aircraft to the SAAF as part of the SDPPs.⁸⁴
44. Gen Hechter was completely dismissive of the allegation that the two-tier system was perfectly acceptable and that pilots could move straight from

⁷⁹ Gen Hechter’s statement paragraph 21.

⁸⁰ Gen Hechter’s statement paragraph 22.

⁸¹ Gen Hechter’s statement paragraph 23.

⁸² Gen Hechter’s statement paragraph 25.

⁸³ Gen Malinga’s statement paragraph 54. Gen Bayne’s statement paragraph 26.

⁸⁴ Gen Hechter’s statement paragraph 15. See also Gen Bayne: transcript p899 line 6 – p904; p937 - 9.

the Astra to the combat fighter – he described this as “hogwash”.⁸⁵

The SAAF’s need for helicopters

45. In regard to helicopters, a study was launched in 1992 during which all stakeholders were consulted on their requirements for the Alouette III replacement. The Alouette II was phased out in 1974 and the Alouette III Light Utility Helicopter (“LUH”), the last of which had been acquired in 1975, then became the basic primary helicopter trainer.⁸⁶ No mid-life upgrade was done due to lack of funds.⁸⁷ By 1990 it was becoming more difficult to operate the Alouette III as costs were increasing and it was limited in its operational utilisation. Indications were that its spares production line was to be discontinued.⁸⁸ Its replacement was the first priority identified by the SAAF.⁸⁹ The 1992 study indicated that at least 60 units were required to replace the Alouette III fleet.⁹⁰ The replacement of the Alouette III was thus already a registered SAAF requirement long before the SDPPs.⁹¹

46. The Required Operational Capacity (“ROC”) for the Alouette III replacement

⁸⁵ Gen Hechter: transcript pp1766 -1768 line 10. He was responding to the statement by Holden and Van Vuuren in *The Devil in the Detail*.

⁸⁶ Gen Malinga’s statement paragraph 26. Gen Burger’s statement paragraph 9.

⁸⁷ Gen Hechter’s statement paragraph 12.4.

⁸⁸ Gen Malinga’s statement paragraph 32. See also Annexure “FKSV-3” to Col Viljoen’s statement (Staff Target 3/95) paragraph 3. Gen Burger’s statement paragraph 16.

⁸⁹ Gen Hechter’s statement paragraph 14.

⁹⁰ Gen Malinga’s statement paragraph 58.

⁹¹ Gen Burger’s statement paragraphs 17 and 20, and references there to the JIT report.

was compiled in 1995 and the Staff Target approved by the Armaments Acquisition Control Board (“AACB”) in May 1996.⁹²

47. The Cabinet approved the acquisition of 40 Agusta A109 helicopters on 18 November 1998, but only 30 were ultimately acquired, with an option for a further 10, though the option was not exercised⁹³. The first LUH was delivered in 2005 and the last in September 2009.⁹⁴

48. The LUH fulfils the following roles:

48.1. it supports the South African Police Services in the maintenance of internal stability;

48.2. it supports the other services of the SANDF;

48.3. it assists both local and foreign Government Departments in accomplishing their tasks and/or missions;

48.4. it supports the maintenance of regional stability and the rendering of aid;

⁹² Col Viljoen’s statement paragraphs 6 and 7 and Annexure “FKSV-3” at p98.

⁹³ Col Viljoen’s statement paragraphs 12 and 13.

⁹⁴ Gen Burger’s statement paragraph 22.

- 48.5. it supports the South African Police Service in crime prevention operations in order to reduce the local crime rate;
- 48.6. it supports the Department of Foreign Affairs (now the Department of International Relations and Cooperation (“DIRCO”)) in carrying out the National Foreign Policy;
- 48.7. it conducts rescue missions in mountainous terrain, at sea and in disaster situations.⁹⁵

UTILISATION

General perspectives

49. The SANDF has met all its obligations within the allocated budget for each period under consideration. It has done so in accordance with the overarching principle that its operations must be “needs driven and cost constrained”.⁹⁶ Within the expenditure framework in which the SANDF operates, the defence packages are utilised in accordance with the mandate and budgetary requirements of the DoD.⁹⁷ It is acknowledged by the DoD that the equipment acquired in terms of the SDPPs has not, in

⁹⁵ Gen Burger’s statement paragraph 25.

⁹⁶ Gen Malinga: transcript p 807 lines 6 – 10 / statement paragraph 44. The Defence Review p4 paragraph 19. Adm Green’s statement paragraph 22; transcript p125-6; p132 lines 6 – p 134.

⁹⁷ Adm Green: transcript p142 line 11 to p147 line 8; Adm Green: transcript p149 lines 1-4.

general, been utilised as much as was originally envisaged when the SDPP process commenced. The extent of the actual utilisation of the equipment depends directly on SANDF obligations on the one hand, and fulfilling these obligations within the given budgetary constraints, on the other.⁹⁸ The Minister of Defence has taken the stance that the defence budget cannot afford to take further cuts⁹⁹ and indeed in her latest budget speech this year called for an increase in the Defence budget from the current 1.1% of GDP to 2% of GDP.¹⁰⁰

50. The obligations of the SANDF comprise its constitutional mandate and various international obligations, as well as ordered commitments that will vary from year to year as the need for assistance arises. Given that it is not possible to predict exactly what the obligations in any given year will entail, it is unsurprising that the actual utilisation of equipment may not always correspond with the utilisation planned at the outset.
51. Utilisation is not limited to the hours that the vessels spend at sea or the hours spent in the air by the aircraft. In addition to these hours, the assets are utilised for the rotational training of pilots, maintenance staff and other support staff.¹⁰¹ The primary role of the SANDF is to be prepared to deter

⁹⁸ Adm Higgs: transcript p215 lines 3 – 13 and p366 line 6 – p 368 line 25.

⁹⁹ Adm Higgs: transcript p367 line 13. (DoD's budget vote on 17 May 2012.)

¹⁰⁰ The Budget Speech is part of the public record and can be accessed at www.dod.mil.za.

¹⁰¹ Adm Green: transcript p136 – 140; p139 lines 10-12.

any external hostilities and to deal with conflict.¹⁰² In light of this, having corvettes and submarines operationally available alongside, is also a form of utilisation.¹⁰³ Similarly, hours flown in the aircraft serve as a deterrent, so that the aircraft are in this sense being utilised to fulfil the primary goal of the SANDF.¹⁰⁴

The SAN

52. The operating of a modern navy, albeit a small one, is a complex undertaking.¹⁰⁵ The German corvettes and submarines are managed according to an Operational Cycle, which includes both Operational Availability/Utilisation and Maintenance Periods.¹⁰⁶ The Operational Availability/Utilisation period comprises three periods, being:

52.1. Force Preparation, which entails Safety and Readiness Checks of the vessels, individual and multi-ship training and exercises;

52.2. Force Employment, during which operations, ordered commitments and joint and multinational exercises are conducted; and

¹⁰² Gen Burger's statement, paragraph 23 and Gen Burger: transcript p1297 line 21 to p1298 line 4.

¹⁰³ Adm Schoultz's statement paragraph 23 and Adm Schoultz: transcript p575 line 14 to 577 line 17.

¹⁰⁴ Gen Burger: transcript p1336 line 22 to p1337 line 7.

¹⁰⁵ Adm Christian's statement paragraph 11 and Adm Christian: transcript p670 line 1 to p771 line 5.

¹⁰⁶ Adm Schoultz's statement paragraph 18.

- 52.3. Self-Maintenance, during which periods the ship's company performs minor on board repairs to the vessels.¹⁰⁷
53. The Operational Cycle and therefore the extent of the utilisation of the naval vessels acquired in terms of the SDPPs is a function of the requirements placed upon the SAN and the funds available to it.¹⁰⁸
54. Adm Green explained the discrepancies between the planned hours at sea and actual hours at sea in relation to both the corvettes and the submarines on the basis of force employment. The planned hours include both force preparation and force employment. If the need for the force employment does not materialise, then the vessel will not be sent out to sea for that mission, so that the planned hours could exceed the actual hours at sea in the relevant financial year. The converse will apply where the need for unplanned force employment arises, so that in the relevant financial year the actual hours at sea could exceed the planned hours.¹⁰⁹

The corvettes: utilisation

Overview

55. The corvettes are South Africa's front line naval surface combatants. In terms of their role, they have replaced three Type 12 corvettes and nine

¹⁰⁷ Adm Schoultz's statement paragraph 18.

¹⁰⁸ Adm Schoultz's statement paragraph 20.

¹⁰⁹ Adm Green: transcript p8928 lines 12 – 22.

Strike Craft while at the same time offering significantly more advanced capabilities. The Meko A200 supplied to South Africa to this day remains at the cutting edge of naval technology and is still at the core of the supplier TKMS's product portfolio.¹¹⁰

56. The Commission has been given detailed information by the SAN of the roles allotted to the patrol corvettes acquired under the SDPP in securing South Africa's seaward safety and security, their use in a multitude of roles since commissioning, and their maintenance and upgrade cycles. This information indicates that the ships are being utilised to do the jobs for which they were procured. That evidence is set out in some detail below.

Key aspects of corvette utilisation

57. Corvette utilisation was defined in Naval Staff Requirement 6/80.¹¹¹ It was recognised in November 2002 that this corvette utilisation would not be possible under the SAN's budget allocation at the time.¹¹² An alternative model for sparing was thus proposed, in which the number of days at sea and days of operational availability would be reduced.¹¹³ This model was

¹¹⁰ Submission by TKMS (Mr Klaus Wiercimok's statement), paragraphs 42 and 43.

¹¹¹ Adm Schoultz's statement, paragraph 15; transcript p468 line 15.

¹¹² Adm Schoultz's statement paragraph 15; transcript p 469 line 10.

¹¹³ Adm Schoultz: transcript p475 lines 12 – 17.

subsequently approved, with the result that the sparing proposed and therefore the utilisation of the vessels was reduced.¹¹⁴

58. The costs required for the life-cycle support of the vessels are driven by both time-based maintenance, such as an annual service, and utilisation maintenance, in which the maintenance required by the vessels will depend on the days spent at sea, days spent alongside, length required for a given mission and the level of dependability required for a given mission.¹¹⁵
59. A key consideration in relation to utilisation is the relationship between the utilisation and maintenance cycles of the corvettes, i.e. the number of days spent on missions, performing exercises and being available for operations, compared to the number of days spent undergoing maintenance.¹¹⁶
60. Another aspect influencing utilisation relates to the complexity of certain features built into the corvettes themselves, some of which were entirely novel to the SAN, such as surface to air missiles, gas turbines and a water jet.¹¹⁷ The SAN had to develop a detailed understanding of the working of the vessels, with all of their complex features, before the vessels could be effectively utilised and maintained.¹¹⁸

¹¹⁴ Adm Schoultz: transcript p 475 lines 1-2 and p477 lines 17-19.

¹¹⁵ Adm Schoultz: transcript p470 lines 5 – 22.

¹¹⁶ Adm Schoultz: transcript p496 lines 20 – 25 and Adm Schoultz's statement paragraph 15.

¹¹⁷ Adm Schoultz's statement paragraph 16.

¹¹⁸ Adm Schoultz's statement paragraphs 16 - 17 and Adm Schoultz: transcript p479 lines 1 – 8.

61. The Operational Cycle of the corvettes is a further fundamental in relation to their utilisation. The Operational Cycle can be separated into Operational Availability / Utilisation and Maintenance periods.¹¹⁹ At the end of an Operating Cycle, the vessel is decommissioned and sent to the dockyard, where major repairs, engineering changes and half-life extensions or upgrades will be carried out.¹²⁰ Related to the Operational Cycle is the concept of “days Ops”, which refers to the number of days that a vessel is available for operations, in other words the number of days where a vessel is not undergoing maintenance.¹²¹
62. The SAN is instructed in regard to the levels of readiness of the vessels. At any given time one corvette must be at a functional level of capability i.e. fit for its war-fighting role. Another corvette must be at a seagoing level of capability, meaning that it is safe to go to sea for limited tasks, but not war-fighting. One corvette would then be at no level of capability, typically because that corvette would be undergoing a major refit.¹²² These requirements are both cost driven and needs driven. It would be prohibitively expensive to keep all four corvettes at their full level of

¹¹⁹ Adm Schoultz’s statement paragraph 18.

¹²⁰ Adm Schoultz’s statement paragraph 18 and Adm Schoultz: transcript p480 line 8 to p483 line 18.

¹²¹ Adm Schoultz: transcript p471 lines 14 – 23.

¹²² Adm Schoultz: transcript p487 lines 11 – 20.

capability all the time, so that the planned and actual utilisation will be influenced by both costs and the needs that actually arise.¹²³

Force Preparation

63. Force Preparation includes safety and readiness checks, which can take up to 19 weeks to complete and are undertaken to prepare the vessels for periods of utilisation.¹²⁴
64. Preparation for operations (for example the peace talks in Zaire conducted aboard the SAS Outeniqua) entails the development of doctrines, operational procedures and training programmes all of which entail utilisation of the vessels.¹²⁵
65. An example of Force Preparation during which crews learn the efficient use of their ships under real conditions is the firing of the Exocet surface-to-surface missiles in False Bay, an exercise in which the SAS Amatola, SAS Spioenkop and the SAS Mendi all took part.¹²⁶

¹²³ Adm Schoultz: transcript p487 line 25 to p488 line 6.

¹²⁴ Adm Schoultz: transcript p528 lines 8 – 20; transcript p528 line 18 to p530 line 20.

¹²⁵ Adm Higgs: transcript p308 lines 10 – 13.

¹²⁶ Adm Schoultz's statement Annexure "PS-8" p75 item 1 and Adm Schoultz: transcript p503 lines 3 – 7.

Force Employment

66. At the time that the relevant evidence was given, the corvettes had spent 1 932 days operationally employed, engaged in joint or multinational exercises or engaged in other ordered commitments.¹²⁷ The figure excludes trials and independent exercises, and translates to 16.5%¹²⁸ mission deployment in which the corvettes participated in 24 operations, 25 joint and multinational exercises and five other ordered commitments.¹²⁹
67. At the request of the Commission, Adm Green submitted a supplementary statement recording the planned and actual hours at sea for both the corvettes and the submarines. He provided a table showing these figures and explained that the SAN's records record planned hours at sea, as opposed to days at sea, as presented by Adm Schoultz.¹³⁰ He explained in his evidence that the SANDF can only report on audited figures, and that the Auditor General required that the performance of the corvettes and the submarines be measured in hours and not days because there is ambiguity as to what constitutes a day.¹³¹ The figures in the supplementary statement

¹²⁷ Adm Schoultz's statement paragraph 21. (The transcript incorrectly refers in places to "audit" commitments.)

¹²⁸ Adm Schoultz: transcript p530 line 24 to p533 line 8.

¹²⁹ Adm Schoultz's statement paragraph 21.

¹³⁰ Adm Green's supplementary statement, paragraph 5.

¹³¹ Adm Green: transcript p8925 lines 5 – 20.

were read into the record.¹³²

68. Adm Green stated that the explanation for the difference between planned and actual hours is complex, but takes into account the issues of force preparation and force employment. If the force employment that was planned for the year did not materialise (i.e. the need for a ship to proceed on a particular mission or operation was no longer required), then that ship would not go to sea for that reason, and the actual hours would be reduced. Where unplanned events arose and the ships had to be deployed for more than was planned, the inverse would apply.¹³³
69. Adm Green said that suggestions that the ships have not been at sea, or that they were not capable of going to sea, were untrue. He stressed that the SAN had never been in a position where it had not been able to execute an operation that had been ordered by government.¹³⁴
70. The operations referred to above included goodwill visits to Brazil, Nigeria, China, India, Vietnam, Singapore, Tanzania and Mauritius.¹³⁵ Goodwill visits entailed warships visiting other countries as a gesture of friendship and cooperation, allowing the warship to fulfil an important diplomatic

¹³² Adm Green: transcript p8927 lines 2 and following.

¹³³ Adm Green: transcript p8928 lines 12 – 20.

¹³⁴ Adm Green: transcript p8928 line 22 to p8929 line 4.

¹³⁵ Adm Schoultz's statement paragraph 21.

role.¹³⁶

71. Ordered commitments in this context are tasks ordered by the President or the Commander-in-Chief and such tasks as the SAN is obliged to undertake by virtue of South Africa's international obligations.¹³⁷ Ordered commitments may also include diplomatic missions. The SAS Amatola, for example, has had a significant impact on foreign policy and strategic positioning. In 2006 she was deployed to Lagos, Nigeria to support the Sea-Power Africa Symposium in Abuja, which was attended by the navies of 22 African countries.¹³⁸
72. An example of an ordered commitment arising from South Africa's obligation to render assistance in relation to international peace support operations is the use of the SAS Outeniqua as a credible platform from which then-President Nelson Mandela conducted peace talks in relation to Zaire.¹³⁹ In 2008, the SAS Spioenkop was deployed to China in support of the recognition of the 10-year relationship between South Africa and the People's Republic of China, another ordered commitment fulfilled by the SAN.¹⁴⁰

¹³⁶ Adm Schoultz: transcript p533 line 24 to p534 line 3.

¹³⁷ Adm Schoultz: transcript p521 lines 22 – 25 and p527 lines 13 – 19.

¹³⁸ Adm Higgs: transcript p311 line 24 to p312 line 12.

¹³⁹ Adm Higgs: transcript p306 line 18 to p307 line 8.

¹⁴⁰ Adm Higgs: transcript p316 lines 6 – 14.

73. This type of utilisation illustrates the ability of warships to fulfil a diplomatic role by visiting other countries as a gesture of goodwill, friendship and cooperation.¹⁴¹
74. The corvettes have also been utilised for anti-piracy operations, being deployed on numerous lengthy anti-piracy patrols in the Mozambique Channel.¹⁴²
75. The SAN was called upon to deploy a corvette to rescue injured sailors after an explosion on a trawler near Tristan da Cunha.¹⁴³ A corvette was deployed to support a SAPS operation to interdict drug-runners on the West Coast by intercepting a vessel suspected to be transporting drugs.¹⁴⁴ The deployment of a corvette was essential in both of these operations on account of the fact that, in both cases, helicopters were required to execute the operation.¹⁴⁵
76. Other notable operations included the escort of a vessel carrying nuclear

¹⁴¹ Adm Schoultz: transcript p533 line 24 to p544 line 3.

¹⁴² Adm Higgs: transcript p311 lines 8 – 12; Adm Schoultz's statement paragraph 21 and Annexure "PS-8" p75-6 Items 39, 41, 43, 46, 48 and 50 and Adm Schoultz: transcript p516 line 19 to p519 line 17.

¹⁴³ Adm Schoultz's statement paragraph 21 and Annexure "PS-8" p 76 Item 40 and Adm Schoultz: transcript p515 line 6 to p516 line 18.

¹⁴⁴ Adm Schoultz's statement paragraph 21 and Annexure "PS-8" Item 29 p 75 and Adm Schoultz: transcript p534 line 4 to p535 line 9.

¹⁴⁵ Adm Schoultz: transcript p538 line 25 to p539 line 6.

waste to ensure safe passage through South African coastal waters¹⁴⁶ and the deployment of a corvette as a precautionary measure during the visit of President and Mrs Obama to Cape Town in June 2013.¹⁴⁷ The corvettes were also utilised on various occasions to secure the preparation and execution of the 2010 Soccer World Cup.¹⁴⁸

77. Some notable multinational exercises concluded during this period included the participation of the SAS Amatola and SAS Isandlwana in the friendly naval exercises conducted every two years in conjunction with the navies of Brazil, Argentina and Uruguay¹⁴⁹ and the deployment in 2009 of the SAS Amatola and SAS Mendi to Walvis Bay, Namibia, to engage in friendly exercises with the navies of various SADC countries.¹⁵⁰ The SAS Amatola performed well in a NATO war fighting capability test performed by the British Royal Navy.¹⁵¹

78. A search and rescue exercise was also performed by the SAN corvettes in

¹⁴⁶ Adm Schoultz's statement paragraph 21 and Annexure "PS-8" p 76 Item 42 and Adm Schoultz's transcript p519 line 20 to p520 line 17.

¹⁴⁷ Adm Schoultz's statement Annexure "PS-8" p76 Item 49 and Adm Schoultz's transcript p520 line 18 to p521 line 9.

¹⁴⁸ Adm Schoultz's statement Annexure "PS-8" p75-76 Items 31; 35 and 37 and Adm Schoultz: transcript p510 line 21 to p514 line 9.

¹⁴⁹ Adm Higgs: transcript p314 lines 7 – 12; Adm Schoultz's statement Annexure "PS-8" p75 Items 3, 11 and 22 and Adm Schoultz: transcript p505 lines 11 – 23.

¹⁵⁰ Adm Schoultz's statement paragraph 20 & Annexure "PS-8" p75 Item 15 / Adm Schoultz: transcript p498 lines 12 – 18 / p504 line 13 to p505 line 5.

¹⁵¹ Adm Higgs: transcript p311 lines 13 – 15.

conjunction with the French Navy in the Mozambique Channel.¹⁵²

Difficulties experienced with the corvettes impacting on utilisation

79. The SAS Amatola had a problem with water ingress into the port side diesel engine in 2008. A replacement engine has been purchased and was to be installed during the upcoming refit of the vessel.¹⁵³
80. There have also been concerns in relation to the oil in the vessels overheating. Although the SAN does not have a definitive answer as to why the oil overheats on occasion, it is thought that it may be due to the temperature of the seas in which the vessels operate.¹⁵⁴
81. With respect to the corvette engines, the SAN found that two of the four leaked coolant. This was brought to the attention of the manufacturers, who indicated that this was a matter of design that could be corrected by removing a certain unnecessary component.¹⁵⁵

¹⁵² Adm Schoultz's statement Annexure "PS-8" p75 Item 19 and Adm Schoultz: transcript p507 line 24 to p508 line 10.

¹⁵³ Adm Schoultz: transcript p613 lines 6 – 9.

¹⁵⁴ Adm Schoultz: transcript p613 lines 10 – 16.

¹⁵⁵ Adm Schoultz: transcript p613 line 19 to p614 line 4.

Criticisms and responses in relation to corvette utilisation

82. Critics have suggested that the missiles purchased for use by the corvettes were deficient, inadequate and inferior.¹⁵⁶ This criticism was not well-founded: the missile chosen is well known and used by many navies around the world.¹⁵⁷
83. Another criticism relates to the engines of the corvettes. Critics alleged that the incorrect engines were installed in the corvettes rendering them deficient and inadequate and unable to serve the purpose for which they were purchased.¹⁵⁸ Adm Schoultz testified that the engines were bought from a major diesel-marine engine manufacturer and that, with regard to the particular series of engine fitted to the corvettes, there were some 634 ships deployed around the world using the same well-respected engine.¹⁵⁹
84. It has also been suggested that the corvettes are merely stationed at the harbour and have not been effectively utilised.¹⁶⁰ The evidence regarding the many operations undertaken by the corvettes refutes this criticism.

¹⁵⁶ Adm Schoultz: transcript p544 lines 19 – 20.

¹⁵⁷ Adm Schoultz: transcript lines p544 22 – 25. Adm Kamerman's statement paragraph 149.5.3.

¹⁵⁸ Adm Schoultz: transcript p545 lines 9 – 12.

¹⁵⁹ Adm Schoultz: transcript p545 lines 13 – 23.

¹⁶⁰ Adm Schoultz: transcript p545 lines 1 – 3.

85. On each occasion where the SAN has been called upon to assist in an operation or exercise, it has been able to do so successfully whilst remaining within the constraints of the budget allocated to it.¹⁶¹ When the time spent utilising the corvettes for the independent training and exercises that are necessary to prepare the vessels and crew for such operations is taken into account, it is fair to conclude that the corvettes have been well utilised.¹⁶²

The Submarines: utilisation

86. The utilisation of the submarines during the period under consideration totals 807 days, which total comprises each day that any of the submarines participated in an exercise, trial or operation.¹⁶³ Although the utilisation of the submarines has been less than originally envisaged, this has been as a result of requirement rather than availability.¹⁶⁴

87. As stated above, at the Commission's request Adm Green provided a supplementary statement setting out the planned and actual hours at sea for the submarines and corvettes.¹⁶⁵

¹⁶¹ Adm Schoultz: transcript p545 lines 4 – 8.

¹⁶² Adm Schoultz's statement paragraph 21.

¹⁶³ Adm Schoultz's statement Annexure "PS-9" p79 and Adm Schoultz: transcript p562 lines 12 – 25.

¹⁶⁴ Adm Schoultz's statement paragraph 22 and Adm Schoultz: transcript p567 lines 4 – 17.

¹⁶⁵ Adm Green's supplementary statement paragraph 5.

Trials and Initial Training

88. Before the submarines could be fully utilised it was necessary to conduct trials in which the torpedoes were fitted, tested and fired from the Submarines to ensure that the weapons system was integrated with the platform.¹⁶⁶ It was also necessary for new personnel to be trained to crew the submarines, as many submariners came to the end of their careers with the demise of the Daphne Class submarine.¹⁶⁷
89. Further trials and exercises were carried out to facilitate the evolution of the standard operating procedures and doctrines in relation to loading crew and supplies onto the submarines via helicopter,¹⁶⁸ anchoring the submarine just above the sea bed when it was in a dive position and the ability to allow the submarine to lie on the sea bed.¹⁶⁹ These trials and exercises comprised the first stages in learning how to operate the submarines in a war-fighting capability.¹⁷⁰

¹⁶⁶ Adm Schoultz's statement Annexure "PS-9" p77 Items 3, 4, 7 and 8 and Adm Schoultz: transcript p549 line 21 to p542 line 3.

¹⁶⁷ Adm Schoultz' statement Annexure "PS-9" p77 Item 5 and Adm Schoultz: transcript p550 lines 4 – 19.

¹⁶⁸ Adm Schoultz's statement Annexure "PS-9" p 77 Item 9 and Adm Schoultz: transcript p550 line 20 to p551 line 12.

¹⁶⁹ Adm Schoultz's statement Annexure "PS-9" p 77 Items 10 and 12 and Adm Schoultz: transcript p551 line 13 to p552 line 8.

¹⁷⁰ Adm Schoultz: transcript p552 line 6 – 8.

90. Naval personnel also had to be trained to operate the escape equipment, which allows the crew to ascend to the surface should the submarine fail to rise for any reason.¹⁷¹

Force Preparation

91. The submarines have been utilised in various multinational exercises. In 2007, at NATO's request, the SAS Manthatisi was deployed, along with two of the corvettes, for a war games exercise with NATO off the coast of South Africa.¹⁷² SAS Manthatisi won the exercise by remaining undetected by the NATO anti-submarine corvette.¹⁷³ Multinational exercises allow South Africa continuously to hone its skills and assess its war fighting capability as well as to keep up with the trends in submarine and anti-submarine warfare.¹⁷⁴ This particular exercise also lent credibility to South Africa by illustrating that the SAN is capable of standing up against one of the most powerful naval forces in the world. Various other multinational exercises have been conducted by the submarines¹⁷⁵. In certain instances, such as

¹⁷¹ Adm Schoultz's statement Annexure "PS-9" p77 Items 11 and 13 and Adm Schoultz: transcript p552 lines 9 – 19.

¹⁷² Adm Higgs: transcript p330 line 11 to p331 line 5; Adm Schoultz's statement Annexure "PS-9" p77 Item 15 and Adm Schoultz transcript p553 lines 3 – 6.

¹⁷³ Adm Higgs: transcript p332 line 11 to p333 line 24.

¹⁷⁴ Adm Higgs: transcript p333 lines 18 – 21 and Adm Schoultz: transcript p559 lines 2 – 9.

¹⁷⁵ Adm Schoultz's statement Annexure "PS-9" p77 Items 16 and 17 and Adm Schoultz: transcript p553 line 6 - 20.

the multinational exercises conducted with Brazil, Argentina and Uruguay¹⁷⁶ and the exercises conducted with SADC countries,¹⁷⁷ the submarines were deployed along with the corvettes.

92. The submarines have been utilised for the purposes of training the commanding officers.¹⁷⁸ Force Preparation also entails exercises relating to the firing of torpedoes, whether simulated or actual.¹⁷⁹
93. SAS Charlotte Maxeke has been deployed to the Marion Island/Prince Edward Island group to protect fishery resources and to gather intelligence in relation to South Africa's extended continental shelf claim.¹⁸⁰
94. South Africa's third submarine, SAS Queen Modjadji, is regularly deployed, particularly up the East Coast and has also been involved in naval exercises with visiting navies.¹⁸¹

¹⁷⁶ For corvettes, see Adm Higgs: transcript p314 lines 7 – 12; Adm Schoultz's statement Annexure "PS-8" p75 Items 3, 11 and 22 and Adm Schoultz: transcript p505 lines 11 – 23. For Submarines see Adm Schoultz's statement Annexure "PS-9" p78 Items 38, 54 and 55 and Adm Schoultz: transcript p553 lines 11 – 16 and p558 lines 1 – 11.

¹⁷⁷ For corvettes see Adm Schoultz's statement Annexure "PS-8" p75 Item 15 and Adm Schoultz: transcript p504 line 13 to p505 line 5. For Submarines see Adm Schoultz's statement Annexure "PS-9" p77 Item 27 and Adm Schoultz: transcript p555 lines 20 – 25 and p556 lines 11 – 18.

¹⁷⁸ Adm Schoultz's statement Annexure "PS-9" p77-8 Items 14, 18, 43, 44 and 45 and Adm Schoultz: transcript p553 line 21 to p554 line 8 and p556 line 19 to p557 line 25.

¹⁷⁹ Adm Schoultz's statement Annexure "PS-9" p77-8 Items 20, 21, 22, 23, 25, 26, 33, 34, 37, 49, 53 and Adm Schoultz: transcript p554 lines 10 – 24.

¹⁸⁰ Adm Higgs: transcript p336 line 19 to p337 lines 9 - 10. Adm Schoultz's statement paragraph 22 and Annexure "PS-9" p79 Items 62 and 73.

95. As with the corvettes, the SAN receives instructions as to how many submarines should be at a functional level of capacity, capable of performing a war-fighting function, how many must be at a seagoing level of capability, and how many should be at no level of capability to allow for extensive maintenance on the vessel.¹⁸²

Operations

96. The submarines have been utilised in numerous SANDF operations relating to border safeguarding.¹⁸³

97. The submarines have also been utilised, along with the corvettes, in relation to anti-piracy operations in the Mozambican Channel.¹⁸⁴

98. Another notable operation necessitating the use of the submarines was the operation to secure the 2010 Soccer World Cup.¹⁸⁵

¹⁸¹ Adm Higgs: transcript p337 lines 10 – 15.

¹⁸² Adm Schoultz: transcript p487 lines 21 – 24.

¹⁸³ Adm Schoultz's statement Annexure "PS-9" p78-9 Items 61, 62, 63, 64, 65, 66, 71, 72, 73, 74, 75 and 76 and Adm Schoultz: transcript p559 line 16 to p561 line 6.

¹⁸⁴ For corvettes see Adm Higgs: transcript p311 lines 8 – 12; Adm Schoultz's statement paragraph 21 and Annexure "PS-8" p75-6 Items 39, 41, 43, 46, 48 and 50 and Adm Schoultz: transcript p516 line 19 to p519 line 17. For Submarines see Adm Schoultz's statement Annexure "PS-9" p79 Item 69 and Adm Schoultz: transcript p561 lines 9 – 13.

Difficulties with the submarines impacting on utilisation

99. It has been suggested by critics that the engine of one of the submarines exploded.¹⁸⁶ This is simply not correct.¹⁸⁷

100. There have been certain issues in relation to the batteries of the submarines.

100.1. The first occurred when a member of technical staff incorrectly connected a power source to the SAS Manthatisi, causing damage to the fuse box. The fuses were replaced within a week and the incident was reported to Parliament.¹⁸⁸

100.2. The second issue relating to the batteries was the build-up of hydrogen gas in the batteries. A repair solution was effected and the concern was addressed with the manufacturer. In any event, in

¹⁸⁵ For corvettes see Adm Schoultz's statement Annexure "PS-8" p75-76 Items 31; 35 and 37 and Adm Schoultz: transcript p510 line 21 to p514 line 9. For submarines see Adm Schoultz's statement Annexure "PS-9" p79 Items 67 and 68 and Adm Schoultz: transcript p561 lines 14 – 20.

¹⁸⁶ Adm Schoultz: transcript p568 lines 18 – 22.

¹⁸⁷ Adm Schoultz: transcript p568 lines 23 - 24.

¹⁸⁸ Adm Schoultz: transcript p569 lines 15 – 25. And p611 lines 10 – 13.

2013 the batteries had come to the end of their 8-year lifespan and were to have been replaced by the next generation of batteries.¹⁸⁹

101. There was a leak in the stern gland of one of the submarines, causing the ingress of water.¹⁹⁰ This leak was subsequently repaired.¹⁹¹

102. In the normal course of operations of the submarines, when any of the systems fail they are repaired on board by the persons operating them or ashore.¹⁹² In general the submarines have been very reliable and have served the SAN very well.¹⁹³

Criticisms in relation to the utilisation of the submarines

103. Critics have alleged that at any given time one or two of the submarines is always inoperable and out of the water.¹⁹⁴ The SAN operates two out of the three submarines in accordance with the Operating Cycle and the dates of operation and maintenance of each vessel were communicated to the

¹⁸⁹ Adm Schoultz: transcript p611 line 13 to p612 line 10.

¹⁹⁰ Adm Schoultz: transcript p566 lines 1 – 10.

¹⁹¹ Adm Schoultz: transcript p612 lines 11 – 13.

¹⁹² Adm Schoultz: transcript p612 lines 18 – 20.

¹⁹³ Adm Schoultz: transcript p612 lines 20 - 21.

¹⁹⁴ Adm Schoultz: transcript p570 lines 1 – 20.

Portfolio Committee on Defence. It was never the intention of the SAN that all three of the submarines should be operational all of the time.¹⁹⁵

Conclusion on the utilisation of the naval vessels

104. The naval vessels acquired in terms of the SDPPs have been put to good use in allowing the SAN to train, to hone its skills and to conduct exercises with friendly nations in order to further hone its capabilities in fulfilment of the constitutional mandate of the SANDF.¹⁹⁶

105. Despite challenges in terms of budgetary constraints, the naval vessels have fulfilled all of their mandated obligations.¹⁹⁷

The SAAF

106. The Gripen and Hawk systems are integral components of the SAAF and the SANDF's capability to meet its air defence and other mandates.¹⁹⁸ In

¹⁹⁵ Adm Schoultz: transcript p570 line 17 to p571 line 5.

¹⁹⁶ Adm Schoultz: transcript p622 lines 6 – 20.

¹⁹⁷ Adm Schoultz: transcript p628 lines 9 – 10.

¹⁹⁸ Gen Bayne's statement paragraph 42 and Gen Bayne: transcript p854 lines 1 – 14.

2013 the fleet comprising 26 Gripens and 24 Hawks was adequate to meet the SANDF mandate.¹⁹⁹

107. The defence budget was reduced in both 1990 and 1997.²⁰⁰ A further complicating factor is that the allocation of funds to the SAAF may not factor in aviation inflation, which is known to be higher than the CPI: 14% as opposed to a 6% CPI.²⁰¹ In this regard, Gen Bayne also presented a table showing the increases in the price of fuel since 1990.²⁰²

108. Austerity measures, including fleet reductions, were planned to accommodate the tight budget for the 2013/2014 year.²⁰³

108.1. The austerity measures impacted on air crew - after training on the Gripen and the Hawk, they had to fly on a different platform, such as the Pilatus PC7 and Astra. A core air crew was retained in relation to the Hawk and Gripen.²⁰⁴

¹⁹⁹ Gen Bayne's statement paragraph 42.

²⁰⁰ Gen Malinga's statement, paragraph 23 and Gen Malinga: transcript p786 lines 12 – 20. Gen Bayne: transcript p874 lines 6 – 16.

²⁰¹ Gen Bayne: transcript p1101 lines 1 – 14. This evidence was given on 3 September 2013.

²⁰² General Bayne's statement Annexure "JWB-12" p117 and Gen Bayne: transcript p1101 lines 15 – 25.

²⁰³ Gen Bayne's statement, paragraph 56 and Annexure "JWB-13" p118 and Gen Bayne: transcript p1103 line 1 to p1113 line 17.

²⁰⁴ Gen Bayne: transcript p1103 line 1 to p1106 line 2.

108.2. The second aspect was the need to reduce the operational fleet of aircraft.²⁰⁵ The SAAF embarked on a Rotational Preventative Maintenance Programme with respect to the Gripens and placed the identified Gripens in dehumidified tents to prevent corrosion and damage from rodents. The programme allowed a serviceable aircraft to be available on the flight line within two days. This programme was a more cost-effective solution than long-term storage and allows aircraft to be rotated in and out of service, ensuring that all are used, if at a somewhat reduced rate.²⁰⁶

109. From a technical perspective, the SAAF is able to maintain and operate the aircraft acquired in terms of the SDPPs in order to meet the constitutional obligations of this branch of the SANDF.²⁰⁷ This is largely due to the fact that the SAAF is fortunate to have sufficient artisans for 90% of its aviation artisan posts.²⁰⁸ The artisans are extremely competent, having more than 10 years of post-qualification experience.²⁰⁹ The turnover rates for aviation artisans have been very low and retention has been excellent.²¹⁰

²⁰⁵ Gen Bayne: transcript p1106 line 3 to p1113 line 17.

²⁰⁶ Gen Bayne: transcript pp1107 – 1110 line 19.

²⁰⁷ Gen Pelser: transcript p1389 lines 8 – 18.

²⁰⁸ Gen Pelser's statement, paragraph 9 and Gen Pelser: transcript p1377 lines 19 – 20.

²⁰⁹ Gen Pelser: transcript p1377 lines 21 – 23.

²¹⁰ Gen Pelser: transcript p1377 line 23 to p1378 line 4.

110. The figures²¹¹ indicate that certain airframes have been flown far more often than others. This is normal with regard to a new fleet. Certain airframes will become fleet leaders and will deliberately be flown more often to determine the faults of the aircraft and to try to get a better idea of the spares that will be required to maintain the fleet.²¹² This practice also allows for staggering of the non-recurring servicing required on the aircraft.²¹³

111. The mean time between failure rates of the components of the Gripen and the Hawk have met expectations.²¹⁴

112. Training entails hours flown by students under instruction, while force preparation entails continuation training flights of qualified aircrew.²¹⁵ Many of the missions flown under force preparation entail actual work for the clients of the SAAF, the Defence Force, or other Departments.²¹⁶

113. Finally, force employment entails flights which do not fall under training or force preparation, such as operations. Generally hours flown by the SAAF

²¹¹ Gen Bayne's statement Annexure "JWB-8" and "JW-9" p109 – 110.

²¹² Gen Bayne: transcript p1059 lines 7 – 20.

²¹³ Gen Bayne: transcript p1059 line 21 to p1060 line 20.

²¹⁴ Gen Bayne's statement, paragraph 46 and Gen Bayne: transcript p1061 line 18 to p1062 line 22.

²¹⁵ Gen Bayne's statement, Annexure "JWB-11" p116 and Gen Bayne: transcript p1090 lines 1 – 16.

²¹⁶ Gen Bayne: transcript p1089 lines 22 – 25.

in participation in joint exercises are recorded as force employment.²¹⁷ The number of hours flown will depend on the budget allocated to the SAAF.²¹⁸

The Hawks and the Gripens: utilisation²¹⁹

Actual hours flown

114. When the evidence was led in 2013 the Hawks had flown over 10 000 major accident free flying hours since 2005.²²⁰ The Gripens had flown over 3 500 major accident free flying hours since 2008.²²¹

115. The ratio of force preparation to force employment in relation to the Hawk was 95% / 5%.²²² The bulk of the 5% comprised the flying hours undertaken during operations related to the 2010 World Cup.²²³ The ratio of force preparation to force employment of the Gripens was 94% / 6%.²²⁴ As with the Hawk, the bulk of the 6% comprised the flying hours undertaken during

²¹⁷ Gen Bayne's statement, Annexure "JWB-11" p116 and Gen Bayne: transcript p1090 lines 5 – 8.

²¹⁸ Gen Bayne: transcript p1098 lines 8 – 11.

²¹⁹ Covered in Gen Bayne's statement paras 42-56.

²²⁰ Gen Bayne's statement para 45 and Gen Bayne: transcript p1058 lines 6 – 8.

²²¹ Gen Bayne's statement, paragraph 45 and Gen Bayne: transcript p1058 lines 8 - 9.

²²² Gen Bayne's statement para 50

²²³ Gen Bayne: transcript p1089 line 17 – 22.

²²⁴ Gen Bayne's statement, paragraph 50.

operations related to the 2010 World Cup.²²⁵ These ratios are normal for a peacetime air force.²²⁶

116. In the years between 2005 and 2012, the actual hours flown in the Hawks amounted to 93% of the budgeted hours.²²⁷ In the period between 2008 and 2012, the actual hours flown in the Gripens amounted to approximately 140% of the budgeted hours. The actual hours flown therefore exceeded the flying hours budgeted for the Gripens.²²⁸

117. Since 2000 the SAAF has attended the Hawk User Group, which approximately 17 other air forces attend.²²⁹ The SAAF also participates in a Gripen User Group comprising approximately six air forces.²³⁰ These user groups assist the SAAF by providing the opportunity to learn from the experience of other air forces which use the aircraft.

²²⁵ Gen Bayne: transcript p1089 lines 17 – 22.

²²⁶ Gen Bayne's statement, paragraph 50.

²²⁷ See Gen Bayne's statement, Annexure "JWB-16" p124 for the ratio between actual hours flown and budgeted flying hours.

²²⁸ Gen Bayne's statement, Annexure "JWB-17" p125 / transcript p1090 line 19 to p1098 line 7.

²²⁹ Gen Bayne's statement, paragraph 48 and General Bayne: transcript p1071 lines 1 – 16.

²³⁰ Gen Bayne' statement, paragraph 48 and Gen Bayne: transcript p1071 lines 16 - 19.

Training and force preparation

118. The Hawk and the Gripen have been utilised in many independent training exercises and operations.²³¹ Gen Bayne emphasised the importance of training on both the Hawk and Gripen through various exercises which simulate the environment in which operations would be carried out.²³²

119. The SAAF and the Royal Air Force (RAF) have participated in a Hawk Instructor exchange programme.²³³

120. The Hawks and the Gripens have also participated in joint and multinational exercises with the German Air Force, a multinational naval exercise with the Brazilian and Indian navies,²³⁴ and a multinational exercise with seven SADC countries.²³⁵ They have also participated in an exercise hosted by the Swedish Air Force in Sweden, along with the Czech and Hungary Air Force and the Norwegian Air Force.²³⁶

²³¹ Gen Bayne's statement, Annexure "JWB-10" p111 – 115 and Gen Bayne: transcript p1074 line 7 - 16.

²³² Gen Bayne: transcript p1074 line 17 to p1075 line 17.

²³³ Gen Bayne's statement, paragraph 48 and Gen Bayne: transcript p1072 lines 2 – 23.

²³⁴ Gen Bayne's statement "Annexure JWB-10" p111 "Ibsomar" and p113 – 114 "Ibsamar" exercises and Gen Bayne: transcript p1084 lines 4 – 6.

²³⁵ Gen Bayne's statement "Annexure JWB-10" p111 "Blue Crane" and p113 "Blue Cluster" exercises and Gen Bayne: transcript p1083 lines 6 – 20.

²³⁶ Gen Bayne's statement "Annexure JWB-10" p111 "Lion Effort" exercises and Gen Bayne: transcript p1084 line 13 to p1085 line 23.

121. The Gripens and Hawks have also been utilised for joint exercises with the SANDF land forces, allowing the SAAF to hone its skills in relation to close air support and dropping of live bombs.²³⁷ The Hawks and Gripens were utilised during the Aerospace and Africa Aerospace and Defence shows and participate in the air-to-air camps, during which they fire live rounds.²³⁸ They participate in various exercises, displaying flights, such as at Air Force Day, the Rand Easter Show and the Presidential Inauguration.²³⁹
122. The Gripens have participated in the bi-annual weapons demonstration and display, which entails a joint exercise with the land forces at Roodewal.²⁴⁰

Operations

123. The Hawk was utilised in combination with the Gripen to secure the airspace around the various stadiums during the 2010 World Cup.²⁴¹ The preparation for this operation began in 2008 and provided an excellent opportunity for training and evaluation of both aircraft types, particularly the

²³⁷ Gen Bayne's statement "Annexure JWB-10" p111 and p113 "Seboka and Ndlovu" exercises and Gen Bayne: transcript p1082 line 19 to p1084 lines 7 - 12.

²³⁸ Gen Bayne's statement "Annexure JWB-10" p111 "AAD" and "Air-to-Air Camp" and p113 "AAD" exercises and Gen Bayne: transcript p1084 line 24 to p1086 line 11.

²³⁹ Gen Bayne's statement "Annexure JWB-10" p112 - 114 and Gen Bayne: transcript p1086 lines 12 – 24.

²⁴⁰ Gen Bayne's statement, Annexure "JWB-10" p111 and Gen Bayne: transcript p1080 line 1 - 5.

²⁴¹ Gen Bayne's statement "Annexure JWB-10" p111 – 115 and Gen Bayne: transcript p1075 line 18 to p1079 line 16.

Gripen.²⁴² This operation was the largest air campaign mustered by the SAAF in Gen Bayne's 43 years of service.²⁴³ Without its defence capabilities, including the SAAF's aircraft, South Africa's eligibility to host the 2010 Soccer World Cup may have been compromised.²⁴⁴

124. The Hawk, in conjunction with the Gripen, has also been utilised in relation to ongoing border control operations. As the aircraft are high-value assets they are not utilised in this manner as a matter of course; instead they assist the SAN and land forces when higher technological capability is required.²⁴⁵

125. A number of Gripens were deployed to the Central African Republic to ensure stability during the peace talks conducted there.²⁴⁶

Defects in the Hawks and the Gripens

126. The Electronic Unit, a component controlling certain engine functions in the Hawk, required replacement. This was done at BAE Systems' cost.²⁴⁷

²⁴² Gen Bayne: transcript p1077 lines 8 – 11.

²⁴³ Gen Bayne: transcript p1077 lines 6 – 8.

²⁴⁴ Gen Bayne: transcript p1079 line 17 to p1080 line 7.

²⁴⁵ Gen Bayne's statement, Annexure "JWB-10" p111 and p113- 114 and Gen Bayne: transcript p1080 lines 9 – 18.

²⁴⁶ Gen Bayne's statement, Annexure "JWB-10" p111 Operation Vimbezela and Gen Bayne: transcript p1080 line 19 to 1082 line 1.

127. Another minor issue related to fuel vaporisation at the rear of the Hawk.

This could be corrected by extending the length of the fuel vent pipe, which modification was carried out at BAE Systems' cost.²⁴⁸

128. The SAAF has identified a high failure rate in relation to the drag chute of the Hawk. At the time of Gen Bayne's testimony in 2013, the SAAF and BAE Systems had developed and were testing a modification to resolve this problem, with promising results.²⁴⁹

129. With regard to the Gripen, the ACR500 radios exhibited a higher than normal failure rate, but a modification to rectify the issue was being carried out at SAAB's cost in 2013.²⁵⁰ This minor problem did not affect the utilisation of the Gripen.²⁵¹

130. No further defects in the Gripen had been discovered by 2013.²⁵² The SAAF is confident that SAAB would act responsibly should further defects become apparent.²⁵³

²⁴⁷ Gen Bayne's statement, paragraph 46 and Gen Bayne: transcript p1062 line 24 to p1063 line 11.

²⁴⁸ Gen Bayne's statement, paragraph 46 and Gen Bayne: transcript p1065 lines 6 – 20.

²⁴⁹ Gen Bayne's statement, paragraph 46 and Gen Bayne: transcript p1063 line 22 to p1065 line 5.

²⁵⁰ Gen Bayne's statement, paragraph 47 and Gen Bayne: transcript p1069 lines 15 to p1070 line 4.

²⁵¹ Gen Bayne: transcript p1070 lines 15 – 22.

²⁵² Gen Bayne's statement, paragraph 47 and Gen Bayne: transcript p1070 lines 5 – 10.

²⁵³ Gen Bayne's statement, paragraph 47 and Gen Bayne: transcript p1070 lines 11 – 14.

Conclusion on the utilisation of the Hawk and the Gripen

131. The SAAF has established an excellent, well balanced and well equipped Fighter System capability, comprising the ideal three-tier system in which the gap between the first and second tiers is larger than that between the second and third tiers, comprising the Hawk and the Gripen respectively.²⁵⁴

132. The Hawk has exhibited a cost effective collateral operational capability, particularly when packaged with the Gripen.²⁵⁵ The training success rate of air crew who go from training on the Hawk to training in the Gripen has been high.²⁵⁶

133. The Gripen has exceeded the expectations of the SAAF and SANDF, particularly with respect to fourth generation integrated systems, deployability, logistics support and reach.²⁵⁷

134. The Hawk and the Gripen have solved problems previously experienced in regard to hot, high operations, particularly thrust, cooling and communications.²⁵⁸

²⁵⁴ Gen Bayne's statement, paragraph 57 and Gen Bayne: transcript p1113 line 20 to p1114 line 7.

²⁵⁵ Gen Bayne's statement, paragraph 57 and Gen Bayne: transcript p1114 lines 8 – 13.

²⁵⁶ Bayne: transcript p1114 lines 12 – 16.

²⁵⁷ Gen Bayne's statement, paragraph 58 and Gen Bayne: transcript p.

135. The Hawk and the Gripen have been well utilised in line with the current security environment and the funding allocated to the SAAF.²⁵⁹ Despite the lower levels of funding allocated to it, the SAAF was still able to meet the requirements prescribed by Joint Operations.²⁶⁰ If funding levels were to remain low, training and renewal would become problematic, but with the application of the austerity measures described above, the SAAF was expected to experience a gradual recovery over the following three years.²⁶¹

The Agusta: utilisation

Role and capabilities of the LUH

136. The first Agusta LUH was delivered to the SAAF in 2005 and the last in 2009.²⁶² The LUH is capable of fulfilling basic generic helicopter roles such as communication tasks flights, and hoisting and slinging, generally at a

²⁵⁸ Gen Bayne's statement, paragraph 58 and Gen Bayne: transcript p1114 line 17 to p1115 line 17.

²⁵⁹ Gen Bayne's statement, paragraph 59 and Gen Bayne: transcript p1115 line 18 to p1116 line 2.

²⁶⁰ Gen Bayne: transcript p1116 lines 6 – 8.

²⁶¹ Gen Bayne: transcript p1116 line 8 to p1117 line 1.

²⁶² Gen Burger's statement, paragraph 22 and Gen Burger: transcript p1297 lines 15 - 16.

less expensive rate than other kinds of helicopter.²⁶³ The LUH is also utilised as the basic helicopter in which to train air crews.²⁶⁴

137. The LUH is capable of fulfilling military roles during periods of conflict and humanitarian roles during peacetime.²⁶⁵ Peacetime roles may include rescues²⁶⁶ from inhospitable terrain and casualty evacuations²⁶⁷ in virtually all weather conditions during the day or night.²⁶⁸

138. One of the capabilities of the LUHs is landward operations,²⁶⁹ which may include support given to the Army or to the SAN. An example of this is the border control operation,²⁷⁰ Project Corona, in which companies of army personnel are deployed to protect the borders. The LUHs are well suited to assist with trooping,²⁷¹ resupplying, and communication flights, or as a reaction force during such an operation.²⁷²

²⁶³ Gen Burger's statement, paragraph 18; paragraph 2.9.1.4; Gen Bayne: transcript p1306 lines 6-23

²⁶⁴ Gen Burger's statement, paragraph 26.

²⁶⁵ Gen Burger's statement, paragraph 24.

²⁶⁶ Gen Burger's statement, paragraph 29.1.10 and Gen Burger: transcript p1311 line 24 to p1312 line 8.

²⁶⁷ Gen Burger's statement, paragraph 29.1.5 and Gen Burger: transcript p1306 line 24 to p1307 line 14.

²⁶⁸ Gen Burger's statement, paragraph 24. See paragraphs 25 and 29 for a more comprehensive list of the roles the LUH is capable of fulfilling. Gen Burger: transcript p1298 line 4 to p1299 line 24.

²⁶⁹ Gen Burger's statement, paragraph 29.1.1.

²⁷⁰ Gen Burger's statement, paragraph 29.1.2.

²⁷¹ Gen Burger's statement, paragraph 29.1.8.

²⁷² Gen Burger: transcript p1305 lines 1 - 24.

139. Although the load bearing capability of the LUHs is less than the Oryx, the LUHs are able to transport cargo at a less expensive rate.²⁷³

140. The LUHs are also utilised for communications flights, which entail transporting a person, such as a general, to a particular operational area,²⁷⁴ and command and control, which allows an army general, for example, to control troops from an elevated position.²⁷⁵

141. The LUHs can be utilised for forward airborne controlling,²⁷⁶ as well as search and rescue missions²⁷⁷ and disaster relief.²⁷⁸ The LUHs also have the capability to assist with special / clandestine operations.²⁷⁹ The LUHs can also be utilised for urban operations²⁸⁰ and VIP transport, for example the transport of dignitaries at the request of DIRCO.²⁸¹

²⁷³ Gen Burger's statement, paragraph 29.1.3 and Gen Burger: transcript p1305 line 25 to p1306 line 5.

²⁷⁴ Gen Burger's statement, paragraph 29.1.6 and Gen Burger: transcript p1307 lines 17 - 25.

²⁷⁵ Gen Burger's statement, paragraph 29.1.7 and Gen Burger: transcript p1308 lines 1 - 18.

²⁷⁶ Gen Burger's statement, paragraph 29.1.9 and Gen Burger: transcript p1308 line 19 to p1309 line 1.

²⁷⁷ Gen Burger's statement, paragraph 29.1.10 and Gen Burger: transcript p1309 lines 2 - 17.

²⁷⁸ Gen Burger's statement, paragraph 29.1.11 and Gen Burger: transcript p1309 line 18 to p1310 line 3.

²⁷⁹ Gen Burger's statement, paragraph 29.1.12 and Gen Burger: transcript p1310 lines 4 - 9.

²⁸⁰ Gen Burger's statement, paragraph 29.1.13 and Gen Burger: transcript p1310 lines 14 - 21.

²⁸¹ Gen Burger's statement, paragraph 29.1.14 and Gen Burger: transcript p1310 lines 22 - 25.

142. The LUHs are able to conduct maritime operations,²⁸² hydrographic support²⁸³ and maritime vertical replenishment, which entails taking a load from ship to land or from land to ship.²⁸⁴
143. The LUHs are utilised to render assistance to local and foreign government departments in completion of tasks and missions, including supporting the stability of a region and giving aid.²⁸⁵ The LUHs also work with the Department of International Relations and Co-operation, particularly when foreign dignitaries visit South Africa. During President Obama's visit to South Africa, the LUHs assisted the SAPS by moving the police protection around.²⁸⁶ Another aspect of the utilisation of the LUHs is crime prevention in conjunction with the SAPS.²⁸⁷
144. The requirement for helicopter support is expected to increase in future, as a consequence of increased emphasis on humanitarian aid, regional assistance and participation in peace support operations.²⁸⁸

²⁸² Gen Burger's statement, paragraph 29.1.15 and Gen Burger: transcript p1311 lines 1 - 17.

²⁸³ Gen Burger's statement, paragraph 29.1.18 and Gen Burger: transcript p1311 lines 6 - 9.

²⁸⁴ Gen Burger's statement, paragraph 29.1.20 and Gen Burger: transcript p1311 lines 18 - 23.

²⁸⁵ Gen Burger: transcript p1299 lines 12 - 15.

²⁸⁶ Gen Burger: transcript p1299 lines 15 - 20.

²⁸⁷ Gen Burger: transcript p1299 lines 21 - 22.

²⁸⁸ Gen Burger's statement, paragraph 23.

Flying hours, exercises and participation in operations

145. The LUHs have been deployed for SAAF training exercises in which the LUH has proved to be a very useable aircraft,²⁸⁹ joint exercises with the army,²⁹⁰ multinational exercises with SADC,²⁹¹ and exercises conducted as preparation for securing the 2010 Soccer World Cup.²⁹²

146. The LUHs have participated in various operations including the standing operations for floods and firefighting,²⁹³ army border protection operations,²⁹⁴ operations related to conservation in support of the National Parks Board,²⁹⁵ anti-rhino poaching operations,²⁹⁶ assistance to the

²⁸⁹ Gen Burger's statement, Annexure "PB-4" p100 "Winter Solstice" and Gen Burger: transcript p1315 lines 6 – 16 and p1319 lines 14 - 15.

²⁹⁰ Gen Burger's statement, Annexure "PB-4" p100 "Young Eagle" and "Seboka" and Gen Burger: transcript p1315 line 17 to p1316 line 4 and p1319 lines 15 - 16.

²⁹¹ Gen Burger's statement, Annexure "PB-4" p100 "Good Hope" and "Golphino" and Gen Burger: transcript p1316 lines 5 - 15.

²⁹² Gen Burger's statement, statement, paragraph 32 / Annexure "PB-4" p100 "Shield" / transcript p1316 lines 16 -19 and p1320 lines 3 - 4.

²⁹³ Gen Burger's statement, Annexure "PB-4" p100 "Chariot" and Gen Burger: transcript p1317 lines 15 – 25 and p1318 lines 11 - 20.

²⁹⁴ Gen Burger's statement, Annexure "PB-4" p100 "Corona" and Gen Burger: transcript p1318 line 22 to p1319 line 1.

²⁹⁵ Gen Burger's statement, Annexure "PB-4" p100 "Edelvalk" and Gen Burger: transcript p1318 lines 1 – 2 and p1319 lines 1 - 14.

²⁹⁶ Gen Burger's statement, Annexure "PB-4" p100 "Horizon" and "Rhino" and Gen Burger: transcript p1318 lines 2 – 3 and p1319 lines 18 – 20 and lines 22 - 24.

Presidency,²⁹⁷ securing the 2010 Soccer World Cup²⁹⁸ and rendering assistance to the SAPS.²⁹⁹ The LUH has thus fulfilled the roles envisaged for it as described in paragraph 48 above.

147. The LUHs have flown over 18,000 hours since their delivery in 2005.³⁰⁰ It was originally envisaged that the LUHs would fly 6,000 fleet hours per year, which would amount to 40,000 hours to date.³⁰¹ Gen Burger testified that this difference had resulted mainly from the austerity measures described below.³⁰² Gen Pelsler also testified that the main impediment to accumulating flying hours was funding.³⁰³

Current status and austerity measures

148. During the seven year period under consideration, there have been three accidents, causing the loss of three LUHs.³⁰⁴ The current fleet of 27 LUHs are at various stages of readiness. One LUH is damaged and awaits

²⁹⁷ Gen Burger's statement, Annexure "PB-4" p100 "Isipho" and Gen Burger: transcript p1318 lines 3 – 4 and p1319 lines 20 - 22.

²⁹⁸ Gen Burger's statement, Annexure "PB-4" p100 "Kwele" and Gen Burger: transcript p1318 line 4 and p1319 line 24 to p1320 line 2.

²⁹⁹ Gen Burger's statement, paragraph 33.

³⁰⁰ Gen Burger's statement, paragraph 40.

³⁰¹ Gen Burger's statement, paragraph 40.

³⁰² Gen Burger: transcript p1332 line 11 to p1333 line 4.

³⁰³ Gen Pelsler: transcript p1402 lines 10 -12.

³⁰⁴ Gen Burger's statement, paragraph 31.

repair³⁰⁵ and various others await maintenance under regular maintenance programmes.³⁰⁶ The supply chain in relation to the procurement of spare parts for the LUHs is lengthy.³⁰⁷

149. The LUH system was integrated into the SAAF without an operating budget.³⁰⁸ The austerity measures that have been implemented in regard to the helicopters have also resulted in constraints.³⁰⁹ The SAAF was operating five helicopter platforms, but decided to focus mainly on the Oryx on account of ordered commitments.³¹⁰ A core group of instructors for the LUH were retained, but the budget allocated to the LUH was limited.³¹¹ Trainee pilots were allowed to continue flying on the PC7s, a less expensive platform to fly.³¹² The SAAF budgeted to maintain the integrity of the LUH system, performing some calendar-based servicing until such time as more money became available.³¹³

³⁰⁵ Gen Burger's statement, paragraphs 34 and 35.

³⁰⁶ Gen Burger's statement, paragraph 35.

³⁰⁷ Gen Burger's statement, paragraph 35.

³⁰⁸ Gen Burger's statement, paragraph 38.

³⁰⁹ Gen Burger: transcript p13123 lines 2 to p1326 line 12.

³¹⁰ Gen Burger: transcript p1323 lines 5 – 9.

³¹¹ Gen Burger: transcript p1323 line 20 to p1324 line 3.

³¹² Gen Burger: transcript p1324 lines 6 – 12.

³¹³ Gen Burger: transcript p1324 line 22 to p1325 line 1.

150. Gen Burger explained that the reduced flying hours have resulted in limited exposure for air and ground crews.³¹⁴ The number of people at the squadron would be reduced so that this issue would be addressed in the next planning cycle.³¹⁵ Gen Burger also testified that although the number of people will be reduced and the process of recruitment is on hold to an extent, the SAAF will continue with recruitment and training of personnel on the helicopter platforms.³¹⁶

151. The austerity measures have not resulted in the grounding of the LUHs, although the flying of these aircraft was limited by the measures.³¹⁷

152. Gen Burger indicated that, at the time of his testimony in 2013, the SAAF had sufficient LUH pilots to meet its obligations.³¹⁸ He explained further that an aspect of the austerity measures was to limit the support for the LUHs, so that the utilisation situation has required adjustment. This has meant that in certain instances the Oryx may be required to fulfil some of the tasks that would otherwise have been assigned to the LUH. Both the Oryx and the LUH are utility helicopters, but the Oryx, being larger, can do more work at one time, though it is more expensive to operate than the LUH.³¹⁹

³¹⁴ Gen Burger's statement, paragraph 36 and Gen Burger: transcript p1327 lines 5 – 19.

³¹⁵ Gen Burger: transcript p1327 lines 15 – 19.

³¹⁶ Gen Burger: transcript p1329 line 17 to p1330 line 13.

³¹⁷ Gen Burger: transcript p1330 line 14 to p1331 line 7.

³¹⁸ Gen Burger: transcript p1331 lines 8 – 11.

³¹⁹ Gen Burger: transcript p1331 lines 14 – 25.

**ALLEGATIONS OF IMPROPER INFLUENCE IN THE LIFT PROGRAMME:-
HAWK OR MB-339 FD**

153. The Hawks were the only item of equipment acquired in the SDPPs that did not win the third-order evaluation rounds, due to their high cost. Mr Steyn, the Secretary of Defence from August 1994 to November 1998, favoured the MB-339 FD due to its relatively low price. He strenuously opposed the choice of the Hawk due to its cost, and expressed his vigorous opposition in both the Armaments Acquisition Steering Board (“AASB”) and the Armaments Acquisition Council (“AAC”).³²⁰

154. Mr Steyn’s views did not carry the day, as the Minister of Defence, his Deputy, and the Cabinet considered that strategic concerns outweighed the ordinary preference for the cheapest offer. These strategic concerns were recorded in the relevant minutes of the various meetings at the time. Under cross-examination, Mr Steyn did not dispute that when selecting the best offer, the selection process was a ‘*decision support mechanism*’ but that the final say rested with the Ministers.³²¹ He also did not dispute that the most inexpensive option may not necessarily be the best option.³²² He conceded that under Modac, it was the Minister’s right to make a political decision and

³²⁰ Steyn’s statement paragraphs 7.57 - 7.65.3 / annexure PS13 p187 at p189 paragraphs 5.4.10 – 5.4.24 / annexure PS22 p277 at p279 paragraphs 7b & d. (AAC meeting of 16 July 1998 and AASB meeting of 16 July 1998). Transcript pp6651 – 6653.

³²¹ Steyn’s statement Annexure PS11, p177 at p179 paragraph 5.5.15. See also paragraph 5.5.18 at p180.

³²² Steyn: transcript p665- -p6658 line 5.

to *carry that to Cabinet*.³²³ Whilst initially contending that no such Cabinet meeting in fact took place, that no such decision was in truth made and that the minute of the Ministers' meeting was fraudulent, he was driven to concede that he had no basis for such contentions.³²⁴

155. Mr Steyn's misgivings concerning the authenticity of the relevant minutes³²⁵ and his allegations that the approval of Cabinet was not actually obtained, were shown to be utterly without foundation. Deputy Minister Kasrils confirmed that the minutes were true reflections of the discussions actually held and decisions genuinely taken. He identified his own handwritten note on the content of the draft minutes, and he identified the relevant signatures on the final version.³²⁶

156. Mr Steyn's further allegations of unlawfulness pertained to:

156.1. his role as Secretary of Defence, and the AASB's role, being unlawfully circumvented.³²⁷ The evidence established the contrary:

156.1.1. the inter-departmental management committee

³²³ Steyn: transcript p6732. See Modac p7 & p40 "*The Minister of Defence has the final authority on all acquisition matters and has the right to defer decision[s] on acquisition to cabinet level.*"

³²⁴ Steyn: transcript pp6701 – 6712.

³²⁵ Steyn's statement paragraphs 7.68.5 – 7.74.

³²⁶ Kasrils: transcript pp7076 – 7088 as read with p7092 line 20 - p7093 line 7. The handwritten note is at p4 of the DoD's bundle for the cross-examination of Deputy Minister Kasrils.

³²⁷ Steyn's statement, paragraphs 7.40.3; 7.41 and 8.3.

established under Modac became known as “SOFCOM” as from 1 April 1998,³²⁸ and played its proper and lawful role in the process;

156.1.2. Mr Steyn and the AASB were shown to have fully participated in the process as envisaged by Modac.³²⁹

156.2. the change in the SOFCOM formula on 1 July 1998 from having the financial score as a denominator to being the aggregate of the Military Value, IP, and the financial, scores. This complaint was thoroughly discredited during cross-examination:

156.2.1. Mr Steyn conceded that the rectified formula applied by SOFCOM was presented to the COD on 31 October 1997 in his presence and that he had endorsed it;³³⁰

156.2.2. the rectified formula was also presented at the Special AASB meeting of 8 July 1998, under Mr Steyn’s chairmanship, and was explained whilst he was present. He raised no objection;³³¹

³²⁸ Giesel: transcript p1942. Adm Howell’s statement paragraph 31.

³²⁹ Steyn: transcript p6670 – 6675 line 10.

³³⁰ Steyn: transcript pp6623 – 6625.

³³¹ Steyn: annexure PS20 p239 paragraph 2b.

156.2.3. similarly, the rectified formula was presented in his presence at the Special AAC meeting of 13 July 1998.³³² It was furthermore explained to the Ministers in Mr Steyn's presence.³³³ Again, he raised no objection.

156.2.4. Mr Steyn was fully aware of the problem with the finance score being the denominator, and understood why it was necessary to rectify the formula to reflect the sum of the military, IP and finance scores. Indeed, this was entirely rational and fair, and he understood as much.³³⁴

156.2.5. Mr Steyn was also driven to concede that the rectified formula applied during the second-order evaluation at SOFCOM on 1 and 2 July 1998 did not influence or affect the tender process, which had been conducted and completed in accordance with the third-order value systems prescribed for assessing the offers.³³⁵ There was thus no prejudice to tenderers occasioned by the rectification of the formula.

³³² Steyn: annexure PS21 p260 at p266.

³³³ Steyn: annexure PS26 p327 at p328 paragraph 7. (Briefing meeting of 31 August 1998.)

³³⁴ Steyn: transcript p6715 – 6717.

³³⁵ Steyn: transcript p6722 line 17 – p 6723 line 5.

157. In regard to the merits of the choice made, since it was the Minister and Cabinet that was vested with the power to make the ultimate decision between the MB-339 FD and the Hawk, the sole question is whether the decision they made was a rational and reasonable one. It undoubtedly was. Government worked against the backdrop of the new democratic South Africa entering the international arena on major infrastructure projects with implications for its strategic international relations that could far outweigh a narrow view that cheapest was necessarily the best option for the nation.³³⁶ Best value for money also required considering industrial development and transformation imperatives;³³⁷ local technology and industrial development, social responsibility and transformation;³³⁸ job creation, wealth generation, trade balance, and counter trade.³³⁹

158. These concerns resonated in the relevant minutes of the time:

158.1. The Minister of Defence cautioned the meeting that a visionary approach should not be excluded, as the decision on the acquisition of a new fighter trainer aircraft would impact on the RSA defence industry's opportunity to be part of the global defence market

³³⁶ As required by DoD Policy Directive 4/147, paragraph 10.

³³⁷ Defence Review p128 paragraph 56.

³³⁸ Defence Review p128 paragraph 56.

³³⁹ Modac p14 paragraph 3.1.2.

though partnership with major international defence companies. He recognised that this vision may mean that the most inexpensive option may not necessarily be the best option. The Minister requested that the DoD's acquisition staff bear this vision in mind during the selection process.³⁴⁰

158.2. Consequent thereon, at a meeting under Mr Steyn's chairmanship, the need to consider a solution taking cost into account, and a solution where cost was not taken as the deciding factor, was recognised.³⁴¹

158.3. This led to the presentation of two recommendations at the next AAC meeting - a 'cost option ranking', with the Italian MB-339 FD ranked first, and a 'non cost option ranking' with the British Hawk ranked first.³⁴²

158.4. Thereafter, the recommendation of the AASB³⁴³ to acquire the cheaper option was conveyed to the Council of Defence ("COD").³⁴⁴

³⁴⁰ Steyn's statement - annexure PS19 p234 at p235 – 236 paragraph 9. (Combined AAC & AASB meeting of 30 April 1998.)

³⁴¹ Steyn's statement - annexure PS20 p238 at p242 paragraph 27d. (Special AASB meeting of 8 July 1998.)

³⁴² Steyn's statement - annexure PS21 p260 at p262 paragraph 9. (Special AAC meeting of 13 July 1998.)

³⁴³ Steyn's statement annexure PS22 p277 at p279 paragraphs 7b & d. (AASB meeting of 16 July 1998.)

³⁴⁴ Steyn: annexure PS24 p316 at p318 paragraph 7.3.7 & p321 at paragraphs 7.3.23 – 7.3.24. (COD meeting of 21 August 1998.)

It was noted that the Hawk was the more expensive option because it had operational capabilities which the MB-339 FD did not offer. Deputy Minister Kasrils in fact emphasised this advantage of the Hawk in his handwritten notes of the time.³⁴⁵ The Minister also referred to the strategic decision that Government had to make regarding the most appropriate European partner for the SA aircraft industry.

158.5. This concern of an industrial alliance between the supplier country and the SA aerospace industry was considered at the Special Briefing held by Deputy President Mbeki on 31 August 1998. At this meeting, both options for the LIFT were recommended for final consideration.³⁴⁶

158.6. On the same day, after further discussion with only the Ministers present, it was decided that the Hawk should be recommended as the preferred bidder. It was recorded that the decision was based on *“National Strategic considerations for the future survival of the Defence Aviation Sector and the best teaming up arrangements ...”* as well as *“the strategically important Industrial Participation programmes offered with the best advantage to the State and local*

³⁴⁵ See Deputy Minister Kasril’s handwritten note of 1 October 1998 at p4 of the DoD’s bundle for the cross-examination.

³⁴⁶ Steyn: annexure PS25 p322 at p324 paragraphs 11 & 13. (Briefing meeting of 31 August 1998.)

Industries...”³⁴⁷

158.7. Deputy Minister Kasrils described the advantages for the economy and industry as the key reasons for the choice of the Hawk.³⁴⁸ There were in addition further secondary reasons. These included their having a dual capability i.e. they could be used for training and they were capable of being deployed in operations. This was a capacity which the Italian offering did not have.³⁴⁹ What weighed heavily with Deputy Minister Kasrils was the transformation imperative of training black pilots, and the Hawks were by far the most suitable bridge from the Pilatus to the Gripen.³⁵⁰ Transformation of the SADF into the SANDF was undoubtedly a priority of the post-1994 South Africa.³⁵¹

159. In exercising their decision-making duties, what swayed the Ministers and what they took into account was both rational and reasonable, and a proper exercise of their decision-making duties and authority in that context at that time. Hindsight has proven these reasons to have had substantial merit. Gen Bayne testified that the small gap between the Hawk and the Gripen

³⁴⁷ Steyn: annexure PS28 p334 at p338 paragraphs 8 & 11. (IMC meeting of 31 August 1998.)

³⁴⁸ In accordance with the Defence Review p128 paragraphs 56 & 64.

³⁴⁹ See also Deputy Minister Kasrils's handwritten note at p4 of the DoD's bundle for the cross-examination in which he suggests that the minute include this reason.

³⁵⁰ Kasrils: transcript pp7077 – 7079 / p7082.

³⁵¹ Defence Review p1 paragraph 2; p127 paragraph 49.

was ideal for the SAAF's three-tier training system. He spoke of the high success rate the SAAF had had in training black and female pilots. Moreover, the Hawk had proven itself to have a useful, cost-effective, collateral operational capability.³⁵²

160. Given the well-documented and justifiable reasons for the acquisition of the Hawk rather than the MB-339 FD, cogent evidence would be required to warrant an inference that corruption played a role in this choice. There was no such evidence. On the contrary:

160.1. Notwithstanding Mr Steyn's vociferous opposition to, and criticism of, the decision to acquire the Hawks, he did not attribute the decision to any bribery or corruption on the part of Mr Modise or any other member of the procurement team.³⁵³ Indeed, Deputy Minister Kasrils described that at the time of Mr Steyn's resignation in November 1998, he had enjoyed a close relationship with Mr Steyn. When they discussed the reasons for his resignation, Mr Steyn had not mentioned that he suspected fraud and attributed it to other factors.³⁵⁴ His late-blooming allegations that something had gone awry were exposed during cross-examination as being without merit, and were, in effect, abandoned.

³⁵² Bayne: transcript p1114.

³⁵³ Steyn: transcript p6753 lines 8 – 15.

³⁵⁴ Kasrils: transcript pp7081 – 7082.

160.2. Similarly, Mr Esterhuysen, the General Manager of Aeronautics and Maritime of Armscor and co-Chair of SOFCOM, confirmed that he had no indication of any *‘informal or behind the scenes relationship’* between representatives of the UK Defence Export Services Organisation (“DESO”) or any other UK equipment manufacturer and Mr Modise.³⁵⁵

161. In conclusion, in selecting the Hawks, the Government properly gave due consideration to best value for money, having regard to SA’s long-term strategic, industrial development and transformation imperatives. The criticisms directed at that decision emanated from Mr Steyn, but his concerns were thoroughly examined and shown to fall far short of justifying any inference that the acquisition of the Hawks was the result of improper influence.

ALLEGATIONS OF IMPROPER INFLUENCE IN THE CORVETTE PROGRAMME

162. There were three criticisms pertaining to the German Frigate Consortium (“GFC”) being chosen as the main contractor to supply the ship platform. These criticisms pertained to the alleged re-entry of the Germans into the competition, the alleged failure of the GFC’s platform to pass the critical performance filter and the alleged failure by the GFC to meet the DIP

³⁵⁵ Esterhuysen: transcript p5976 line 15 – p5977 line 16.

requirements. These issues are dealt with below, save for the latter which falls outside the DoD's area of responsibility.

163. The balance of the criticisms pertained to the sub-contracts awarded in connection with the corvette combat suites. Each of those criticisms is analysed below.

164. Relevant to both sets of criticisms is an understanding of the contracting model, and accordingly that is dealt with first.

The contracting model

165. During the bidding phase, the GFC was formed to bid for the naval surface vessel aspects of the SDPP. It consisted of Blohm+Voss GmbH; Howaldtswerke Deutsche Werft GmbH and Thyssen Rheinstahl Technik.³⁵⁶

166. ADS was the only South African company capable of naval combat system integration and was the only contender for the role as the local supplier of the combat suite.³⁵⁷ The GFC therefore included in its offer that it would, in the event of being chosen, enter into a consortium with ADS to offer the

³⁵⁶ Submission by ThyssenKrupp Marine Systems GmbH (TKMS), (Mr Klaus Wiercimok's statement), paragraph 7.

³⁵⁷ This was common cause with Dr Young. See Dr Young's letter attached to Kamerman's statement as annexure JK-20 paragraph 21 / also attached to Howell's statement as annexure AH-22. See also Adm Kamerman's statement, paragraphs 127.5; 140.7.5 & 142.11. Adm Howell's statement, paragraph 93.3 & 93.4.

patrol corvette combat systems.³⁵⁸ When the GFC was informed in November 1998 that it had been selected as the preferred bidder to supply the patrol corvettes, ADS was identified as its partner for the provision of the corvette combat systems. A consortium was formed to act as the Prime Contractor for the totality of the patrol corvette offer with ADS (as the primary South African company capable of naval combat system integration) and with its part owner at the time, Thomson NCS (later Thales) France. This consortium was eventually named the European South African Corvette Consortium (“ESACC”), which became the Prime Contractor for the patrol corvettes.

167. The parties to ESACC acted jointly and severally towards the South African Government and consisted of the GFC, Thales and ADS. Within ESACC, the partners signed a consortium agreement defining their separate responsibilities, with the GFC responsible for the supply of the platform and its integrated logistics support, and Thales with ADS responsible for producing and integrating the combat system.³⁵⁹

168. This contracting model constituted a new approach from that followed under the pre-1994 acquisition programmes, where Armscor had played the dominant role, and was in accordance with Modac.³⁶⁰

³⁵⁸ Adm Kamerman: statement paragraph 106.1.

³⁵⁹ Submission by ThyssenKrupp Marine Systems GmbH (TKMS), (Mr Klaus Wiercimok’s statement), paragraphs 9 & 10.

³⁶⁰ Modac, p15 paragraph 3.1.4.

The allegations regarding the re-entry of the Germans

169. Dr Young alleged that there was individual or Government collusion with the Germans to irregularly allow them back into the competition after they had been excluded in the first rounds of tendering in the Project Sitron Project Study phase, particularly by the irregular intervention of then Deputy President Mbeki.³⁶¹

170. The evidence was that in July 1994, Request for Proposals (“RFPs”) were issued to five competing shipyards. The offers were duly evaluated against a registered value system derived from the Naval Staff Requirement and the technical information received during the Feasibility Study. The results of this evaluation were captured in a Project Study Report dated 30 November 1994 which was duly approved by the Naval Board. The result of the evaluation was:

170.1. first, Bazan of Spain;

170.2. second, Svendborg of Denmark;

170.3. third, Blohm+Voss of Germany;

170.4. fourth, Yarrows of UK;

³⁶¹ Dr Young’s statement paragraphs 288 – 299.

170.5. fifth, DCN of France.

171. Germany was one of the formal offering countries in the first phase of Project Sitron. Had it not been for the strategic consideration of the UK Rooivalk competition, the Request for Final Offer (“RFFO”) in December 1994 would have been issued to the first two or three placed contenders (i.e. the Spanish Bazan, the Danish Svendborg and possibly the German Blohm+Voss), and not to the UK.³⁶²

172. In 1997 at the restart of the Project Study under the SDPP mantle, it was appropriate that at least all of the five countries (Denmark, France, Germany, Spain and UK), which had competed in the tendering rounds of 1994/5 should be given a renewed chance in this new competition. To these were added Brazil, Canada, Italy and Sweden.³⁶³

173. Dr Young alleged that when final cabinet approval was sought on 3 May 1995, the Cabinet refused to give such final approval to the contract, despite all formal requirements having been fulfilled for doing so during the formal and comprehensive acquisition process.³⁶⁴

³⁶² Adm Kamerman’s statement, paragraphs 23 and 24.

³⁶³ Adm Kamerman’s statement, paragraphs 55 – 58.

³⁶⁴ Dr Young’s statement, paragraph 291.

174. This allegation is false. Cabinet's denial of approval for the acquisition of the corvettes had nothing to do with any particular supplier or country. The Chief of the SAN and Adm Howell both attended the briefing to Cabinet on 3 May 1995, and the decision was made to defer the acquisition of the corvettes until a national consensus on defence was reached, which resulted in the Defence White Paper and the Defence Review over the next two years.³⁶⁵ It is preposterous to aver, as Dr Young does,³⁶⁶ that Tony Yengeni achieved this result, and that the entire process undertaken during the Defence Review, including the nationwide public consultative conferences and regional workshops, the extensive involvement of the parliamentary Joint Standing Committee on Defence, the DoD, and the Minister and Cabinet, were all a sham.³⁶⁷

175. Dr Young alleged that after Project Sitron was reconstituted in 1997 with an essentially identical technical baseline, a similar acquisition process commenced and a shortlist of four countries was drawn up, but this time including Germany and excluding Denmark.³⁶⁸ This allegation is false:

175.1. the 1997 technical baseline was very different to the 1993-95 baseline in major ways, for example a gas turbine propulsion requirement was added to the diesel-only propulsion hitherto called

³⁶⁵ Adm Howell's statement, paragraph 13.

³⁶⁶ Dr Young's statement, paragraph 297.

³⁶⁷ Defence Review, paragraphs 11 – 13.

³⁶⁸ Dr Young's statement, paragraph 300.

for; helicopter interfaces, long-range SSMS (surface to surface missiles), and vertical launched SAMs (surface to air missiles);

175.2. the acquisition process of 1997/1998 was very different to the 1993-95 process: in 1993-95 the State was not soliciting a main contractor for the vessel system, in 1997-98 it was; in 1993-95 it invited shipyards to offer a platform, in 1997/98 the State invited countries to offer a package of equipment; and

175.3. Germany had been included in 1994, not only in 1998.³⁶⁹

The ship platform: the critical performance filter

176. It was alleged that *“Bazan was the only bidder that complied with all critical minimum criteria in respect of technical and DIP evaluation.”*³⁷⁰ The allegation was that it was only Bazan that had produced a corvette design that met the basic requirements of the SAN; all the other bids had flaws that meant that they did not actually meet the tender requirements. All the bidders besides Bazan should therefore have been disqualified, but this was unlawfully over-ridden by Chippy Shaik. This is a somewhat vague allegation, which necessitates a response in regard to both the RFI and RFO stages of the Project Sitron evaluations.

³⁶⁹ Adm Kameran’s statement, paragraph 137.

³⁷⁰ Dr Young’s statement, paragraph 303, as read with paragraph 324.1.

177. The RFI round of Project Sitron took place in September 1997. At that stage, as the documents showed, ten designs were evaluated against the approved value system by an appointed team of expert naval officers and ARMSCOR specialist managers. Two countries' proposals, those of Canada and Italy, and two of three French designs and one of the two UK designs, badly failed the critical minimum filter and were rejected for further evaluation. Five designs from four countries were passed to be evaluated against the full value system, despite all of them failing a small number of critical performance requirements of relatively minor implication in order to obtain a ranking reflecting the Military Value.³⁷¹

178. Even the Spanish Bazan failed some of the critical performance requirements. If it were true that this meant that a design had to be disqualified, without any discretion, there would have been NO designs evaluated at all.³⁷²

179. The next stage at which to consider this somewhat vague allegation is at the RFO stage during May 1998. The evidence and documents established that:³⁷³

³⁷¹ Adm Kamerman's statement, paragraphs 66 – 67 / Annexure AH-8 to Adm Howell's statement, p316 at p319, paragraphs d & f / also at cross-examination bundle for Dr Young, Vol 5, p983.

³⁷² Adm Kamerman's statement: Annexure "JK-7" Corvette Military Evaluation Report at p262 paragraph 8.

³⁷³ Adm Kamerman's statement, paragraph 89.

- 179.1. two designs (from France and the UK) failed to pass the Critical Performance Filter with severe shortcomings and were rejected for further evaluation. The shortcomings were, for example diesel-only propulsion instead of the specified combined diesel with gas (CODAG) turbine and the DCNI LA FAYETTE design offered a scope of supply of three ships, instead of the four required;

- 179.2. three others, the French DCNI Patrol Corvette, the UK GEC F3000 and the German MEKO A200, failed certain critical minimum performance requirements but were allowed through for full evaluation, at the unanimous discretion of the Evaluation Team:
 - 179.2.1. in the case of the French and UK designs the failing design deficiencies were of a nature that could be corrected, albeit at design effort and cost;

 - 179.2.2. in the case of the German MEKO A200 the design failed the specified vulnerability separation of one compartment between propulsion machinery spaces. However, as the design instead incorporated an innovative and revolutionary CODAG WARP propulsion configuration which had not been foreseen in the RFO Ship Specification, it actually represented a better vulnerability solution than the engine room separation required by the

Critical Performance Filter. It was markedly superior in this aspect.

180. This discretionary application of the Critical Performance Filter was explained to the Moderator and he gave his consent to this discretion by the team. As explained by the Moderator, Adm Howell:³⁷⁴

The value systems consisted of 2 parts. The first was a critical performance filter which was a list of the critical minimum performance criteria specified in the Ship Platform Requirements Specification to which the offer must comply in order to be eligible for further evaluation. The document stated that any proposal failing to comply with each of the critical performance requirements may be deemed to be militarily unacceptable and may be disregarded from further evaluation, unless, at the discretion of the Chairman of the Naval Evaluation Team, there were good grounds in favour of the Navy to continue to part 2. Part 2 of the Value System was the relative Military Performance Evaluation, and this was the measure of the relative merit between the various offers that had passed through the critical performance filter.

181. This is borne out by the documents:

181.1. See the RFO of May 1998³⁷⁵ – which provided for the exercise of the aforesaid discretion (see paragraph 2.16.2.).

³⁷⁴ Adm Howell's statement, paragraph 58.

³⁷⁵ Annexure AH-13 to Adm Howell's statement, p326 at p335 / also at also at cross-examination bundle for Dr Young, Vol 2, p351 at p360, paragraph 2.16.2.

181.2. See the RFO report of June 1998³⁷⁶ – particularly paragraph 7c which recorded that the GFC Meko A200 engine design did not need to be corrected. This was later accepted in the JIT report.³⁷⁷

The combat suite databus: the alleged nomination of C²I²

182. Dr Young claimed that the IMS (information management system) was nominated for the combat suite, that C²I² was entitled to supply the IMS when Project Sitron was resumed in 1997 as it had been pre-selected, or prescribed, as the preferred supplier. Alternatively, he alleged that at the very least, C²I² had a legitimate expectation in this regard.

183. The documents showed that the whole Combat Suite was nominated in the RFO solely to provide a design baseline for the Platform Offer. The RFO documentation, in particular the guidelines provided to contenders in the RFO and the Programme Management Plan, indicated the clear intention of the State that the tendering process be followed for the Combat Suite. Both of these RFO documents indicated that there would be a tendering phase for the Combat Suite only after selection of the Main Contractor.

184. The nominated combat suite consisted of items available in the SANDF

³⁷⁶ Annexure AH-14 to Adm Howell's statement, p368 at p371 / also at also at cross-examination bundle for Dr Young, Vol 2, p361 at p364, paragraph 7c.

³⁷⁷ Cross-examination bundle for Dr Young, Vol 5, pp835 – 837.

inventory, items then under South African technology development programmes and items that had to be sourced from overseas due to a lack of local potential. It was described as a "Nominated Combat Suite". Each potential supplier was listed as an "Element Supplier". The word "nominated" in the context of the RFO clearly meant "proposed", and not "prescribed" by the State.

185. The GFC was selected by Cabinet on 18 November 1998 as the Preferred Supplier and had offered to form a consortium with ADS to supply the required minimum 60% of the combat suite from local industry, "without committing to any sub-contractor or supplier". The GFC was instructed to expand its offer to include an offer for the combat suite on 12 December 1998, against a SAN User Requirement Specification (URS) document wherein all suppliers are explicitly listed as "Candidate Suppliers" only, with the Main Contractor free to offer any alternative it felt fit. The GFC formed a consortium with ADS, obtained quotations and made a series of combat suite offers to the State as part of its overall vessel offer during the negotiation phase. On numerous occasions during this phase, the GFC was explicitly instructed / requested to offer cost-effective alternatives to its proposed equipment or suppliers.³⁷⁸

186. ADS was the only viable local company that had the capability and technology to act as a partner for the combat systems and as combat

³⁷⁸ Adm Kamerman's statement, paragraph 140.

system integrator. This was a status acknowledged by Dr Young himself, to his lawyers on 5 June 1999, where he stated “*Although ADS is a South African registered company, it is now-foreign owned. However we recognise that there is no other single company with the requisite experience to take its place.*”³⁷⁹

187. It became clear that Dr Young knew that the competition would be opened to tenders after the main contractor had been selected and that the ‘nominated sub-contracts’ were going to be open to competition:

187.1. there were other nominated suppliers against which C²I² competed, for example the Project Sitron Navigation Distribution System (NDS) - which competition C²I² won, thereby ousting ADS; and

187.2. C²I² was part of the BaeSema / ASM consortium. During December 1998 it was seeking to oust the SA-nominated supplier of the combat suite (ADS) and the other SA-nominated suppliers of the combat suite sub-systems by making a competitive bid. It was thus clear that Dr Young himself did not place any weight on ADS being a *nominated* contractor, as he saw nothing wrong with a bid to supply a combat suite that would have displaced ADS.³⁸⁰

³⁷⁹ See paragraph 21 of Annexure “JK-20” to Adm Kamerman’s statement / Bundle for Dr Young’s cross-examination, pp211-214.

³⁸⁰ Dr Young: transcript p10200 at line 8 - p10201 line 1 - 4.

The combat suite databus: the commercial risk of retaining C²I²'s IMS

188. The databus represented less than 1% of the total cost of the corvette i.e. R98 million out of a price of R6.8 bn for the entire vessel system of four ships, of which R2.599 bn was for the combat suite. Yet a failure of C²I²'s IMS sub-system would have critically placed at risk the contractual and operational performance of the remaining 99% of the vessel.³⁸¹

189. Young suggested that either the Main Contractor or the State should have taken the chance and assumed this risk, notwithstanding that any failure of the IMS would have meant a major and potentially catastrophic financial risk for the Main Contractor.³⁸² It could have found itself having to replace the IMS, and fundamentally re-designing the selected architecture and physical and signal interface of the entire Combat Suite within a very tight delivery schedule. The potential impact of discovering that the IMS would fail at a late stage was far higher than the simple cost of replacing the IMS itself.

190. Thus Dr Young's proposals in his correspondence³⁸³ that he be provided with R15 million and nine months to take the IMS from being a technology demonstrator to a product, were unacceptable.³⁸⁴ Dr Young's contemporaneous memorandum reflected a full appreciation of the

³⁸¹ Adm Kamerman's statement, paragraph 150.15; Adm Kamerman: transcript p6440 line 5.

³⁸² Dr Young: transcript p10315 line 12.

³⁸³ Annexures to Adm Kamerman's statement – "JK-27" & "JK-28" / Bundle for Dr Young's cross-examination: p215 – p219 / pp220 - 223.

³⁸⁴ Dr Young: transcript p10317 line 13 – p10319 line 24.

difficulties.³⁸⁵

191. Due to the Main Contractor's calculation of its risk exposure at a vessel level, if the C²I² IMS was included, a risk premium of some R42 million was included in its offer to the State for the IMS³⁸⁶. This premium was made up as follows:

191.1. R12 million to execute a comprehensive risk analysis, including independent expert studies and modelling, as well as empirical testing in a realistic environment.

191.2. R30 million to cover integration development risks, particularly the very complicated interfacing with the Combat Management System hardware and software; and to partially cover the risk of having to replace the C²I² IMS in the event of an IMS problem.³⁸⁷

192. The R30 million represented only 10% of the Main Contractor's vessel performance liability, and only 0.05% of the total cost of the vessel to the State. For a programme risk of this nature the R30 million was well within international norms. It was considered prudent and reasonable by the Joint Project Team ("JPT").³⁸⁸

³⁸⁵ Bundle for Dr Young's cross-examination: p211 – p214.

³⁸⁶ Dr Young: transcript p10338 lines 20 – 27.

³⁸⁷ Adm Kamerman's statement paragraph 150.18; Dr Young: transcript p10332 line 5 – p10339 line 22.

³⁸⁸ Adm Kamerman's statement paragraph 150.19.

193. The Main Contractor initially offered to waive the risk premium if the State was willing to relieve it of the responsibility for the IMS and related vessel performance. This was unacceptable to the State. So too was the additional cost implication to the State of the C²¹² IMS.³⁸⁹

194. In an effort to accommodate C²¹², one other potential solution was considered. It was proposed that Dr Young follow what the other South African sub-contractors had done, by including an internal development risk allocation in their quotations to the Main Contractor. This averaged some 10%, and on some sub-systems was a considerable sum. Kentron, for example, put aside R43 million to cover their own development risks. C²¹² had included no development risk cover in its quotation to the Main Contractor, and as such was an exception.³⁹⁰

195. It was in this context that the PCB mandated Mr Swan and Adm Howell to meet with Dr Young to consider possible ways to resolve the obvious result that these financial considerations would drive the SAN to select the Detexis databus.³⁹¹

196. Sometime after the PCB meeting of 24 August³⁹² and prior to the meeting of

³⁸⁹ Adm Kamerman's statement, paragraph 150.20; transcript p6371 line 5.

³⁹⁰ Adm Kamerman's statement, para 150.21.

³⁹¹ Adm Kamerman's statement paragraph 150.22.

³⁹² Adm Howell's statement, Annexure AH-18.

6 October 1999³⁹³, Armscor CEO, Mr Llewellyn Swan and Adm Howell met with Dr Young in Simon's Town. They discussed the issue of risk and C²I²'s ability and preparedness to put up financial guarantees to overcome the aforesaid financial issue. If that could have been resolved, there was no reason why C²I² would not have been granted the sub-contract for the IMS. However, Dr Young was not amenable to this option, and the SAN was not prepared to pay the risk premium or carry the risk itself (as a category C item). Notwithstanding the deadlock, which necessarily meant that C²I² would not be awarded the sub-contract for the IMS, Dr Young agreed not to proceed with the threatened legal action.³⁹⁴

197. The probabilities are that at that stage Dr Young was prepared to hold back on litigating against the State, as he was hoping to procure contracts for other sub-systems of the combat suite. He had tendered for other sub-contracts in the SDPP, and won work worth at least R38 million (on his own version).³⁹⁵

198. It was thus apparent that the State's only viable option was to select the Detexis databus, which it then did. The reasons for doing so were clearly justified and this selection is no basis from which allegations of corruption may be drawn.

³⁹³ Adm Howell's statement, Annexure AH-19.

³⁹⁴ Adm Howell's statement, paragraphs 87 – 89.

³⁹⁵ Bundle for Dr Young's cross-examination: page A. See paragraph 239 below.

The combat suite databus: the decision that the IMS was in category B and the powers of the PCB to make that decision

199. Dr Young questioned whether the 19 August 1999 Project Control Board (“PCB”) meeting took place and alleged that the decision to place C²1²'s databus into category B was not fair, not legal and was a foregone conclusion.³⁹⁶

200. The first hand knowledge of three witnesses who attended the meeting of 19 August 1999 was that it did indeed take place: Mr Nortje, (transcript pp5212 – 5213); Adm Howell (statement, para 92) and Adm Kamerman (statement, para 151.3). The minutes of the PCB meeting of 24 August 1999³⁹⁷ confirm that the presentation (annexure D) made on 19 August was ratified. Paragraph 15 of the aforesaid minute refers to Appendix D, dated 19 August 1999. At the beginning of the minute, one of the items is "Project SITRON: PCB Ratification Required". Thus the fact that the issue was placed before the PCB for decision on 24 August 1999 was minuted. The PCB in fact ratified the classification of the databus as a Category B item and confirmed that the prescribed cost ceiling of the corvettes could not be

³⁹⁶ Dr Young's statement, paragraphs 129 and 130 / transcript: p9107 line 24; Dr Young's statement, paragraph 162 / transcript: p9141 line 18 – p9142 line 21; Dr Young's statement, paragraphs 255 and 258 - 259 / transcript: p9325 line 21 to p9327 line 9; Dr Young's statement, paragraphs 431 - 439 / transcript p9615 lines 7 – 17; p9618 line 23 to p9617 line10; p9618 lines16 -18; p9618 lines 5 – 9; p9620 line 15 – p9622 line 25. See also transcript: Dr Young p9268 line 17 – 22.

³⁹⁷ Cross-examination bundle for Dr Young, Vol 3, p365 at para 15 / Annexure AH-18 to Adm Howell's statement, p412.

exceeded. These two factors resulted in the selection of the Detexis databus.

201. Adm Howell described the events as follows:

Mr Llew Swan called for a special PCB meeting on 19 August 1999 to explain the risk issues and the proposed categorisation of equipment into categories A, B and C. This was not a decision-making meeting, and was solely for the purposes of assisting PCB members to understand the Project Team's proposal. Mr Fritz Nortje gave a presentation, which became appendix D to the minute of the Project Control Board of 24 August 1999. Adm Kamerman gave a much shorter presentation in support of Mr Nortje's. The members of the PCB were placed in a position to consider the risk issues before they were called upon to make a decision on whether to accept the Project Team's recommendation at the next PCB meeting of 24 August 1999. The meeting of 19 August 1999 was not intended to be a minuted meeting, as it was only for the purposes of informing the PCB members, prior to their decision-making meeting of 24 August 1999.³⁹⁸

202. Young alleged that the PCB was not supposed to make decisions as its constitution was never finalised and formally adopted.³⁹⁹ He tentatively conceded that had the constitution been formally adopted, the PCB would have had the authority to make decisions, because that is what it

³⁹⁸ Adm Howell's statement paragraph 92.

³⁹⁹ Dr Young's statement, paragraphs 89 & 90; Dr Young: transcript p9055 lines 22 - 24.

provides.⁴⁰⁰ In so conceding, Dr Young was referring to paragraphs 3e of the PCB Constitution, which states that the PCB was to “*make decisions or obtain higher level authorisation concerning matters outside of the responsibility for the project team.*”⁴⁰¹

203. Although it is unclear when and by whom the PCB Constitution was adopted, the PCB minute of 4 December 1998⁴⁰² records that the constitution was considered and amended. Read together with the minutes of 8 March 1999,⁴⁰³ approving the 4 December 1998 minutes, the only reasonable implication is that it had been adopted.

The combat suite databus: the alleged disclosure of C²I²'s price for the databus

204. Dr Young sought to rely on the hearsay averments made by a Captain Marais, who gave evidence before the Investigating Directorate: SEO on 29 June 2001, to the effect that on 3 June 1999, when Cdrs Egan-Fowler and Cothill, and Mr Mathieson were meeting with the Diacerto team,⁴⁰⁴ the

⁴⁰⁰ Dr Young: transcript p9063 line 18 – p9064 line 10.

⁴⁰¹ Annexure RMY 11 to Dr Young's statement, Vol 1, p223, paragraph 3e.

⁴⁰² Cross-examination bundle for Dr Young, Vol 2, p406 at p409, paragraph 21 / Annexure AH-23 to Adm Howell's statement, p492.

⁴⁰³ Cross-examination bundle for Dr Young, Vol 2, p415 at p416, paragraph 4 / Annexure AH-24 to Adm Howell's statement, p501.

⁴⁰⁴ See RMY41 at p995 regarding the date of the meeting, and those present.

Diacerto employees apparently knew that the Diacerto Bus was being offered at approximately 30% less than C²I²'s bus.⁴⁰⁵

205. The report regarding the aforesaid meeting does not mention Captain Marais as being present, yet it does list all the individuals involved.⁴⁰⁶ This corroborates Adm Kamerman's evidence that Marais was never a member of the Project Team of Project Sitron, nor did he have any role in the commercial negotiations.⁴⁰⁷ Dr Young conceded that he had no knowledge of Marais's involvement and that he had no '*direct*' involvement.⁴⁰⁸

206. Moreover, Marais had a reason to falsify his evidence - he harboured a vociferous antagonism towards ADS which he often voiced, and at that time, he was involved in an acrimonious dispute with Lt Commander Cothill and Mr Mathieson.⁴⁰⁹

207. It is submitted that this hearsay evidence is too unreliable to carry any weight and that Dr Young's reliance thereon is unjustified.

⁴⁰⁵ Dr Young's statement, paragraphs 395 – 397; Dr Young: transcript p9597 line 23; p9598 line 17; p 9599 line 16

⁴⁰⁶ See RMY41 at p995 regarding the date of the meeting, and those present.

⁴⁰⁷ Adm Kamerman's statement, paragraphs 144.1 & 144.2.

⁴⁰⁸ Dr Young: transcript p10420 line 3.

⁴⁰⁹ Adm Kamerman's statement, paragraphs 144.3 & 144.4.

The combat suite SMS (System Management System): the reasons for the rejection of C²I²'s bid

208. Dr Young alleged that had the competition been fair, C²I²'s quotation for the SMS should have been accepted, that the reasons for its rejection were simply lies thought up *ex post facto*, and that in effect the competition for the SMS was a sham.⁴¹⁰

209. The evidence established that C²I²'s offer was rejected for sound commercial reasons. It was common cause that C²I²'s offer was conditional upon the State providing customer furnished equipment ("CFE").⁴¹¹ This was unacceptable to the State. The cost to the State of the computers was unknown and could not be factored in. The intellectual property relating to the SMS arising from projects Diodon and Suvecs was to be provided free of charge. This included intellectual property jointly owned by the State and ADS. In the unlikely event that ADS would have been amenable to disposing of its rights to the IP for this purpose, the price would have been in the order of several million rands. This would have put the cost of the C²I² offer well beyond the ADS price.⁴¹²

210. Dr Young's stance is an absurd one. It was not for the State to obtain ADS's

⁴¹⁰ Dr Young's statement paragraphs 683 – 692.

⁴¹¹ See RMY138, Vol 6 continued, p2879 at p2893. (Also at cross-examination bundle for Dr Young, Vol 5, p838 at p840.)

⁴¹² Adm Kamerman's statement paragraph 145.

IP and provide it to C²I² for free to assist C²I² to win the competition.

211. Dr Young also complained that the 12.05% margin imposed on C²I²'s price by ADS was unfair. There was a clear, rational and objective reason for the State recovering this cost that it had to bear.⁴¹³ Dr Young was driven to concede this, and his complaint was reduced to the unpersuasive whimper that a fair process would have involved C²I² being warned in advance, so that it could take this into account.⁴¹⁴ This is a far cry from C²I² losing the bid as a result of lies and shams, and it is difficult to believe that Dr Young was so naive as to not realise that ADS would impose a margin to cover the costs it would have incurred had C²I² won its bid.

The combat suite SMS: the alleged disclosure of C²I²'s price for the SMS

212. Dr Young alleged that C²I²'s price for the SMS was disclosed after the closing date for the tender. Dr Young had based his allegation on a letter (RMY90) from the main contractor calling upon competitors to submit their quotes by 15 April 1999.⁴¹⁵

213. The deadline in RMY90 was to enable the main contractor to submit the tenders to the JPT on 16 April 1999, which was the closing date. The GFC provided both offers to the JPT on 16 April 1999, although the offers had

⁴¹³ Adm Kamerman's statement paragraph 146.5.

⁴¹⁴ Dr Young: transcript p9605 / p10415 line 11 – p10419 line 16.

⁴¹⁵ Dr Young's statement, paragraphs 681 & 682, as read with annexure RMY90 at Vol 5, p1603. Transcript pp9957 – 9958.

been submitted by both parties to the GFC on 15 April 1999.⁴¹⁶ Dr Young conceded as much.⁴¹⁷

214. The Project Team had requested both C²I² and ADS to eliminate certain items from the SMS in order to reduce the price. ADS had omitted to furnish a quote with all these items removed, and had erroneously included a component that had been eliminated i.e. the VSS ILS. ADS realised its error, and immediately sought to correct it by way of a letter dated 16 April 1999 (Annexure “JK-26”). The JPT permitted the correction, as both offers submitted the previous day to the main contractor had been in sealed envelopes and had been kept confidential, and the correction was confined to the removal of an item that should not have been quoted on in the first place. There could thus be no prejudice to C²I², and the correction enabled the Project Team to compare the C²I² and ADS offers for exactly the same equipment.⁴¹⁸

⁴¹⁶ Adm Kamerman’s statement, paragraph 145, as read with annexure JK-25, paragraph 2c (also at cross-examination bundle for Dr Young, Vol 4, p629A.) Dr Young conceded as much at transcript p10406 line 16 – p10407 line 6.

⁴¹⁷ Dr Young: transcript p10406 line 16 – p10407 line 6.

⁴¹⁸ Adm Kamerman’s statement, paragraph 145.7 / Dr Young: transcript p10411 line 14 – p10414. line 9.

215. It is submitted that Dr Young's complaints in this regard were borne of a misunderstanding and that the facts do not constitute any basis for an inference of improper conduct.

The combat suite IPMS Simulator: the reasons for the rejection of C²I²'s bid

216. IPMS (Integrated Platform Management System) refers to the system on board which performs monitoring and control of the ship's machinery and damage control systems. The IPMS simulator is the shore-based training simulator on which the ship's machinery crew can be trained to operate the on board IPMS.⁴¹⁹

217. Dr Young claims that C²I² was selected as the supplier, and then deselected at a late stage.⁴²⁰ Dr Young complains that in the Public Protector hearings, Adm Kamerman falsely denied that C²I² had been selected, and falsely stated that C²I² was only listed as a potential supplier.⁴²¹ During the JIT hearings, Dr Young alleged that the decision to deselect C²I² was to punish him for crying foul on other parts of the corvette contract and he alleged a conspiracy between the State and the Main Contractor to punish him.⁴²² He abandoned that contention.⁴²³

⁴¹⁹ Dr Young: transcript p1059 lines 5 – 13.

⁴²⁰ Dr Young's statement, paragraphs 471, & 478.

⁴²¹ Dr Young's statement, paragraphs 479 & 482 as read with transcript p10359 lines 14 – 24.

⁴²² Cross-examination bundle for Dr Young, Vol 5, p1087.

218. In Dr Young's statement, he relied on two documents in support of these contentions. The first was a letter dated 29 June 1999 from Mr Llew Swan to the GFC. Within the table entitled "Ship Platform" the element "IPMS Simulator" was listed with its supplier identified as being C²I².⁴²⁴ However, Dr Young would not disclose how he came to be in possession of this document, and stated that it was given to him by somebody who he refused to name. The reliance on incomplete information obtained via the back door was exposed as being inherently unreliable - Dr Young had not seen the contemporaneous correction to the errors in Mr Swan's letter, as contained in the GFC's response of 6 August 1999. The GFC advised *inter alia* that the decision concerning the IPMS Simulator was open.⁴²⁵ Dr Young's response - which was typical of his oft repeated perception that he was subject to unfair victimisation - was to baldly allege that the GFC's letter was a fraud. He demonstrated an inability to accept correction and to engage with the facts.⁴²⁶

219. In addition, the contents of the GFC's letter were borne out by another document: annexure A Part 6: IPMS Simulator, Revision 00 dated 25th June 1999, which was initialled by both the GFC and the Project Team, and formed part of the Supply Terms. It described the functional specification

⁴²³ Dr Young: transcript p10359 line 25 - p10360 line 12.

⁴²⁴ Also at cross-examination bundle for Dr Young, Vol 5, p1047. Dr Young: transcript p10361 - 10362.

⁴²⁵ Cross-examination bundle for Dr Young, Vol 5, p1049.

⁴²⁶ Dr Young: transcript p10368 - p10374 line 5.

and scope of the IPMS Simulator and stated that the “*Final supplier selection shall only be made after this detail[ed] investigation.*”⁴²⁷

220. The second document cited by Dr Young in support of his contentions was the minute of a meeting of the PCB of 8 June 1999.⁴²⁸ (RMY9 p120.⁴²⁹) However, this minute contained no reference at all to any decision in favour of C²I²'s selection. As conceded by Dr Young, the topic of the IPMS Simulator was not dealt with at this PCB meeting.⁴³⁰

221. Dr Young alleged that C²I² was the contractor for the IPMS simulator as at January 2001.⁴³¹ In support of this allegation, he referred to RMY-100.⁴³² Yet that document merely reflected that Siemens was also listed as a supplier for the IPMS simulator - *it did not demonstrate that by that time any selection had been made.* Siemens competed against C²I² and won this competition. Dr Young was driven to concede this point.⁴³³

222. Dr Young alleged that Blohm+Voss first provided C²I² with a detailed *Requirement Specification* and requested C²I² to supply a ‘*last and final*

⁴²⁷ Cross-examination bundle for Dr Young, Vol 5, p1046. (Put to Dr Young at transcript p10378.)

⁴²⁸ Dr Young's statement, paragraph 480 / 479.

⁴²⁹ Also at cross-examination bundle for Dr Young, Vol 5, p1093.629A

⁴³⁰ Dr Young: transcript p10366 lines 18 – 20 / p10367 lines 17 - 21.

⁴³¹ Dr Young's statement, paragraph 472.

⁴³² Annexure RMY-100 to Dr Young's statement, p10 / Also at cross-examination bundle for Dr Young, Vol 5, p948 at p957.

⁴³³ Dr Young: transcript p10375.

offer by **2 March 2001**, which C²I² did (after an extension of 3 days). Yet he could not explain why - if he had understood that C²I² had already been selected in 1999 – C²I² agreed to tender during 2001. Surely the response would have been to protest that it had already won this competition in 1999?

223. The dishonesty in Dr Young's protestations was exposed by a minute of a meeting held with C²I²'s technical director, Mr Knight, on 6 April 2001, which Knight had signed.⁴³⁴ Mr Knight had been in charge of this programme, and the minute recorded the reasons why C²I² had lost the competition. Dr Young was driven to concede that when Mr Knight had returned to South Africa immediately after the meeting, he had been provided with a copy of the minute, and the contents thereof had never been challenged.⁴³⁵

224. This notwithstanding, when on 11 April 2001 Dr Young was advised that the GFC had decided to procure the IMPS Simulator from Siemens, he responded with a lawyer's demand.⁴³⁶ In response, C²I² was advised of the GFC's reasons for the selection, as follows:⁴³⁷

"The main reasons for a decision in favour of Siemens were:

- *No C²I² experience in projects of comparative size and*

⁴³⁴ Cross-examination bundle for Dr Young, Vol 5, p1057.

⁴³⁵ Dr Young: transcript p10395.

⁴³⁶ Dr Young: transcript p10396 / cross-examination bundle for Dr Young, Vol 5, p1053.

⁴³⁷ Cross-examination bundle for Dr Young, Vol 5, p1055.

complexity

- *The whole software package would have to be supplied by Messrs. Siemens, an adaptation from Siemens' software to CC/1 software would become necessary, bearing risks regarding the interface as well as cost*
- *The delivery-time is outside the contractual time frame*
- *The costing is not within the existing budget for the IPMS simulator"*

225. Notwithstanding his convoluted explanations and accusations of dishonesty, Dr Young finally had to concede that these reasons were true ones, albeit in his view, simplistic.⁴³⁸ Dr Young's excuses as to why these could not be valid reasons, notwithstanding that Mr Knight had accepted them, were far from impressive, especially since he conceded that C²I² could not deliver in time to meet the time requirement or the Main Contractor's obligations.⁴³⁹

226. Dr Young's persistence in his allegations that he was cheated out of this contract is demonstrative of an extra-ordinary arrogance and a reckless propensity to make baseless and dishonest allegations.

⁴³⁸ Dr Young: transcript p10379 – p 10401.

⁴³⁹ Dr Young: transcript p10391.

The combat suite: the alleged manipulation of the price by R300 million for the purposes of paying bribes

227. Dr Young alleged a conspiracy to artificially inflate the price paid to Thomson for the combat suite by R300 million on the basis that it would use that money to pay corrupt officials or politicians.⁴⁴⁰ He alleged that the genuine price for the combat suite of R2.3 bn was manipulated upwards by R300 million to a price of R2.6 bn, and that this was achieved for the most part by not paying cash for the missiles.⁴⁴¹

228. Dr Young had based his theory, at least in part, on a minute of the Project Control Board meeting of 28 April 1999.⁴⁴² An analysis of the documents indicated that there was never an offer to acquire the combat suite for R2.3bn. The Project Team had hoped to achieve such a price, as that was the price ceiling indicated in the affordability documents. However, this hope proved to be a bridge too far, and an offer of R3.3bn was reduced, over time and by way of negotiations, from R3.3bn to R2.9bn and then to a best and final offer of R2.6bn. The price ceiling had to be increased from R2.3bn

⁴⁴⁰ Dr Young: transcript p10421 lines 13 - 21.

⁴⁴¹ Dr Young: transcript p10439 / statement, paragraphs 372 – 392 & 396.

⁴⁴² Annexure RMY 80 to Dr Young's statement, file 4 p1445 – in particular, Appendix A at p1453.

to R2.6bn, and it was only thereafter that the contract could be concluded at R2.599bn.⁴⁴³

229. The other document on which he based this conspiracy theory was a fax from Mr Alain Thetard of Thomson-CSF dated 17 May 1999.⁴⁴⁴ He placed great weight on a handwritten alteration from MF2.3bn to MF2.6bn, but had not considered that the amounts charged by Aerospatiale of approximately R300m for missiles were not included in these amounts.⁴⁴⁵ Dr Young did not take this up with Mrs Christine Guerrier of Thomson-CSF, notwithstanding that he was present during her evidence, and cross-examined her on other issues.

230. His conspiracy theory was also linked to an alleged failure to pay for the missiles, thereby disguising the true cost of the combat suite through the alleged devious scheme of leasing most of the missiles and only purchasing one.⁴⁴⁶ This theory was difficult to tie down, mutating and becoming increasingly vague as the cross-examination of Dr Young advanced.⁴⁴⁷ Whatever the details of this speculative and mutating '*sub-theory*' may have been, on any version of it, it was blown out of the water by the production of

⁴⁴³ Dr Young: transcript pp10422 – 10439 / Annexure RMY 80 to Dr Young's statement, file 4 p1445 at 1452 / annexure RMY 81, file 4 p1464 at p1466; p1470 and p1471. See also Dr Young's statement, paragraphs 389 & 396.

⁴⁴⁴ Annexure RMY 82 to Dr Young's statement, file 4 p1489 & p1490.

⁴⁴⁵ Dr Young: transcript pp10461 – 10462.

⁴⁴⁶ Dr Young: transcript pp10440 – 10442.

⁴⁴⁷ Dr Young: transcript pp10443 - 10446.

the relevant extract from the Corvette Supply Terms, which proved that the missiles were part of a sale, and not a lease.⁴⁴⁸

231. Notwithstanding the hard evidence of the documents, Dr Young was incapable of appreciating that his theorizing just could not be correct, and he persisted therein nonetheless.⁴⁴⁹

DR YOUNG'S LACK OF CREDIBILITY

232. Dr Young's evidence-in-chief was entirely discredited during cross-examination. He was shown to be an untruthful and unreliable witness, who was contemptuous and arrogant.

Dr Young's reckless public pronouncements

233. Examples of Dr Young's outrageous, contemptuous and malicious public statements in regard to the arms deal and this Commission include the following:⁴⁵⁰

233.1. "Erwin and his Grand Larceneers Mandela, Mbeki, Modise, Manuel et cie had this golden goose well and truly plucked, stuffed, peri-

⁴⁴⁸ Dr Young: transcript p10451 – 10454 / Cross-examination bundle for Dr Young, Vol 5, p1104 at p1107.

⁴⁴⁹ Dr Young: transcript p10457 lines 4 – 9.

⁴⁵⁰ Cross-examination bundle for Dr Young, Vol 1, pp1 - 9.

peried, drawn and quartered”.

233.2. “But instead Mandela, Mbeki, Erwin, Modise, Manuel, Radebe, et cie sacrificed this golden goose on the altars of avarice, gluttony, greed, conspicuous consumption and dynasty construction”.

233.3. “The real accountable persons are Mandela and his useful fool Mbeki. Their Arms Deal chief spokesman was yet another useful fool, Alex Pinocchio Erwin”.

233.4. “Mbeki and Erwin are two of the biggest liars that this country has ever known. One basically cannot trust anything that comes out of these vegetables' mouths except that it may be okay for fertilizing the vegetables. But, then again, maybe not. One does not fertilize the earth with vulture manure. Vegetable, vulture - whatever?”

233.5. “If the former Commander in Chief were not so ill he should call his brethren to account. He might even look in the mirror at the same time”. (Referring to President Mandela and published at a time when President Mandela was ill and dying.)

233.6. “This commission is a farce - but not a funny ha ha one. It is a farce of the most odoriferous and pungent kind. Something that reminds me of something that came out of the anuses of my neighbour's

pigs when they invaded my farm last year”.

233.7. “Seriti continues with such unadulterated nonsense...”

233.8. “Indeed [the Seriti Commission] has become such a farcical arse, or arsical farce, that whistleblowing witnesses giving evidence is just a complete waste of their and the public’s effort, time and money”.

234. Whilst he denied acting out of revenge, and purported to understand that reckless and scurrilous accusations - particularly against those holding high positions and those who served the nation - should not be made,⁴⁵¹ he added to and aggravated these scurrilous statements when confronted with them during cross-examination. He did not shy away from saying that President Mandela was complicit in and had knowledge of irregularities in the arms deal.⁴⁵² He did not seek to retract his allegations that the Commission was ‘*bullshitting*’.⁴⁵³

235. During late 2000, Dr Young drew up an organogram which he provided to the SIU. Therein, he linked various high profile Muslim politicians, officials and private persons in what can only be described as a further conspiracy theory implicating individuals in arms-deal-related corruption, solely on the

⁴⁵¹ Dr Young: transcript pp10001 – 10002.

⁴⁵² Dr Young: transcript pp10030 – 10035.

⁴⁵³ Dr Young: transcript pp10086 – 10087 / p10089.

basis that they were Muslims. He maintained that his organograms were still accurate and useful to date, and upon being confronted with the offensive nature of these allegations, he was unapologetic.⁴⁵⁴

236. Dr Young's comments showed a disproportionate and alarming absence of restraint and responsibility. Nonetheless, he maintained that whilst his responses were vicious, they were proportionate to what precipitated his responses.⁴⁵⁵ He also continued to maintain that he was a victim, and that the three projects he lost initiated that belief.⁴⁵⁶ The allegations regarding these three contracts have been considered above – they do not warrant Dr Young's suspicions.

237. Notwithstanding his undertaking to remove foul, vulgar and offending remarks against the Commission from his website,⁴⁵⁷ Dr Young has failed to do so to any meaningful extent. Whilst he replaced some particularly offensive and malicious remarks with "#####" signs,⁴⁵⁸ what remains on the website to date are remarks of the same nature, including that both Commissioner Seriti and Advocate Mdumbe are "*unapologetic barefaced*

⁴⁵⁴ Dr Young: transcript p10067 – 10084 / p10089 / statement, paragraphs 533 -539.

⁴⁵⁵ Dr Young: transcript p10085.

⁴⁵⁶ Dr Young: transcript p10085 / p10090 line 21 – p10091 line 12.

⁴⁵⁷ Dr Young: transcript p10663 line 19 – p80664 line 15.

⁴⁵⁸ He removed the remarks set out in paragraph 233.6 above.

liars”;⁴⁵⁹ that the members of the Commission “*bullshit so much*”;⁴⁶⁰ that “*the APC is indeed a farce - so far. I might even go so [far] to it's indeed an arse. But can we just let the Arms Deal, the grandest of all larcenies ever committed south of [the] Limpopo, to just die a dignified death? It needs to be hanged, drawn and quartered before its entrails are hung over the gates and its heads impaled on the spikes of the Palace of Monstrous Greed...*”.⁴⁶¹

238. It became clear that Dr Young perceived himself as the victim of a grand conspiracy which in his mind justified his vicious, malicious, outrageously unmeasured and reckless accusations. The result is that his allegations must be viewed with great caution as the unreliable, abusive and malicious scorn of an arms dealer with a personal axe to grind.

Dr Young’s motives

239. Remarkably, Dr Young’s complaints of fraud and corruption pertained only to the three competitions for the SMS, NDS Simulator, and IMS - which C²I² lost. In relation to the three sub-contracts directly related to the SDPPs in which C²I² succeeded, and which were worth at least R38 million on his

⁴⁵⁹ Two ‘undermined’ evidence leaders quit arms deal commission [City Press, 2014-07-24] 2015/05/22, 12:57 PM <http://www.armsdeal-vpo.co.za/articles17/undermined.html>.

⁴⁶⁰ Comments to “De Lille’s arms deal claims ‘need probing’ [Sunday Times, 2014-07-27]”.

⁴⁶¹ Dr Young’s comments to “Shut down the arms deal farce [Mail and Guardian, 2014-02-21] 2015/05”.

own version (R119 million on Adm Kamerman's version), there was not a whimper of complaint concerning the process, or any suggestion of fraud or corruption.⁴⁶²

240. Dr Young's personal grudges arose not only out of losing tenders, but also out of a bitter competition with his erstwhile employer, UEC, which had become ADS. He vehemently denied that he had double-crossed UEC, that the relationship had soured, and that he had consequently left UEC shortly thereafter. The facts were that he had attended the RINA⁴⁶³ conference in London during December 1991, presented a paper in the name of C²I² at a time when he was employed by UEC, who had paid his travel expenses, and that he left UEC in January 2000.⁴⁶⁴ The version that Armscor forbade him from linking the technology with UEC was simply not borne out by the relevant correspondence. It became quite obvious that Dr Young had initiated the idea that the paper not be presented in the name of UEC, and that there was no prohibition emanating from Armscor.⁴⁶⁵ The probabilities were overwhelming that his history with UEC was a bitter one.⁴⁶⁶

⁴⁶² Dr Young: transcript p1005 line 25 – p10006 line 5 / transcript p10008 line 19 / transcript p10006 line 14 onwards. See also the letter dated 22 May 2015 in answer to the Chair's questions of 19 May 2015, transcript p10939 line 5.

⁴⁶³ Royal Institute of Naval Architects

⁴⁶⁴ Dr Young: transcript pp9028 – 9029 / p9839 / p10229. Annexure RMY 2 & 3 to Dr Young's statement, file 1 p3 & p32.

⁴⁶⁵ Dr Young: transcript pp10222 - 10228. Cross-examination bundle for Dr Young, Vol 4, p778 & p782.

⁴⁶⁶ See Dr Young: transcript p9811; pp10235 – p10236 for the unconvincing explanation of Mr Duncan Hiles's subsequent request that they not trip one another up.

Dr Young's unjustified reliance on pilfered documents

241. Dr Young's arrogance and dishonesty were demonstrated when he was shown that information he had obtained unofficially and on an unauthorised basis, from a source he refused to identify, contained mistakes. These errors had been contemporaneously corrected, but Dr Young had not been aware thereof and had relied on incomplete snippets of information. Upon being shown the full story as reflected in the documents, he still declined to review his allegations. On the contrary, instead of accepting that he had formed a view on the basis of incomplete, unreliable and incorrect information, he persisted in his contentions that C²I² had been nominated for the SMS sub-contract, and was subsequently cheated out of that sub-contract by fraud.⁴⁶⁷ In doing so, he demonstrated his obstinate propensity to make and persist with baseless – but serious – allegations.

242. Dr Young's preparedness to rely on pilfered information, notwithstanding the knowledge that that information was both incomplete, and even more seriously, had been abandoned as unreliable by its source, reached exacerbating levels when he elevated RMY52, 53 and 54 (translated at RMY55) to the status of his three most important documents, and claimed that they were sufficiently reliable to justify far-reaching investigations. The issue of the German investigations is dealt with in paragraphs 255 to 265 below. Dr Young's grave lack of judgment in regard to what was, and was

⁴⁶⁷ See paragraphs 208 to 211 above.

not, reliable was exposed.⁴⁶⁸

Dr Young's refusal to withdraw unsupportable allegations

243. Dr Young demonstrated an inability to engage with reason, to accept that on occasion he could be and was wrong, and instead retaliated with yet further allegations of fraud. This showed an extra-ordinary arrogance, a reckless propensity to make baseless allegations, and his dishonesty.

244. We refer to the example of his demonstrable bitterness following the loss of the tender for the IPMS Simulator, traversed in paragraphs 216 to 225 above. Another example of Dr Young's persistence with allegations that cannot be reconciled with the documents, or any reasonable interpretation of events, was his theory regarding the circumstances under which BaeSEMA and Advanced Systems Management ("ASM") withdrew their bid for the corvette combat suite (see below).

245. Dr Young's refusal to withdraw his allegations against Adm Kamerman regarding 'revolving-door corruption', notwithstanding that the documents, as confirmed by the relevant witnesses, conclusively put paid to his allegations, is inexcusable and revealed the malicious nature of his

⁴⁶⁸ Dr Young: transcript pp10139.

allegations.⁴⁶⁹ Faced with the facts, a level-headed, fair-minded person simply could not have continued with these serious allegations of corruption.⁴⁷⁰

Dr Young's duplicitous standards - the BaeSEMA and ASM Alliance

246. Dr Young was shown to be guilty of duplicitous standards. He considered the payment to an entity with political connections as being “*highly, highly, highly improper*”, and a powerful indicator of improper conduct, corruption and the likely payment of bribes.⁴⁷¹ He did so notwithstanding that when he himself knowingly and deliberately engaged in the same practices for economic advantage, he could neither see nor acknowledge any fault.

247. In his evidence before the Commission Dr Young has argued that “*there is no place whatsoever ... for the winning of such contracts... through political connectivity and even more so if political connectivity involves funding, paying funds to those companies and more so if it is done in a covert manner...*”⁴⁷²

⁴⁶⁹ Dr Young's statement, paragraphs 483 – 487 / transcript pp10237 – 10245 / Submission by TKMS (Mr Klaus Wiercimok's statement), paragraphs 79 – 81.

⁴⁷⁰ See Ms Taljaard's retraction of her allegations once confronted with the facts, of which she had been unaware: transcript pp7783 -7787 / p7814 – 7815.

⁴⁷¹ Dr Young: transcript p10180 line 16 – p10181 line 20.

⁴⁷² Dr Young: transcript p10181 lines 4 - 8.

248. However what Dr Young omitted to mention in his evidence in chief was that through C²¹²'s association with ASM, he became part of a consortium that had intentions to bid for aspects of the corvette contract. According to the minutes of this new consortium there was an intention to leverage on the "*high political profile*" of individuals and entities for the purpose of bidding for the corvette combat suite contract.⁴⁷³ In this regard the minutes dated 2 December 1998 explicitly state that:

*"Richard Charter would like to be kept informed so that he can provide appropriate political support."*⁴⁷⁴

*"All parties felt that because of Altantis Consulting's high political involvement and excellent intelligence that this company should be involved in the activities of the ASM."*⁴⁷⁵

*"Additional position: Marketing Manager – Pretoria; John Gower. Close to the political power base and the customer for intelligence."*⁴⁷⁶

249. Despite the perfectly straightforward and explicit meaning of the minutes, he resorted to obfuscatory answers when faced with these matters during cross-examination. He contended that the Commission should believe that

⁴⁷³ Dr Young: transcript p10186 line 3.

⁴⁷⁴ DoD cross-examination file 4 p741 – 743 paragraph 1.4.

⁴⁷⁵ DoD cross-examination file 4 p741 – 743 paragraph 6.1.

⁴⁷⁶ DoD cross-examination file 4 p741 – 743 paragraph 8.3.

he had no real knowledge of the political associations⁴⁷⁷ referred to in the minutes despite his presence at the meetings and involvement in the Management Committee of ASM⁴⁷⁸. Dr Young's unsatisfactory answers and unconvincing attempts to wriggle out of his own impossibly compromised position included the following:

249.1. A contention that what was meant by "*high political profile*" was merely involvement with "*lower level people but a lot of, that is volume, rather than high level.*"⁴⁷⁹ On being pressed for a clearer answer, Dr Young stated that high political profile does not mean "*they had political connectivity at decision-makers, at the, you know ministerial level*" - but there was a line of communication with an MP.⁴⁸⁰

249.2. The "*appropriate political support*" that Richard Charter was to provide was a reference to "*political support within one's own organisation ...support from...British Aerospace.*"⁴⁸¹ This is despite the fact that Dr Young had denounced Richard Charter as having been directly involved in bribery on behalf of BAE.

⁴⁷⁷ Dr Young: transcript p 10186 at line 4 – 11; p 10198 at line 2 – 4.

⁴⁷⁸ Dr Young: transcript p10197 line 23 to 10198 at lines 1 – 4.

⁴⁷⁹ Dr Young: transcript p10186 at lines 20 – 22.

⁴⁸⁰ Dr Young: transcript p10187 line 11 – p10188 line 2.

⁴⁸¹ Dr Young: transcript p10195 line 23 – p10197 line 13.

249.3. In regard to the fee paid to Atlantis Consulting, which had “*high political involvement*”, was engaged on a monthly retainer and was promised a success fee, Dr Young sought to draw arbitrary and technical distinctions between the conduct of ASM and the conduct that he has now come to condemn as indicative of bribery and corruption.⁴⁸² Yet Dr Young, through his association with ASM, had engaged in the same practices which he condemns as being strongly indicative of bribery.⁴⁸³ His startling double standards were exposed.

249.4. In order to advance C²I²'s commercial interests, Dr Young had entered into a Memorandum of Understanding with Atlantis Consulting as they could, in Dr Young's words, “[*open*] up doors to us.”⁴⁸⁴ He sought to explain this, somewhat unconvincingly, as being confined to overseas companies looking for South African partners. When it was put to Dr Young that his evidence was “*simply not credible, in short that [he] was lying, and that [he] knew perfectly well who Richard Charter was and what political support he could offer. [He] knew exactly that Atlantis Consulting ha[d] some high political involvement and that [he was] prepared to, and indeed had already entered into a contract with them for that*

⁴⁸² Dr Young: transcript p10189 at line 15 – p10190 at lines 1 – 8.

⁴⁸³ Dr Young: transcript p101189 at lines 11 – 14 / p10192 lines 6 - 9.

⁴⁸⁴ Dr Young: transcript p10194 at lines 15 – 16.

purpose, and [he was] going to hire a marketing manager whose qualification was that he was close to the political powerbase, and that [his] excuses and pretensions of ignorance [were] just false”, his unconvincing response was that he:

Had no knowledge or involvement in any of that kind of stuff whatsoever. The fact that I sat there in meetings where most of the stuff was actually being discussed between Tellumat and BAE does not indicate that I knew about it...⁴⁸⁵

250. The essence of Dr Young’s evidence was that despite his involvement at meetings where these matters were discussed, and despite his participation in the management Board of ASM, the Commission must accept that he had no knowledge or involvement in ASM’s attempts to associate itself with politically connected people, for a fee, in order to obtain contracts from the state. This notwithstanding that C²I² had itself engaged these people for the same reason as ASM did, prior to the association with ASM.⁴⁸⁶

251. At paragraphs 349 to 352 of Dr Young’s statement he discussed the circumstances under which BAeSEMA and ASM withdrew their bids for the corvette combat suite. Notwithstanding that according to Dr Young, BAE

⁴⁸⁵ Dr Young transcript: p 10198 at line 6 – 14.

⁴⁸⁶ Dr Young: transcript p10192 line 10 – p10193 line 12.

had considered this a “must win opportunity”,⁴⁸⁷ BAE had reserved its position until after a meeting to make a decision on whether to pursue the matter, which was to be held on 13 January 1999. After that meeting, on 14 January 1999, BAE communicated its decision to withdraw the bid. When Dr Young contacted the relevant person at BAE to enquire as to the reasons for the “*extremely sudden pull out*”⁴⁸⁸ he was advised by a Mr Roger Barnes that never in his 17 years of being involved in the industry, had he been told so directly and from so high up in the “*home country*” that BAE should withdraw its bid. Dr Young then asked if the high level to which Barnes was referring to was Chippy Shaik. Apparently, Mr Barnes replied: “*No. Much higher*”. Dr Young drew the inference that the only persons higher were the SA Minister of Defence, the SA Deputy President and the SA President.⁴⁸⁹

252. However on a plain reading of the documents it is evident that Dr Young misrepresented the facts as recorded in the minutes and the relevant correspondence in order to suit his interpretation of events. It is evident that:

252.1. BAE was still deciding whether to join the consortium. They were in a sensitive situation due to the R11bn aircraft deal and as a result did not want to overtly declare their association with ASM.⁴⁹⁰

⁴⁸⁷ Dr Young transcript: p 9547 at line 23 – 25.

⁴⁸⁸ Dr Young transcript: p 9551 at line 5 – 7.

⁴⁸⁹ Dr Young transcript: p 10213 at line 6 - 12.

⁴⁹⁰ Department of Defence cross examination file 4 at page 772 paragraph 2.3 – 2.7.

252.2. Parties were informed that the South African situation was under review and a meeting would be held in the UK on 13 January 1999.⁴⁹¹

252.3. Thus the decision, one way or the other, when it came on 14 January was not unexpected, nor was the possibility that BAE might withdraw.

252.4. In the fax dated 14 January 1999⁴⁹² BAE gave three primary reasons for deciding to withdraw from the bid, which included reviewing their competitive position; the investment needed to complete the bid and to secure a contract win; and the resources available as against other opportunities in the UK and overseas.⁴⁹³

253. Dr Young's version was in direct conflict with the documents. He even contended that the "*second two reasons are actually nonsense in the context of them having long since declared, in front of us at least, this is a must win.*"⁴⁹⁴ Dr Young simply resorted to his customary method of dismissing that which did not support his theories – according to him, BAE's

⁴⁹¹ Ibid.

⁴⁹² Ibid at page 816.

⁴⁹³ Ibid.

⁴⁹⁴ Dr Young transcript: p 10208 at line 10 - 17.

reasons for withdrawing were a lie.⁴⁹⁵ That was because Dr Young was convinced that he knew the real reason for BAE's withdrawal i.e. that they had been told to do so by a high ranking SA politician.⁴⁹⁶ In constructing this theory, Dr Young had incorrectly assumed that the reference by Mr Barnes to "*home country*" was a reference to South Africa. This despite the fact that it was from the UK that a decision was being awaited regarding whether BAE was to exit the consortium, and it was from the UK that this was communicated to South Africa. It was common sense that the reference to '*home country*' in that context was a reference to the United Kingdom, where BAE had its headquarters.

254. Dr Young's theories were shown to lack any proper factual basis. They were premised on incorrect assumptions made to suit a particular line of argument. A reasonable person would have recognised his or her mistake and withdrawn the allegations, but Dr Young refused to do so.

THE GERMAN INVESTIGATIONS

255. Dr Young sought to rely on incomplete, draft and preliminary records of investigations apparently being conducted by someone located within the German prosecutorial authority. He elevated the significance of three such documents to being the most important of all of his evidence, namely

⁴⁹⁵ Ibid p 10209 at line 14 – 15.

⁴⁹⁶ Dr Young transcript: p 10210 at line 13 - 20.

RMY52, RMY53 and RMY54 (translated at RMY55) and relied upon them to justify his own making of serious allegations of impropriety.⁴⁹⁷

256. Dr Young did not come into possession of these documents from any official source, or even with the knowledge of the person who authored them.⁴⁹⁸ He knew nothing of their legitimacy, whether they were obtained by unlawful or lawful means, the identity of their authors and the links between them and himself. He assumed that they emanated from the institution identified in the header – which purported to name a German investigative authority in Dusseldorf.⁴⁹⁹ But the documents bore no official letterhead with the customary details ordinarily associated with an investigatory office, no addressee, no signature, no formal salutation and seemed to be probing for information on an informal basis. For example, one finds personal notations that would not form part of an official investigative report, such as *“To me it is still irritating” ... “I found out that PUTTER during the apartheid regime ...”*⁵⁰⁰ and *“as mentioned during our meeting in February we still need some information for our request for legal assistance to Britain ...”*⁵⁰¹ The documents were manifestly not in final form, and could best be described as rough preliminary documents. Only RMY54 was received in German. RMY52 and 53 were received in English. This

⁴⁹⁷ Dr Young: transcript p9384 line 21 – p9385 line 3 / transcript: p10093 line 9 – p10095. Cross-examination bundle for Dr Young, Vol 4, p661; 701 & 740A.

⁴⁹⁸ Dr Young: transcript p10095 line 25 - p10096.

⁴⁹⁹ Dr Young: transcript p10099.

⁵⁰⁰ Cross-examination bundle for Dr Young, Vol 4, RMY52 at p678.

⁵⁰¹ Cross-examination bundle for Dr Young, Vol 4, RMY52 at p697/ transcript p10114.

also creates the perplexing conundrum of why a German investigator would create a report in English, and if he did not, who translated the original, for what purpose, and whether the translation was accurate.⁵⁰²

257. Dr Young alleged that he had sought to contact the relevant German officials, police investigator Andreas Bruns and public prosecutor Gotte, regarding these 'reports', who had declined to collaborate or be involved with him. He feigned a loss of memory as to their responses, but when compelled to produce the correspondence, it indicated that he had not so much as mentioned these 'reports' in his correspondence.⁵⁰³ He had also been advised that the investigations were "*preliminary*" and had been "*closed by the 13th of January 2008*".⁵⁰⁴

258. In chief, Dr Young claimed that the documents were delivered to him anonymously in digital format.⁵⁰⁵ In cross-examination, Dr Young would not disclose how he came to be in possession of the one mini-hard drive on which they were allegedly contained.⁵⁰⁶ He said it came to him in early 2010.⁵⁰⁷

⁵⁰² Dr Young: transcript p10117.

⁵⁰³ Dr Young: transcript pp10100 – 10102 contrasted with pp10156 – 10159. Cross-examination bundle for Dr Young, Vol 4, p747B.

⁵⁰⁴ Cross-examination bundle for Dr Young, Vol 4, p747E. Transcript pp10160-10161.

⁵⁰⁵ Dr Young: transcript pp9383 – 9384.

⁵⁰⁶ Dr Young: transcript p10103 – 10105.

259. If the Commission were to have regard to the contents of these documents, what it would find would be extraordinarily speculative material, which at times became manifestly ridiculous. It does not establish links to persons who may have been bribees (save perhaps for a relatively small payment to a Mr Ian Pierce, who may have benefitted his daughter).⁵⁰⁸ It focuses on a trust company in Jersey, Stonehage, solely on the basis of its many links to South Africans – which Dr Young considered as legitimately establishing cause for suspicion - for the same reasons as his Muslim analogy in his organogram.⁵⁰⁹ It proceeds into speculation regarding the well-known and well-publicised charity organisation ‘MaAfrika Tikkun’, the author revealing an apparent lack of investigation or remarkable ignorance. All this creates the background for the implication of President Mandela and Mr (now Deputy President) Cyril Ramaphosa in a complex conspiracy of bribes which can only be described as reckless and quite extraordinary.⁵¹⁰ The reports indulge in such brazen speculation: *“I can only guess who the other beneficiaries might have been ... I also could imagine that HOWELL had been part of the MERIAN group ...”* that even Dr Young had to acknowledge that they could not be described as conveying fact.⁵¹¹ He resorted to the argument that the product of an investigation (which was a fact) was the

⁵⁰⁷ Dr Young: transcript p10106 line 5 / p10107 line 18.

⁵⁰⁸ Dr Young: transcript pp10122 – 10123.

⁵⁰⁹ Dr Young: transcript pp10125 – 10131.

⁵¹⁰ Dr Young: transcript pp10128 – 10132.

⁵¹¹ Dr Young: transcript pp10137 – 10138.

'reports', and the 'reports' were fact.⁵¹² As deficient as this reasoning is, it loses all traction in the light of the German prosecuting authorities themselves having condemned these investigations in strong terms.

260. When the German prosecuting authority withdrew the tax charges which had apparently given rise to these unauthorised investigations into bribery, it expressed its disapproval of these investigations: it criticised the absence of any *specific or substantial evidence whatsoever* that would corroborate the assumptions made; it expressed disapproval of *unconfirmed press reports*⁵¹³ as a basis for alleging a criminal offence; it recorded that *the documents and deeds found in the Ferrostaal AG offices do not permit the inference that funds paid to "Mallar" were forwarded to foreign officials*; it recorded that it was both *impermissible* and *wrongful* to have embarked upon these *excessive investigations* under the circumstances as they were; and it recorded that there was *no cause whatsoever* that would justify the further contacting of the persons listed therein.⁵¹⁴ Mr Klaus Wiercimok confirmed that the investigations were closed without charges being preferred.⁵¹⁵

261. Even if this tentative probing had constituted a proper and authorised

⁵¹² Dr Young: transcript pp10138.

⁵¹³ On Dr Young's own version, he provided the German police with his organograms and with press reports. Transcript pp10147 - 10150. Dr Young is also identified as the source of some of the allegations. See Cross-examination bundle for Dr Young, Vol 4, p684 – 685 / transcript p10149.

⁵¹⁴ Cross-examination bundle for Dr Young, Vol 4, p744 & 745.

⁵¹⁵ Submission by TKMS (Mr Klaus Wiercimok's statement), paragraph 75.

investigation by the German authorities (which there is every reason to doubt), there can be no question of any reliance thereon by this Commission. It would be unjustifiable to elevate this unauthorised probing by an unnamed official in the German police to 'evidence' – it would be tantamount to elevating mere untested opinion by an unidentified author with an apparent ignorance of the issues to a status which the German prosecuting authority itself has roundly rejected. Moreover, on Dr Young's own version, he provided the German police with press reports, he was the conduit sending such articles to the German police after publication in South Africa, he was the source for some of the allegations in the 'reports' and he was merely paraphrasing what the press had said, without any personal knowledge of the allegations.⁵¹⁶ It was Dr Young who provided the German police with his organograms showing the 'Muslim links' and the 'struggle links'.⁵¹⁷ According to TKMS, the raids on its offices and on the homes of some of its employees during 2006 were occasioned by a docket being opened on the basis of two sources of information: the media and South African critics of the SDPP, including Ms Patricia de Lille and Mr Terry Crawford-Browne.⁵¹⁸ It has been established in this Commission that neither of these individuals had a responsible basis for their public repetition of allegations of corruption, and were, like Dr Young, simply disseminating baseless hearsay, much of which Mr Crawford-Browne attributed under

⁵¹⁶ Dr Young: transcript pp10147 – p10153, especially at p10151. See also cross-examination bundle for Dr Young, Vol 4, p684 – 685 / transcript p10149.

⁵¹⁷ Dr Young: transcript pp10155.

⁵¹⁸ Submission by TKMS (Mr Klaus Wiercimok's statement), paragraphs 74 – 78.

oath to Dr Young.⁵¹⁹ See paragraphs 267 to 273 below for a discussion of the quality and reliability of their evidence.

262. The self-circulating maligning of high-ranking officials without any reasonable basis is also demonstrated in the example of the treatment of the former Chief of the SAN, Adm Robert Simpson-Anderson. Upon analysis, the allegations in the 'report' were shown to be ludicrous and without foundation.⁵²⁰ Even Dr Young was driven to concede that they were nothing but speculative.⁵²¹ He then retracted, but was compelled to disavow that he personally had made allegations against Adm Simpson-Anderson.⁵²² This too was exposed as an expedient lie made under the pressure of cross-examination. Upon being confronted with his own allegations in paragraph 636 of his statement, he expediently blamed the evidence leaders.⁵²³ However, the allegations had been repeated on his website, in his Constitutional Court papers and in his earlier statements before this Commission. On Dr Young's own say-so, they were all *"more of the same... not ... completely independent instances of vilification, they are*

⁵¹⁹ Crawford-Browne: transcript p8482 - 8484 / p8487 lines 21 – 23 / p8499 line 17 / p8500 line 22 / p8501 lines 9 – 10 / p8517 lines 4 – 8 & lines 19 – 20 / p8544 – 8545. See the discussion above on the absence of credibility and reliability in relation to the evidence of Mr Crawford-Browne and Ms de Lille.

⁵²⁰ Cross-examination bundle for Dr Young, Vol 4, p677. Dr Young: transcript pp10162 – 10168.

⁵²¹ Dr Young: transcript p10168 lines 5 - 6.

⁵²² Dr Young: transcript p10169 line 21 – p10170 line 23.

⁵²³ Dr Young: transcript pp10171 – p10173.

*all in the same theme.*⁵²⁴ The conclusion must surely be that Dr Young based his repeated allegations against Adm Simpson-Anderson, not on any personal knowledge or fact, but on these outrageously speculative 'reports'. This repeated defamation of the DoD's high-ranking officials in this reckless way should be categorically condemned.

263. Dr Young alleged that Colonel Johan du Plooy had shown him a page or two of these documents to encourage him to lay a formal complaint, and was thereby indicating that the South African Police had independently acquired these reports from the German investigating authorities.⁵²⁵ Colonel du Plooy denied that he would have shown Dr Young any documents prior to him laying a charge.⁵²⁶ However, he had no recollection or record of how these documents came to be in the DSO's possession. He had attempted to ascertain the source from those conducting the investigation before he joined the team, but neither Advocate Downer SC nor Advocate Steynberg had any recollection of how they had obtained these documents, and there had been no response from the Germans. The source of the documents thus remained obscure.⁵²⁷

264. We are thus left with probabilities and a piecing together of the available evidence: during March 2008 Dr Young had written to the SA prosecuting

⁵²⁴ Dr Young: transcript pp10178 – 10179 line 6.

⁵²⁵ Dr Young: transcript pp10097 – 10098 / pp10142 – **10144**.

⁵²⁶ Du Plooy: transcript pp10922 – 10924.

⁵²⁷ Du Plooy: transcript pp10915 – 10916 / pp10926 – 10927 / Du Plooy's statement, paragraph 139.

authorities, and had repeated some of the allegations made in these documents and expressly referred to the German investigatory reports.⁵²⁸ It seems probable that if the 'reports' were not provided to the SA authorities by Dr Young with this letter, Dr Young would have been called upon to provide what he was referring to. Alternatively, Colonel du Plooy would have requested him to provide them when he visited Dr Young in January 2010 – he seemed to have no recollection of what he asked for, and obtained, from Dr Young.⁵²⁹ On Dr Young's version, he had received the documents in early 2010. Certainly, by August 2010 the South African investigators had them, as it is apparent that Adv Steynberg had read them and commented on them in an internal email.⁵³⁰ There is no record of any German authority (whether officially or unofficially) having responded to the South African investigators or having provided them with documents.⁵³¹ Dr Young's allegations that the South African authorities had obtained these reports from a source independently of himself or from a source independent of his source are speculative and unreliable. It is just as probable that they were obtained from the same source, and there is no basis for the Commission to regard the German 'reports' as any more admissible or cogent than would be the case if the documents emanated from a single, unnamed, unofficial, anonymous source.

⁵²⁸ Annexure JDP59 to Du Plooy's statement, p2337.

⁵²⁹ Du Plooy: transcript pp10926 lines 17- 18 / p10927 lines 7 – 12.

⁵³⁰ Transcript: du Plooy, p10914 / Annexure JDP53 to Du Plooy's statement, p2252.

⁵³¹ Du Plooy: transcript pp10914 line 23 – p 10916. See also Annexure JDP54 to Du Plooy's statement, p2258.

265. It remains to consider the status of the “Teutonic memorandum” which apparently came to Dr Young by anonymous fax from a German fax number.⁵³²

265.1. There is no evidence that corroborates the contents of this document. On the contrary, Klaus Wiercimok has given evidence that the GFC did not authorise or make any such payment.⁵³³ Chippy Shaik denied that he solicited or received any such money, directly or indirectly.⁵³⁴ The German prosecuting authority closed its investigations without laying any charges.⁵³⁵

265.2. On the face of it, the document is a perplexing one. If the contents were genuine, why would a Mr Hoening record such matters in a “memo”, without contemporaneous circulation to others purportedly involved, including Chippy Shaik and those in the organisation that may need to be informed in order to authorise or execute the payment?

⁵³² Dr Young: transcript p9370 /Annexure RMY 51 to Dr Young’s statement, file 3 p1075.

⁵³³ Submission by TKMS (Mr Klaus Wiercimok’s statement), paragraph 78.

⁵³⁴ Chippy Shaik: transcript p8914 line 11 – 8915 line 3.

⁵³⁵ Submission by TKMS (Mr Klaus Wiercimok’s statement), paragraphs 74 – 75.

265.3. Moreover, the GFC won the competition as the preferred bidder as a result of the third-order evaluations. The evidence was that the scores from the military, IP and financing evaluations were simply aggregated at the SOFCOM level, and carried forward to the AASB, AAC and to Cabinet. Even if a corrupt payment was requested, there is no reason to conclude that it improperly influenced the award of the contract to the GFC. Furthermore, Chippy Shaik had no influence in the third order evaluations.⁵³⁶

266. On the available evidence, there is no basis for the Commission to conclude that any such payment actually took place. Even if it was requested, or did take place, there is no basis to conclude that this influenced the award of the contract to the GFC. The main contract for the corvettes would have been awarded to the GFC in any event.

⁵³⁶ Adm Kamerman's statement paragraphs 78; 79 & 126.

MR CRAWFORD-BROWNE, MS DE LILLE AND DR WOODS

Mr Terry Crawford-Browne's evidence

267. What was striking about Mr Crawford-Browne's evidence was that he refused to engage in any assessment regarding the basis, source and rationality of his allegations. He was an exceptionally poor witness, who refused to answer the questions put to him and repeatedly offered evasive discourses on his own theories.⁵³⁷ It became apparent that these theories were based on hearsay rumours from nameless sources,⁵³⁸ or they were based exclusively and entirely on Dr Young's allegations as published on his website.⁵³⁹

268. He made, and persisted in, outlandish allegations that did not accord with the documentary records, or the evidence of experts with personal knowledge.⁵⁴⁰ His preparedness to assert the plainly ridiculous, notwithstanding his absence of expertise and his absence of personal knowledge, severely dented his credibility.⁵⁴¹

⁵³⁷ For example, Mr Crawford- Browne: transcript pp8534 – 8536 / p8541 /8546 /p8562 – 8563.

⁵³⁸ For example, Mr Crawford- Browne: transcript p8482 – 8484 / p8487 lines 21 – 23.

⁵³⁹ Mr Crawford- Browne: transcript p8482 – 8484 / p8487 lines 21 – 23 / p8499 line 17 / p8500 line 22 / p8501 lines 9 – 10 / p8517 lines 4 – 8 & lines 19 – 20 / pp8544 – 8545.

⁵⁴⁰ For example, Mr Crawford- Browne: transcript p8507 lines 7- 11 /pp8539 – 8542.

⁵⁴¹ For example, Mr Crawford- Browne: transcript p8510 lines 1 - 5.

269. It became obvious that Mr Crawford-Browne's motivation for opposing the SDPP was his devotion to a pacifist stance and his total opposition to the acquisition of arms. Whilst he is entitled to hold this stance, it is not in accordance with the national consensus achieved during the Defence Review, or the Constitutional imperative that South Africa is to have an effective defence force i.e. one that is able to defend and protect the nation.⁵⁴² Mr Crawford-Browne's reckless allegations must thus be seen in this context.

Ms de Lille's evidence

270. Ms de Lille's sole contribution was the production of the document called 'the de Lille dossier'.⁵⁴³ It was this document which constituted the basis for her call in September 2009 and as a Member of Parliament for a judicial commission of inquiry into the SDPP.⁵⁴⁴ It seems doubtful that the document was authored by 'concerned members of the ANC' – it was too replete with errors, even in relation to the spelling of the Deputy President's

⁵⁴² Mr Crawford- Browne: transcript p8527 lines 16 – p 8529 line 13.

⁵⁴³ Ms de Lille: statement, annexure "PdL1" / paragraph 6.

⁵⁴⁴ Ms de Lille: statement paragraphs 3 and 4.

name.⁵⁴⁵ If some MPs had delivered the document to Ms de Lille, as she claimed, she was not prepared to name them. If she even knew who the author was, she was not prepared to disclose his or her identity.⁵⁴⁶

271. It was apparent from a reading of ‘the de Lille dossier’ that it was superficial, contained numerous obvious errors, made extremely broad allegations, some of which were so vague as to be incomprehensible. Notwithstanding these obvious shortcomings, Ms de Lille did not even make any attempt to verify the source of these allegations, or their reliability, still less take any reasonable steps to do so.

272. In regard to the published allegations that the source of ‘the de Lille dossier’ was the deceased Mr Bheki Jacobs,⁵⁴⁷ Ms de Lille had attended Bheki Jacobs’s funeral notwithstanding that she said she was neither his friend nor acquaintance.⁵⁴⁸ It seems that she did so for the purpose of making a public statement crediting him with being a source of ‘*a lot of information*’ relating to the arms deal.⁵⁴⁹ Ms de Lille was in a potentially embarrassing position – either Bheki Jacobs was at least one of the sources of her

⁵⁴⁵ Ms de Lille’s statement, annexure A / transcript: p7683.

⁵⁴⁶ Ms de Lille: transcript p7696 line 23.

⁵⁴⁷ Mail & Guardian article of 8 September 2008 entitled “*Man behind ‘De Lille Dossier’ dies*”.

⁵⁴⁸ Ms de Lille: transcript p7710 lines 17 – 20.

⁵⁴⁹ Ms de Lille: transcript p7714.

allegations, alternatively, she had expediently used his name after his death.⁵⁵⁰ She conceded that she had personally met with him and had discussed issues pertaining to the arms deal with him. But she refused to answer questions regarding her assessment of his reliability.⁵⁵¹ At best she was evasive, at worst she deliberately avoided giving a truthful answer on this issue. The inference may fairly be drawn that she knew that Bheki Jacobs was not a reliable source, and it remains deeply unclear whether she had any other source.

273. Ms de Lille's position was untenable, if not irresponsible. She permitted herself to be used as the mouthpiece of the unidentified (and perhaps unknown) authors of 'the de Lille dossier' and embarked on a widely-publicised political campaign regarding alleged corruption in the SDPP.⁵⁵² Her public stance was based on information in relation to which she had not made any enquiries. She refused to engage with the questions asked of her, and repeated the same pre-prepared answer to questions, including that she had no personal knowledge regarding any of the allegations.⁵⁵³ She publically disseminated serious allegations which were hearsay. Given the obvious shortcomings of 'the de Lille dossier', her status as a public

⁵⁵⁰ Ms de Lille: transcript p7685 / p7698 line 5 /p7716 / pp7710 – 7718 /p7714 - p7720 line 5.

⁵⁵¹ Ms de Lille: transcript pp7684 - 7685/ pp7717- 7718.

⁵⁵² Ms de Lille: transcript p7719 / p7719 line 23 – p 7720 line 6.

⁵⁵³ See for example, Ms de Lille: transcript p7682 lines 10 – 14 / p7684 lines 4 – 7 / p7693 lines 1 – 6 / p8818 lines 22 – 25.

figure and the seriousness of the allegations, it is submitted that this was not responsible conduct.⁵⁵⁴ As a result:

273.1. Ms de Lille could not reasonably or responsibly justify any further investigations that had not already been done,⁵⁵⁵ and

273.2. she was driven to withdraw her serious allegations regarding others' lack of integrity in relation to the SDPP. She had absolutely no basis for making such allegations, having no personal knowledge regarding any of the allegations, and having made no attempt to verify their reliability. This included a concession that she had no basis to make any allegations that officials of the DoD were implicated in any dishonest or unlawful conduct.⁵⁵⁶

Dr Gavin Woods' evidence

274. Dr Gavin Woods readily accepted that he had no personal knowledge or admissible evidence of corruption i.e. in his words, no smoking guns.⁵⁵⁷ In effect, he sought to present arguments to the effect that corruption should

⁵⁵⁴ Ms de Lille: transcript p7719 – p7720 line 6.

⁵⁵⁵ Ms de Lille: transcript p7688 / p7719.

⁵⁵⁶ Ms de Lille: transcript p7690 / p 7695 / pp7709 - 7701.

⁵⁵⁷ Dr Woods: transcript p7997 / p8098. See the cross-examination by Cilliers SC: pp818 – 8126.

be inferred.⁵⁵⁸ He argued that this inference should be drawn from the results of other investigations,⁵⁵⁹ the alleged notoriety of the arms industry,⁵⁶⁰ press reports,⁵⁶¹ books⁵⁶² and other hearsay.⁵⁶³

275. He had no knowledge of funds having flowed to any Cabinet ministers and doubted that any of them received any monies, but did suggest that Minister Joe Modise received some other benefits.⁵⁶⁴ The next day, upon being pressed for some evidence other than years of media speculation regarding Minister Modise's position, he in effect retracted such allegations.⁵⁶⁵ In relation to the allegation that Chippy Shaik was paid US\$3 million,⁵⁶⁶ Dr Woods relied on a press report and the 'service' Dr Young offered of distributing any arms-deal related press statements to his considerable list of interested persons.⁵⁶⁷

⁵⁵⁸ See for example Dr Woods: transcript p8014 / pp8091 – 2.

⁵⁵⁹ See for example Dr Woods: transcript p8014- 5 /p8035 /p8065 and following – re the JIT report.

⁵⁶⁰ Dr Woods: transcript pp7998 – 9 / pp8002 – 3 /p8061.

⁵⁶¹ See for example Dr Woods: transcript pp8016 – 7 / p8019 /pp8030 -1 /p8055 / p8104.

⁵⁶² See for example Dr Woods: transcript p8057.

⁵⁶³ See for example Dr Woods: transcript p8073 and following – re his interview with Mr Steyn. See also p8166 and following in which he contends that Mr Steyn's alleged complaints indicated a breakdown in the process, and not corruption.

⁵⁶⁴ Dr Woods: transcript **p8022** / p8098.

⁵⁶⁵ Dr Woods: transcript pp8132 - 8137.

⁵⁶⁶ Dr Woods: statement: annexure GTW9 / transcript p8023.

⁵⁶⁷ Dr Woods: transcript p8024.

276. In cross-examination, Dr Woods' generalised theories concerning indications of corruption found no application when he was confronted with the facts regarding the acquisition of each item of equipment under the SDPP:

276.1. He accepted that there were no grounds for suspecting anything unlawful in relation to the acquisition of the maritime helicopters.⁵⁶⁸ In relation to the submarines, he had not considered the evidence before the Commission, but quite correctly conceded that if it had been established that the GSC submarine was R800 million cheaper than the next closest contender, and was the best value for money, the Commission would be justified in concluding that corruption was not a probability.⁵⁶⁹

276.2. In relation to the GFC corvettes, and the participation of the Germans, he had not considered any of the evidence before the Commission explaining the legitimacy of that participation. It became apparent that his allegations that there was a probability of corruption arising from this issue were completely unfounded and

⁵⁶⁸ Dr Woods: transcript p8140.

⁵⁶⁹ Dr Woods: transcript pp8145 - 6.

unfair.⁵⁷⁰

276.3. In relation to the combat suites, upon being pressed for any basis for his allegations of corruption, his evidence deteriorated into a meek reliance on press reports and a face-saving attempt to distance himself from serious allegations of corruption as if he had not himself made them, which he had.⁵⁷¹

276.4. In relation to the Hawks, Dr Woods conceded that he could not possibly suggest that the Ministers' reasons for acquiring them were so unreasonable and irrational as to indicate corruption.⁵⁷² Again, he sought to distance himself from allegations of corruption.⁵⁷³

276.5. In relation to the Agusta light utility helicopters, he conceded that he could not contest Col Viljoen's first-hand expert testimony to the effect that they won the evaluation rounds and were the best acquisition in the circumstances. He also conceded that reliance on aggrieved bidders who had lost the competition (Bell) was

⁵⁷⁰ Dr Woods: transcript pp8149 - 50.

⁵⁷¹ Dr Woods: transcript pp8151 - 8154.

⁵⁷² Dr Woods: transcript pp8160 - 8161.

⁵⁷³ Dr Woods: transcript pp8162.

inherently undesirable.⁵⁷⁴

276.6. In relation to the Gripen, he readily conceded that it was a “deserved winner”.⁵⁷⁵

CANCELLATION OF THE SDPP CONTRACTS?

277. A prerequisite to the State being able to seek the cancellation of the SDPPs is a conviction of fraud or corruption on the part of the implicated supplier, or its representatives, in criminal proceedings.⁵⁷⁶ The likelihood of such a conviction seems remote given the evidence before this Commission and of

⁵⁷⁴ Dr Woods: transcript pp8163 - 8164.

⁵⁷⁵ Dr Woods: transcript pp8164.

⁵⁷⁶ See for example, clause 19 of the Corvette Umbrella Agreement, which provides as follows:

“19.1 If the seller or any of its members or representatives in relation to negotiating, entering into or execution of the agreement has:

19.1.1 been convicted of having committed an offence under the Prevention of Corruption Act or analogous legislation in any jurisdiction relevant for the performance of the Agreement by for example having promised or caused on its behalf to be promised, offered or given any kind of illegal gift, illegal advantage or illegal consideration; or

19.1.2 been convicted of fraudulent illegal or criminal acts in obtaining or execution of the Agreement;

Armcor and the South African Government may summarily cancel the agreement and claim damages from the cancellation or claim an amount equal to 5% of the Contract Price for liquidated damages.”

Note: Clause 20 of the agreement for the supply of the Hawks and Gripens is substantially the same. Pages 73 - 74 of the annexures to Ms Taljaard's statement.

representatives of the then DSO and the SA Police Service to the effect that:

277.1. there was no *prima facie* evidence of wrongdoing against any such person;⁵⁷⁷

277.2. in regard to BAE, no direct evidence indicating any corrupt payment was found;⁵⁷⁸

277.3. there was no direct evidence that any government official was influenced in regard to the award of the main contracts;⁵⁷⁹

277.4. even though there were 'red flags', the investigation produced no direct evidence of corruption at the decision making level;⁵⁸⁰

277.5. there was no direct evidence that Schabir Shaik influenced the decision in awarding any contract in the SDPP;⁵⁸¹

⁵⁷⁷ Gen Meiring's statement paragraph 18.1.5.

⁵⁷⁸ Gen Meiring: transcript p10727 lines 7 – 10; p10730 lines 7 – 21.

⁵⁷⁹ Col Du Plooy: transcript p10774 line 24 – p10775 line 1.

⁵⁸⁰ Col Du Plooy: transcript p10779 lines 7 – 17.

⁵⁸¹ Col Du Plooy: transcript p10788 lines 1 – 2; See also p10788 lines 9 – 21.

277.6. there was no evidence that anyone influenced the Ministerial Committee or former President Mbeki.⁵⁸²

278. Even if a criminal prosecution were to ensue, it would be years before any such conviction may occur. It is realistic to assume that any arbitration proceedings following such a conviction would be complex, heavily disputed, protracted and costly. Questions of the timing, proportionality and appropriateness of this drastic remedy would no doubt arise, and have already been anticipated as deeply problematical: does one 'cut down the whole tree if there is one bad fruit?'⁵⁸³ The outcome of any such litigation would be deeply uncertain.

279. There is no doubt that seeking the cancellation of the SDPP contracts, and if successful in such litigation, the cancellation itself, would deprive the DoD of the ability to fulfil its constitutional mandate.⁵⁸⁴ The consequences of losing the capabilities acquired in the SDPP may be described, without exaggeration, as a national disaster:

279.1. Return of the equipment in question to the suppliers would have to be tendered. It is likely that the armed forces may in effect and for practical reasons therefore be precluded from using the equipment

⁵⁸² Col Du Plooy: transcript p10776 lines 8 – 11 and line 14 / p10780 lines 7 – 9.

⁵⁸³ Adm Schoultz: transcript p628 line 16

⁵⁸⁴ Adm Higgs: transcript p393 line 15 / p396 line 2. Adm Christian: transcript p676 line 2. Gen Hechter: transcript p1768 line 18. Gen Bayne p882 line 21.

and from procuring alternatives until a determination of the dispute.⁵⁸⁵ In the interim, the equipment would deteriorate.⁵⁸⁶

279.2. The old equipment replaced by the SDPP equipment is now obsolete or has been scrapped or otherwise disposed of. For example, the last corvette was decommissioned in 1985⁵⁸⁷ and the last Daphne Class submarine was decommissioned in 2004.⁵⁸⁸ The fighter trainers, the Impala, were only able to fly until 2003.⁵⁸⁹ The fighter aircraft, the Cheetah D, could only have been operated cost-effectively and safely, with integrity and airworthiness, until 2008 and the single-seater Cheetah until 2012.⁵⁹⁰

279.3. The ability to defend and protect would be lost; the nation would be vulnerable to would-be mischievous elements, both externally and internally; there would be no deterring factor;⁵⁹¹ a power-vacuum would be created;⁵⁹² the security of the country would be severely compromised; sectors of the economy would be affected; South Africa would lose scarce and specialised skills; morale of the

⁵⁸⁵ Adm Higgs: transcript p393 line 20 – p 394 line 8.

⁵⁸⁶ Adm Higgs: transcript p394 lines 12 - 17.

⁵⁸⁷ Adm Green: transcript p104 line 15.

⁵⁸⁸ Adm Green: transcript p105 line 8.

⁵⁸⁹ Gen Bayne: transcript p882 line 7.

⁵⁹⁰ Gen Bayne: transcript p876 line 21 & p877 line 23.

⁵⁹¹ Gen Shoke: transcript p1795 line 6 – 13 & p1797 line 3.

⁵⁹² Gen Malinga: transcript p815 line 8.

members of the SANDF would evaporate,⁵⁹³ many members of the SAN and SAAF would be rendered redundant; jobs would be lost⁵⁹⁴ and South Africa would default on its international peace-keeping and other obligations. None of this evidence was challenged. These are not matters that may be taken lightly.

279.4. Even if successful, the reparations would be insufficient to replace the returned equipment.⁵⁹⁵ In any event, even if the State could afford to replace the equipment, the delay would have a catastrophic effect. The acquisition process for cardinal projects such as the SDPP is a long one, and it may easily take ten or more years before a state of readiness is achieved with new equipment.⁵⁹⁶ That process may only commence after the finalisation of protracted criminal and arbitration proceedings. By that time the re-establishment of a SAN would be astronomically expensive⁵⁹⁷ and the gap created in the SAAF could be logistically well-nigh devastating.⁵⁹⁸

⁵⁹³ Gen Shoke's statement, paragraph 22 p6.

⁵⁹⁴ Gen Malinga: transcript p828 line 13.

⁵⁹⁵ Adm Higgs: transcript p364 line 20 – p365 line 8.

⁵⁹⁶ Adm Green: transcript p130 line 9 – p 131 line 7 / Adm Schoultz: transcript p431 line 3 / Adm Christian: transcript p659 line 14 / Adm Higgs: transcript p359 lines 11 – 24 / Gen Malinga: transcript p815 line 13 and p828 line 23 / Gen Bayne: transcript p882 line 15 / Gen Shoke: transcript p1801 line 1, p1812 line 24.

⁵⁹⁷ Adm Higgs: transcript p364 line 20. – p365 line 8.

⁵⁹⁸ Gen Bayne: transcript p883 line 16, p885 line 9 and p1111 line 4. Gen Pelsler: transcript p1399 line 23.

280. In summary, the DoD submits that any suggestion that the cancellation of the SDPPs should be pursued is a reckless one. It can only be made by those who have no regard for the DoD's capacity to fulfil its constitutional mandate and the catastrophic consequences thereof. As recognised by both Dr Wood and Ms Taljaard, no such recommendation may responsibly be advanced.⁵⁹⁹

CONCLUSION

281. The Constitutional mandate to defend and protect South Africa is clear. The SDPP was necessary in order to fulfil that mandate. A core force, and no more, was acquired. The equipment acquired under the SDPP has been used to discharge that mandate.

282. There were two exceptions to the rule that the cheapest equipment that satisfied the DoD's requirements was procured. These were the Hawks and the corvettes:

282.1. in relation to the Hawks, there has been no indication that the contracts to procure them were tainted by improper influence. On the contrary, the evidence was overwhelming that that decision to acquire the Hawks was a properly-motivated, well-documented, strategic one in the best interests of the nation.

⁵⁹⁹ Ms Taljaard: transcript pp7855 – 6. Dr Woods: transcript p8094.

- 282.2. in relation to the GFC corvettes, whilst they were not the cheapest on offer, they won the competition based on the financial and industrial scores. The GFC thus ranked first in the evaluation, which would, barring exceptional considerations such as those that played a role with the Hawks, in itself justify the acquisition. Notwithstanding this, there were allegations that the competition was marred by irregular political interference, and that the sub-contracts awarded by the GFC in relation to the combat suite were fraudulently manipulated. These allegations emanate from a single source, Dr Young. His allegations have been exposed as being reckless, malicious and lacking in merit. Adm Kamerman's expertise in assisting the Commission in this regard with outstanding, reliable and credible rebuttals to Dr Young's allegations should now finally put an end to Dr Young's damaging campaign.
283. The South African public should be reassured that the DoD has admirably served the nation and that there is no reasonable basis upon which it may be suspected of having failed in its duties in relation to its role in the SDPPs.
284. On all the available evidence before the Commission, there is little doubt that South Africans were well served by the DoD in the SDPP – the

evaluation teams did an outstanding job in evaluating what was offered; the negotiating team showed courage and tenacity to win reasonably priced contracts that were hard-fought for; a core force consisting of the absolute essentials for a credible defence force was acquired – and no more than that – and a democratic South Africa entered the international community as a global citizen by *inter alia* discharging its fair share of essential military and peace-keeping operations in Africa. It was the SDPP that made this possible, and that continues to make possible the fulfilment of the DoD's Constitutional mandate.

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