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NOTE: Note that the recording is poor. None of the parties are clearly audible.

CHAIRPERSON: Good morning everybody. I'm not sure whether it's Advocate Sibeko or Advocate Sello or Advocate
5 Lebala who is going to kick off?

ADV SIBEKO: Good morning Chair and Commissioner Musi. I believe it's appropriate that Advocate Lebala kick off this morning as his address to the Commission will be in respect of the last witness Mr Kamerman, and as soon as that
10 then has been disposed of, we can look at Mr Steyn who has been recalled for purposes of cross-examination.

ADV LEBALA: Esteemed Commissioners, we are indebted to Ms Sello and Sibeko SC for giving us this opportunity. Esteemed Commissioners, [indistinct] of Admiral Kamerman
15 [indistinct] cross-examination are concerned and those [indistinct] got concerns raised by Lawyers for Human Rights. [Indistinct] statement that my colleague Ngobese is going to present to the Commission just to clarify and state their position in as far as that important aspect of [indistinct] is
20 concerned and at this stage on behalf of our team I will give over to Advocate Ngobese.

ADV NGOBESE: Good morning esteemed Commissioners. Esteemed Commissioners permit me to start by saying that Advocate Lebala and [indistinct] to address the complaints
25 raised by the Lawyers for Human Rights against the

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Commission. Esteemed Commissioners, these complaints were published by various newspapers on 29 May 2014. Chairperson, we believe that if we address these complaints before the Commission the public will be better informed, will
5 be able to determine whether the complaint raised by the Lawyers for Human Rights are justified or not.

I state further that by addressing these complaints before the Commission we'll be able to take the public into our confidence in regard to the issues [indistinct] access to
10 information and cross-examination. Chairperson and Commissioner Musi, with your permission I beg leave to proceed with my address.

Briefly Chairperson and Commissioner Musi, Lawyers for Human Rights' complaints are as follows; on
15 27 May 2014 the Commission barred Lawyers for Human Rights from actively, effectively cross-examining Rear Admiral Jonathan Kamerman on his technical knowledge of the purchase of Corvettes, on the allegation of corruption against [indistinct]. The second complaint was that the Commission has
20 failed to grant Lawyers for Human Rights access to information and the latter is awaiting the documentation requested for a period spanning over 12 months ago.

Chairperson and Commissioner Musi it is worth mentioning that the complaint relating to barring from cross-
25 examination can be well addressed before this Commission by

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referring Lawyers for Human Rights to the Commission's [indistinct], in other words article 8(3) of Regulations 35023 dated February 2012 and article 20 of Regulations number 35325 dated 9 May 2012. Commissioner Musi and Chairperson, article 3 of Regulation number 35023 dated 8 February 2012 states that:

"Any witness appearing before the Commission may be cross-examined by a person only if the chairperson permits such cross-examination by such person because the chairperson deems it necessary in the interest of the functions of the Commission".

Article 20 of Regulation 35325 dated 9 May 2012 states that:

"It is in the discretion of the chairperson to allow the cross-examination and re-examination of any witness called to give evidence".

Commissioner Musi and Chairperson, since the beginning of the year the Commission has always upon application made by Lawyers for Human Rights exercised its discretion in favour of the Lawyers for Human Rights by allowing the Lawyers for Human Rights to cross-examine. In [indistinct] Chairperson and Commissioner Musi, the Commission had to adjourn the hearing to allow the Lawyers for Human Rights to prepare for cross-examination. This becomes manifest when reference is made to the following instances:

One; on 17 October 2013 during the testimony of

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Rob Vermeulen the Commission adjourned the hearing to 21 October 2013 to allow Lawyers for Human Rights to prepare for cross-examination. The Commission also instructed the Secretariat of the Commission to furnish Lawyers for Human Rights with documents relating to Mr Rob Vermeulen's testimony in order for the former to prepare for cross-examination.

Two; on 21 November 2013 during the testimony of Mr Odendaal the Commission again adjourned the hearing to 25 November 2013 to allow Lawyers for Human Rights to prepare for cross-examination. On 17 February during the testimony of former Minister of Trade and Industry Mr Alec Erwin, the Commission adjourned the hearing to 18 February 2014 after the Lawyers for Human Rights' request. Again on the same day the chairperson and Commissioner Musi tried in vain to persuade Advocate De Vos SC of the Lawyers for Human Rights to cross-examine Mr Alec Erwin after Advocate De Vos was seeking has declined to cross-examine.

Chairperson, permit me to quote what was stated by you on 18 February 2014 during the hearing. This statement is found on page 4430 lines 11 to 15 of the record:

"Thank you Advocate De Vos. So even after my colleague has tried to persuade you to cross-examine, you still decline to cross-examine".

Lastly Chairperson and Commissioner Musi, on 30 April 2014

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the Commission adjourned the hearing to 8 May 2014 with a view to give persons who are interested to cross-examine Mr Esterhuysen an opportunity to prepare and give their notice of intention to do so on or before 6 May 2014.

5 Esteemed Commissioners, may I take the liberty to address you on the complaint raised by Lawyers for Human Rights that they were barred from cross-examining Admiral Kamerman on 27 May 2014. Chairperson and Commissioner Musi, after Rear Admiral Kamerman finished his evidence in
10 chief on 27 May 2014 the chairperson of the Commission once again extended the invitation to those who are interested in cross-examining Rear Admiral Kamerman. Advocate Snyman from Lawyers for Human Rights opted to address the Commission by reading a document perceived to a statement.

15 Advocate Snyman was then barred by the chairperson from proceeding to read the said document, however, Advocate Snyman advised the Commission that since she was not in a position to cross-examine Rear Admiral Kamerman on 27 May, instead but reserved her rights to call
20 Admiral Kamerman for cross-examination at a later stage.

 Chairperson and Commissioner Musi, notwithstanding the qualifications and limitation provided in article 83 of Regulation 3523 dated February 2012 and article
20 of Regulation 35025 dated 9 May 2012 we request the
25 Commission to extend the invitation to those who was still

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interested in cross-examining Rear Admiral Kamerman. We requested such notification must be in writing and be forwarded to the Commission at least no later than 20 June 2014.

5 The second complaint which was raised by the
Lawyers for Human Rights Esteemed Commissioners relates to
[indistinct] the Commission. Commissioners, it has been the
stance of the Commission to avail documents upon request to
persons who have interest in the Commission as soon as the
documents are declassified. The Commission has always
10 ensured that no witness withholds information during the
hearing. This is self-evident when reference is made to the
hearing of 3 October 2013 where at the Chairperson ordered Mr
Rob Vermeulen and ARMSCOR not to withhold any information
which is not declassified.

15 The Commission further ordered that paragraph 1.7
of the statement of Rob Vermeulen should be removed as it
were against the letter and spirit of the Commission. The
paragraph states:

20 *“Quite possible ARMSCOR has declassified
documents and has made such documents available
to the Commission, however, some documents
cannot be declassified and [indistinct] made
available to the Commission for various reasons,
including maintaining good diplomatic relations
25 between South Africa and other countries and*

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ensuring South Africa's compliance with contractual obligations on a number of levels [indistinct] relevant, a Defence Industry as well as on an individual bidder level".

5 Esteemed Commissioners, it is worth mentioning that the
Chairperson of the Commission has always demonstrated his
willingness to assist in the resolving any problem relating to
access to information. During the hearing of 3 March 2014 the
chairperson ordered evidence leaders assigned to Mr Fritz
10 Nortjé together with Ms Ramagaga, Advocate Mphaga SC,
Advocate Mdumbe, head of Legal Division of Arms Procurement
Commission, and the legal teams of ARMSCOR and the
Department of Defence to hold a meeting with Dr Young in
Cape Town in order to resolve the issue relating to documents.

15 Chairperson, with a view to emphasise the
importance of cross-examination, during the meeting with Dr
Young on behalf of the Commission evidence leaders together
with Advocate Mdumbe, head of Legal Division of Arms and
Procurement Commission requested Dr Young to reconsider his
20 decision to withdraw his application for cross-examination of
Mr Fritz Nortjé.

Chairperson Dr Young was advised by the Evidence
Leader and Advocate Mdumbe that it would be important for him
to cross-examine Mr Fritz Nortjé in that his cross-examination
25 [indistinct] the Commission. Dr Young acceded to that request.

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Finally Esteemed Commissioners we request once again that the Commission to request [sic] its invitation to persons who have interest in the Commission, including Lawyers for Human Rights by notifying the Commission in writing of the documents which they would like to access for the purpose of the hearing. Esteemed Commissioners, the notification should be done not later than 10 June 2014.

We finally state that when documents are requested the applicant must specify the document and indicate its relevance to the testimony of the witness to be cross-examined or to lead evidence. I thank you.

NOTE: Caucus.

ADV SNYMAN: Good morning Chairperson and Commissioner Musi. I request leave to respond to the submissions that have been made by my learned friend and in addition Lawyers for Human Rights on behalf of our clients Andrew Feinstein, Paul Holden and Hennie Van Vuuren had wished to address the Commission today in response to the medial release put out by the Commissions last week Thursday in response to the submissions that we had [indistinct] Admiral Kamerman's evidence. May I be permitted now to respond to my learned friend's submissions? In doing so Chairperson, I will respond simultaneously to the submissions made [indistinct] by the Commission.

CHAIRPERSON: I'm sorry Advocate Snyman, I suppose you

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are representing Mr Feinstein, Mr Holden and Mr Van Vuuren?

ADV SNYMAN: That is correct Chairperson.

CHAIRPERSON: So, whatever you say you are saying on their behalf?

5 ADV SNYMAN: That is correct Chairperson.

CHAIRPERSON: So, I suppose I didn't understand when you were saying that after you have addressed me you expect [indistinct] individually so?

ADV SNYMAN: I wish to respond on behalf of my clients
10 and on behalf of the allegations that had been made against Lawyers for Human Rights.

CHAIRPERSON: Yes. No, that I understand. I'm saying I hope I didn't understand you to be saying after you are finished the issue of your clients that would also want to personally
15 address us.

ADV SNYMAN: No Chair.

CHAIRPERSON: Thank you. Thank you. You can go ahead.

ADV SNYMAN: Thank you. On the 29th of May 2014 the Commission issued a media statement in response to our
20 submissions to the Commission following Admiral Kamerman's evidence on the 27th of May. Whilst the substance of our submissions was not responded to at the time the Commission has responded to the media and we have been criticised publicly and [indistinct] by the Commission. We have now also
25 been done so by the evidence leaders.

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We deem it courteous and proper to respond directly now to the Commission. Firstly it is not correct that [indistinct] pre-prepared media statement. Criticism [indistinct]. We addressed our concerns to the Commission on the 27th of May and thereafter explained those submissions to the media in a statement that was released on the 28th of May. It is also not correct that a prior decision had been taken not to cross-examine and to come up with an excuse for not doing so, nor that this is an approach that LHR has adopted in the past. That is the quotation from press statements made by the Commission's spokesperson.

It is not possible to receive and assimilate 662 pages of technical and detailed evidence in addition to the witness statement at the time that a witness begins his evidence, follow the proceedings and proceeds to cross-examine the witness immediately after without assimilating the evidence or taking instructions from one's clients. This would not be excepted of any other legal team in any [indistinct], rather the rules of fairness would dictate that all legal teams have witness statements and [indistinct] in order for all parties to be able to prepare adequately to participate legally in the proceedings.

It is also not correct that LHR was afforded the time [indistinct] to cross-examine Kamerman but was not ready to do so. No other party sought to cross-examine Kamerman. The

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Commission will be aware that Richard Young had intended to do so but was also [indistinct] the statement in London. Now LHR has requested more time to prepare to cross-examine witnesses and be allowed to do so. The Commission's attitude to such requests hasn't been consistent and we have been reproached for requesting more time. On one occasion, which was during ..., requests for more time following Mr Odendaal's evidence the record will reflect on the 21st of November that we were told that this would be the very last time that such a request would be granted and if I could quote from line 10 the Commission stated:

"We are going backwards, for the last time to accommodate your clients and I can assure you this will not happen again".

From November last year. But our access to Kamerman's statement and bundle, delayed access to Kamerman's statement only [indistinct] precluded from seeking leave to cross-examine Admiral Kamerman on the 27th of May. The second ground is that we are still waiting for access to these documents and a substantive response to our numerous requests for those documents. It is not correct that LHR deems the Commission bound to make each and every document in its possession available, irrespective of its relevance to the issues to be canvassed by a particular witness and it is not correct that all of the documents relevant to Kamerman's evidence were made

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available to Lawyers for Human Rights or our clients. It is also not correct that the documents received [indistinct] witness. With respect, it is trite that a witness [indistinct] supporting documents that impugn himself on his version and it is a growing concern that a witness's testimony is effectively being limited to a statement prepared by that witness or [indistinct] legal team with supporting documents selected by that witness of legal team.

The effect then is that the evidence before the Commission is not placed before the Commission by the investigators or evidence leaders and witnesses select versions are then deemed common cause without robust inquiry to test the evidence or establish the truth. LHR'S clients Andrew Feinstein, Paul Holden and Hennie Van Vuuren are one of the only parties attempting to provide [indistinct] to the evidence before the Commission but they cannot do so without testing broader evidence with witnesses than that placed by evidence leaders and the witnesses [indistinct] evidence.

Now we accepted that classified documents can only be made available to interested parties once declassified. We [indistinct] on numerous written requests to the Commission to establish which of the documents which we have requested are in possession of the Commission, which are classified and under what legal provisions they are deemed to be classified and so [indistinct] to have them declassified. Our most recent

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correspondence to the Commission on these points was addressed on the 22nd of May which was a follow-up to previous requests, we further attached a schedule to our correspondence setting out all the outstanding documents that we have
5 requested [indistinct] a response, [indistinct] response.

It is not correct that LHR has [indistinct] the Commission and [indistinct] perused all the documents that they've received and that they are inadequate. Through our numerous correspondence dating back to February 2013 LHR
10 and its clients have indicated which document we seek in all fairness, but have still not had the [indistinct].

I will point out that we had not referred to the [indistinct] forming part of the SDPP [indistinct] to Admiral Kamerman. The Commission's media statement is not correct
15 where it states that most, if not all of the testimony led so far has had no bearing on the [indistinct] contracts, or that the work of the Commission has not been adversely affected due to the unavailability. These contracts form the very basis of the Commission's stated purpose and the lack of their availability
20 was a [indistinct] meaningful cross-examination of Mr Alec Erwin as amounting to as they allowed him to be for the following [indistinct] ministers who were signatories to them.

Regarding Kamerman's preferential treatment we will reiterate that Admiral Kamerman's statement was not made
25 available to our clients until the moment he began testifying

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despite of the [indistinct] allegations against our clients while it is clear that our clients' submission to the Commission were made available to Admiral Kamerman in advance. In any event it is the same submissions which the Commission [indistinct] are not before the Commission. In addition other witnesses have had access to classified documents prior to their declassification. This is not legal access to documents, nor does it demonstrate the particularly rigorous [indistinct] to resolve the issue of classified documents, [indistinct] number of occasions the Commission managed to get documents declassified as a witness is about to classify as they were submitted as annexures to their statements. This indicates that these witnesses have been given access to classified documents ahead of time.

We respectfully submit that the Commission's legitimacy depends on our clients' and other parties' ability to meaningfully participate, but that is not possible under these circumstances. We also wish to point out that as we speak the summary for the next witness before the Commission, former Deputy and Defence Minister Ronald Kasrils is still not available on the Commission's website, neither has his statement been made available to interested parties and he is due to begin testifying tomorrow morning.

Finally we submit we would like to request that the Commission demonstrates that [indistinct] consistency in the

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manner in which it treats witnesses and [indistinct] our clients. Its failure to do so hinders the public's right to know and leads to the impression of bias which we believe would be correct, and if this is not [indistinct] addressed it would be detrimental to the work of the Commission and our clients' ability to meaningfully participate. Thank you.

CHAIRPERSON: Maybe let me reiterate two points. The first one is your clients allege that Admiral Kamerman was given preferential treatment. That is not correct. My view, your clients in the books that they have written and in various media releases that they have made in the past have made serious allegations against Admiral Kamerman, serious allegations were made against him and I feel it's only fair that Admiral Kamerman is made aware of the allegations made by your clients and submissions that you and your clients made to the Commission [indistinct]. I think it's only fair that he should be given an opportunity to respond thereto, I mean surely he cannot try and [indistinct] not have told him about the allegations against him? [Indistinct] submissions had to be made available to him because your clients were making serious allegations against him and he haven't been given an opportunity to respond thereto.

Secondly it is correct that evidence led by Admiral Kamerman [indistinct] various arguments were [indistinct] and it is correct that the statements were [indistinct] but then if you

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remember that statements were only signed the day before, [indistinct] were signed on Sunday in Sandton and it was not only available to us. If your clients' attitude is that they were unable to cross-examine effectively because they did not have
5 enough time to prepare because the statement of Admiral Kamerman was made available to them at the last minute, I think that would be a justifiable reason for not cross-examining on that day.

Amongst [indistinct] of Admiral Kamerman and if
10 your clients do wish to cross-examine I will grant them the opportunity to cross-examine, and I'll do so because Admiral Kamerman's evidence deals directly with your clients and that also includes [indistinct]. You can take comfort from the fact that you have been given permission to cross-examine
15 [indistinct] platforms.

ADV SNYMAN: Thank you Chairperson.

CHAIRPERSON: [Indistinct].

ADV SNYMAN: Thank you Chairperson.

CHAIRPERSON: Secondly ...

20 COMMISSIONER MUSI: Thirdly.

CHAIRPERSON: Oh I'm sorry, Commissioner Musi reminds me that it's thirdly and not secondly, you have said that there are certain documents that your client require in order to prepare for the cross-examination of Admiral Kamerman. I
25 think it would be really helpful if you can make a list of the

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documents that your clients would need in order to prepare for the cross-examination of Admiral Kamerman because those documents [indistinct] if they are relevant to the evidence of Admiral Kamerman, obviously they will have to be [indistinct] and the said document will have to be made available to Admiral Kamerman so that he can prepare for cross-examination.

And I heard you talking about all the documents that your clients are still waiting for, besides the umbrella [indistinct]. Can you also make available to us a list of those other documents which you've referred to which are relevant to the evidence that your clients are to present? I think it is important to note that they are not just documents available to a particular party which at a particular point feels that he wants those documents, those documents must either be relevant to the evidence that your client is going to lead or they must be relevant to the cross-examination that your client wants to [indistinct], one cannot just simply say I want these documents or these documents, this is not how we operate [indistinct] parties can just come to us and say let's have whatever documents, you must be able to show that that document is relevant to the evidence that your client is going to lead or that document is relevant to the cross-examination of a particular witness.

COMMISSIONER MUSI: All I wish to add is this. I think the

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problem Advocate Snyman is that on the 27th you did not say you request an adjournment or time in order to prepare for the cross-examination, you did not say that, you said that you declined to cross-examine for the reasons that you mentioned.

5 I think there's a distinction there, I think this point must be made clear. And to say that you were precluded from cross-examining is wrong, because preclude gives the impression that you were denied the right to cross-examine, which is not the case.

10 You said that you were not in a position to cross-examine because you want XYZ document, but you did not ask for time to prepare for that cross-examination, I think that point must be made. Then also there is reference to Dr Young, that Dr Young also was not given the opportunity to cross-examine
15 but Dr Young never approached the Commission to say he wanted to cross-examine Mr Kamerman, he didn't.

And also the statement that not all the documents that were relevant to Mr Kamerman's evidence were produced, I do not understand this because there was a bundle of
20 documents that he relied upon that were made available and you have all those. Which other documents you have in mind we do not know, and I think you should take up the invitation of the chairperson to list the documents that you require in order to be able to cross-examine Admiral Kamerman, but indicate
25 the relevance of those documents to his testimony. Thank you.

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CHAIRPERSON: [Indistinct] get to the next witness. I think in closing I just want to make mention that I was advised by [indistinct] correspondence from the attorneys of Admiral Kamerman and the advice is that Admiral Kamerman, despite
5 the fact that [indistinct], if he's required to come back for cross-examination he is ordered to do so. [Indistinct].

ADV LEBALA: My colleague and I would like to [indistinct] clarify two aspects given the fact that we [indistinct] the submission that [indistinct] the response by
10 Advocate Snyman and there are a number of issues which are left hanging [indistinct] our team and we need to have clarity on it, if you permit us Commissioners?

NOTE: Caucus.

CHAIRPERSON: Advocate Lebala, I think we have
15 [indistinct] issues ventilated and I'm not quite sure how your [indistinct] is going to be affected [indistinct] and that is what we are trying to avoid.

ADV LEBALA: [Indistinct] esteemed Commissioners the principles of addressing [indistinct] the following; we opened,
20 the other party responds and we'll try, and [indistinct] clarify two issues [indistinct]. We'd like to start with this [indistinct] preamble, we assure all and sundry that we think independently, [indistinct] discharge those functions without fear or favour. No [indistinct] conditionally allowed to state a
25 statement that [indistinct], not even yourselves esteemed

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Commissioners.

At no time since the beginning [indistinct] evidence
leaders we assure all and sundry that at no time you do
condition us into [indistinct] evidence and we assure the
5 Lawyers for Human Rights' team that we address positively, we
address with a view to assure Lawyers for Human Rights that
we'd support any [indistinct] to make it a point that the right to
cross-examining [indistinct] that they would like to [indistinct]
was just to clarify that we have not seen any symptoms, any
10 signs that such right was being tampered with.

But we need to over-emphasise the following
esteemed Commissioners, Lawyers for Human Rights sought
throughout the hearing [indistinct] by virtue of the fact that
they participated at the hearing, they heard the deliberations,
15 they heard the testimony of Admiral Kamerman. Here are
issues that leaves us cold, dealing with the theme of what
Admiral Kamerman was going to testify about, most of the
issues that Admiral Kamerman testified to became common
cause, [indistinct].

20 Admiral Kamerman testified about the contents of
the databus, it's common cause, Lawyers for Human Rights sat
throughout with the issue and the ventilation of the testimony
of the databus came before the Commission. They heard about
the costing and the risk, the evaluations. Of significance what
25 Admiral Kamerman exclusively testified about in as far as his

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role as the project officer and the leader of the Evaluation Team is concerned is not something which is exclusive because it's common cause.

Of significance the nub of Admiral Kamerman's testimony was merely [indistinct] on responding to what the critics were saying and most critics include the clients of Lawyers for Human Rights. Now what does that mean esteemed Commissioners? By the time Admiral Kamerman started testifying Lawyers for Human Rights knew what he was going to testify about. Now either, and we say this [indistinct], they understand the purpose of cross-examination, alternatively they [indistinct].

You don't need a statement, with respect Mr Chairperson, to be made available in order to [indistinct] made available to you, all that we are saying is that into the future by the time testimony of witnesses is before the Commission anyone who wants to cross-examine would be better informed by the time that witness finishes testifying and our view is that they ought to have known and they expected to have known about what the testimony of Admiral Kamerman and [indistinct].

Of significance, that's the summary also of Admiral Kamerman, but the question that we pose finally is why do they sit throughout the Commission, and that's where we come in and make the submission that we've made, we're not making it with a view to undermine them, we are making it with a view to

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bring clarity and shed light about our position, how we view the while process, but in closing Chairperson we assure [indistinct] the right to cross-examine a witness, and we thank you.

CHAIRPERSON: Thank you. I'm closing the [indistinct].

5 Advocate Sibeko.

ADV SNYMAN: Thank you Chairperson and [indistinct], it is not to my learned friend Advocate Lebala that I wish to respond, but in light of this submission that he has a right of reply to my submissions to him, I respectfully request the right
10 to reply on two points raised by [indistinct] Commissioner Musi, one being I wish to make clear that we do not represent Mr Richard Young and the second is that I also wish to reiterate that on last week Tuesday the 27th of May, if it was not clear then it was intended to be clear [indistinct], we sought to
15 reserve the right to seek leave to apply to recall Admiral Kamerman to cross-examine at a later date and not merely not to cross-examine him. And so, having listened to what you have said now Chairperson and Commissioner Musi thank you, we will take up all the points that you have made and address
20 further correspondence to the Commission regarding recalling Admiral Kamerman for his cross-examination and the documents on which we seek to rely. Thank you.

CHAIRPERSON: Thank you. We close this topic now.

Advocate Sibeko.

25 ADV SIBEKO: Thank you Chair. The last occasion when

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Mr Steyn concluded his testimony his evidence was adjourned for cross-examination on the 4th, I believe that there were difficulties on the 4th of June and that is why we are here today. Perhaps before he is sworn in today I wish to beg leave
5 of the Chair to remind the camera crew of the ruling that was made with regard to taking live photographs of the witness during his testimony.

Secondly Chair I wish to point out that I was advised of a letter that Mr Wagenaar has written to the legal
10 section of the Commission, Mr Wagenaar being Mr Steyn's legal representative in terms of which he seeks to address the Commission on one aspect relating to a transcript of the section 32 proceedings that Mr Steyn was subjected to.

And finally there is a matter relating to the bundle
15 that was submitted, a bundle of documents that was submitted by the Department of Defence which it intends to rely on for the purposes of cross-examining Mr Steyn. I may just point out that under cover of a letter dated 13 May 2014 a bundle of documents was sent to the Commission and in that letter the
20 following is recorded:

"In addition to the documents contained in Mr Steyn's bundle we also intend to refer to the following three documents in our cross-examination;

1.1 Letters to the various embassies dated

23 September 1997.

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1.2 *Management Committee meeting of
1 April 1998; and*

1.3 *Transcript of Mr Steyn's evidence on
proceedings on 14 August 2001 furnished to
us by the Secretariat of the Arms Procurement
Commission".*

Paragraph 2:

*"We will also be referring to the transcripts of
evidence of prior Department of Defence witnesses,
amongst others Generals Hechter, Malinga and
Bayne. As Mr Steyn will note [indistinct] these
transcripts have been available to the Arms
Procurement Commission website since they
testified.*

3:

*"We attached a bundle of documents which were
indexed and paginated for convenience. Lastly we
reserve the right to include further documents to
the attached bundle should that become necessary".*

Now the bundle that was furnished to the Commission under cover of the letter that we've just referred to contained the various documents that are listed in that letter and they amount to approximately 89 pages. During the course of this morning and just before the proceedings resumed a supplementary bundle with approximately 70 further pages was given to the

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witness. There are two documents that were included in that bundle, they are the revised Staff Target and Staff Requirement for Project Ukhozi dated 20 February 1998 and a combined Staff Target and Staff Requirement for Project Winchester
5 dated 20 February 1998.

Chair, while we accept the reservation of the rights by the Department of Defence and its legal representatives to include further documents on which they wish to rely to cross-examine Mr Steyn we wish to submit that it was incumbent upon
10 them to furnish these documents with sufficient time to enable them to assimilate the contents of the documents [indistinct] in order to be able to meaningfully respond to the questions that would be put to him during cross-examination.

Now in the absence of having furnished Mr Steyn
15 with sufficient opportunity to consider these documents, and we accept that he's had some 30 or 45 minutes before we started with today's proceedings, that should questions be put to him with regard to those two documents, he be afforded an opportunity to consider those documents [indistinct] before
20 responding to the questions that will be put to him.

CHAIRPERSON: Before the witness takes the oath Advocate Cane, I suppose there are no further documents that you are going to give us? Fortunately the documents that were handed only this morning, these are not [indistinct], it's documents that
25 we have dealt with in the past. Besides these ones are there

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further documents that you think you might want to introduce to the cross-examination of General Steyn?

ADV CANE: Chair, thank you for the opportunity. Thank you Commissioner Musi. You are quite correct, these
5 documents were referred to during the evidence of General Bayne and the letter expressly refers to his evidence and they are not new to the Commission, but by all means should Mr Steyn require an opportunity to consider them before I pose any questions in regard thereto I would willingly grant him such
10 time with your leave. Your question pertained to whether there were further documents. Chair, yesterday afternoon the Department of Defence's legal team was first given two further documents which are relevant to this witness. They are very short documents, three or four pages each and they pertain to
15 the minutes of the special AASB meeting of 8 July 1998.

Commissioners, you may recall that this witness challenged the correctness of those minutes and his evidence was that while he was in office no draft of that minute was produced to enable him to consider and approve the final
20 minutes which was then subsequently signed by Mr Gründling as the acting chairperson and new Acting Secretary of Defence.

Regrettably the AASB meeting of 26 November 1998 is a document which cannot be located notwithstanding diligent search, however, the subsequent AASB meeting in early 1999,
25 that's now been located together with the agenda for the

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meeting of 26 November and these two documents together shed light on how that minute of 8 July 1998 was formulated and approved and I submit that it is relevant to this witness and to the Commission's enquiries. The documents are presently in the process of being declassified and they will be made available as soon as possible for you.

CHAIRPERSON: Thank you. I think we will deal with those documents as soon as we [indistinct]. Maybe before I hear from the attorney [indistinct] can you first take the oath?

ADV SIBEKO: Chair? I beg your pardon Chair. Chair, with regard to the further documents that the chair has been appointed to [indistinct], I need to bring it to the Commission's attention that at the time of Mr Steyn's preparation of his evidence and some time before then he wrote a letter to the Department of Defence requesting to be furnished with every document in which he participated and of every meeting [indistinct]. It does appear that the further documents that my learned colleague is referring to are documents which may not have been furnished to Mr Steyn which have now since been [indistinct] which begs the question are there any other documents that the witness may have had to rely on which perhaps may have not been furnished to them. Perhaps this is a matter that would be considered at the appropriate time when these documents are put to the witness.

CHAIRPERSON: Advocate Sibeko, I understand all this, but

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then I think I understood Advocate Cane that those documents have just been recently located and I said to her that I'm unable [indistinct] those documents are, let's raise those issues again once we have those documents and I suppose now
5 [indistinct] now they will not be in a position to refer to documents which are not before us. At the time that they [indistinct] those documents that we can deal with the issue that they are raising. Can the witness then take the oath?

(Witness is sworn in.)

10 **NOTE: Caucus.**

CHAIRPERSON: Before we decide which party is going to start with the cross-examination I learn the attorney Mr Wagenaar wanted to raise one or two issues with us before we commence with the cross-examination.

15 MR WAGENAAR: Thank you Mr Chair. Mr Chair, I addressed a letter to the Commission dated 4 June 2014 and I beg leave to read this, the contents of this letter, it's one and a half pages, into the record. It's dated 4 June 2014 and it's addressed to the Arms Procurement Commission:

20 *"With reference to the abovementioned matter we acknowledge receipt of your email dated 1 July 2014 to which you attached a letter from Bowman Gilfillan dated 30 May 2014 together with a bundle of documents. We must emphasise the*
25 *following concerns:*

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1. *That the Commission was given access to a transcript of our client's evidence before the investigating director in terms of Section 28 of the National Prosecuting Authority Act 32/1998 and;*

2. *That the Secretariat of the Arms Procurement Commission afforded the Department of Defence and its representative access to the abovementioned transcript".*

Section 28(3) of the Act makes it clear that all proceedings contemplated in Section 28(6), 28(8) and 28(9) shall take place in camera. We submit that the wording of the Section is obligatory and does not afford the investigating director in these proceedings a discretion. Section 28(8) of the Act prescribes the circumstances under which the protection enjoyed by a witness in terms of the Act is limited. We submit that the proceedings before this Arms Procurement Commission does not constitute one of these exceptions provided for in the Act. While our client does not object in principle to being cross-examined on the contents of the abovementioned transcription we are of the view that the provisions of the Act place the obligation on this Commission to judicially consider

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5 *whether the publication of the transcript and the
cross-examination thereon is admissible or not. We
further submit that the investigating director does
not in terms of the Act have any authority to alter
and/or remove the nature and the force of the
statute of these in camera proceedings except in
the instances referred to in Section 28(8) and
28(9). We do not, however, object to the
Commission obtaining the presentations from the
investigating director in this regard should it
become necessary. Please note that our client's
attitude not to object to being cross-examined on
the contents of the transcription, subject to a ruling
by the Commission to this effect, is subject to the
condition that in the event of any reference to
and/or reliance on other portions of these
proceedings our client must be afforded access to
those portions of the transcription and be afforded
sufficient opportunity to prepare on those portions".*

20 Now Mr Chair, this morning I was handed or I was informed by
the Secretariat of the Commission that the NDPP has in the
meantime granted certain permission or granted consent to the
transcription being used. May I also read this, the contents of
this letter, it's one paragraph, into the record, it's dated
25 4 June 2014 and it says:

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“This is to advise that the National Director of Public Prosecutions grants consent to the use of the transcripts obtained in accordance with Section 28 of the NPA Act in the above Commission proceedings only”.

5

Now Mr Chair, I submit that this does not actually take the point any further. The National Prosecuting Act is clear, the proceedings in terms of Section 28 of that Act takes place *in camera*, full stop. It does not have any further provisions such as in Section 153 of the Criminal Procedure Act which empowers the presiding officer to make, with a certain discretion to make certain rulings and orders. This Act does not provide for it. Those proceedings are *in camera* and may not be published.

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Now if by way of example Mr Chair the Commission allows cross-examination on those proceedings, it means those proceedings are no longer *in camera* because these proceedings are not *in camera*. I therefore submit that before cross-examination on those transcriptions may take place, this Commission will have to judicially consider whether the provisions of the Act extend to this Commission allowing cross-examination on *in camera* proceedings. Thank you Mr Chairman.

CHAIRPERSON: Advocate Cane.

25

ADV CANE: Thank you Chair. Chair, may I draw your

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attention to one other section of the National Prosecuting Act, it's Section 41(6), that is the Section that in fact pertains ...

CHAIRPERSON: I'm sorry Advocate Cane, can you repeat that section?

5 ADV CANE: Yes certainly, it's Section 41(6). It is the Section of the Act which would afford protection to the transcription in question and it provides that without the permission of the National Director such a transcription may not be disclosed to any other person. I understand from the
10 Commission and from Mr Wagenaar's address that the National Director of Public Prosecutions has granted his consent to the transcription being used in these proceedings and so the protection ordinarily applicable preventing such transcriptions from being published would no longer be applicable.

15 Secondly the same section provides that such a record may only be used in performing a lawful function, the precise wording reads like this:

20 *"The record of any evidence given at an investigation as contemplated in Section 28(1) may not be used except:*

1. For the purpose of performing a function in terms of this Act or any other law".

This Commission is clearly performing a function in terms of law, more precisely the Commission's Act as read with the
25 Terms of Reference and accordingly the transcription may be

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used during these proceedings on that basis also. The further alternative if either refers to are not upheld for any reason by the Commission would be to simply hold that short portion of the cross-examination that is contemplated pertaining to the Section 28 transcript and it would be short, perhaps five or 10 minutes in total, *in camera*, and that would certainly alleviate Mr Wagenaar's concerns.

Coming back though to the outset of his address I did understand that his client is not objecting to cross-examination on the transcription and it was subject to this caveat and that was that any other portions of the Section 28 proceedings be given to his client in advance. There is no intention to direct cross-examination at any other portions of the Section 28 proceedings and in fact the transcription that is intended to be utilised has been timeously given to his clients, precisely to avoid any unfairness. Thank you.

CHAIRPERSON: Thank you. Advocate Sibeko, do you want to join the debate?

ADV SIBEKO: I have nothing to add Chair.

CHAIRPERSON: Thank you. Mr Wagenaar have you seen the statement that [indistinct], have you seen that?

MR WAGENAAR: Yes, we have Mr Chairman.

CHAIRPERSON: Have you noticed that line through seven from the bottom in that statement right up to the end of that page, have you had a look at it?

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MR WAGENAAR: My apologies Mr Chair, what document are you referring me to?

CHAIRPERSON: The transcript of the proceedings.

MR WAGENAAR: Which proceedings?

5 CHAIRPERSON: It appears on page 33 of the [indistinct].

MR WAGENAAR: Mr Chair if you just give me one moment I'll get to that document. I have it Mr Chair?

CHAIRPERSON: Do you see that paragraph which ..., that paragraph, almost the last one, sentence or last paragraph
10 which starts by saying: "However, ..."? Right up to the [indistinct].

MR WAGENAAR: Mr Chair, are you referring me to page 33 of the Section 28 proceedings?

CHAIRPERSON: No, Section ... Page 33 of the index
15 documents?

MR WAGENAAR: I've got that in front of me. Are you referring me to page 33? Which line Mr Chair?

CHAIRPERSON: It's almost the last paragraph where it starts by saying: "However, ...".

20 COMMISSIONER MUSI: The last but one sentence.

MR WAGENAAR: Are you referring to Mr Mzinyathi's remark?

CHAIRPERSON: That's right.

MR WAGENAAR: I've got that Mr Chair.

25 CHAIRPERSON: Do you see where it says: "However, ..."?

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MR WAGENAAR: I do Mr Chair.

CHAIRPERSON: Do you agree with the sentiments expressed by Mr Mzinyathi at the time when he cross-examined or when he took the statement from your client?

5 MR WAGENAAR: Mr Chair, strictly speaking that statement is not correct because the wording of the Act is that the evidence will not be admissible whereas he refers to “may not be used against you”, those are two different concepts Mr Chair, but I’ve got no problem with what Mr Mzinyathi did there.

10 CHAIRPERSON: Okay, thank you. Then the second issue is that if we are unable to resolve this issue I suggested that we should go *in camera*?

MR WAGENAAR: Mr Chair, my instructions from General Steyn is if he testifies he wants to testify in an open forum.
15 My concern is this, that if the Act does not allow that his contention is irrelevant and we will have to stick, with respect, to the letter of the Act.

CHAIRPERSON: Mr Wagenaar, you haven’t answered my question. Irrespective of what your client [indistinct] interpret
20 the Act, because your interpretation of the Act and mine may be different. The question is if we are unable to resolve this dispute is it your client’s contention that we must go *in camera*, because your earlier statement, I think it’s important for us to be able to deal with this statement. I’ve gone through this
25 statement, I think it is very important in order to discover and

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[indistinct] this statement.

MR WAGENAAR: Mr Chair, General Steyn will then elect to testify in an open forum.

CHAIRPERSON: I think I'm going to make a [indistinct] ruling, the ruling is that this statement can be used to cross-examine General Steyn, but on condition we must make certain that the correct copies of this statement, those statements that you've made [indistinct] other parties and two, that they should not form part of the record, except to those [indistinct] that the DoD legal counsel is going to refer to unless if at all there is anybody who wants to object to this ruling. In other words the portion of the Section 202 statement which should appear on our website should only be those portions that have been referred to in cross-examination, those that had been referred to, they shouldn't appear [indistinct]. Do you accept this qualification Mr Wagenaar?

MR WAGENAAR: I have got no objection Mr Chair, I'm just not sure that the consent of the NDPP goes that far that it should be made available for public consumption. The way I understand his letter and his consent is that it should only be [indistinct] in the above Commission proceedings only. He qualifies that and my concern is if he goes on the website it is not for purposes of this Commission only but then it's for public consumption.

CHAIRPERSON: But [indistinct] the purpose of this

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Commission, in order to [indistinct] ruling we have put that evidence on our website, that is the only reason why we put it on our website, for the purpose of this Commission. But then I need to go further and try and qualify it and say that what must
5 be on the website, it must only be [indistinct], it must only be the portion that a legal representative will deal with [indistinct] refer to and from what I understand or from what the legal representative [indistinct] said that is that only a very small portion of it [indistinct] very small portion of it.

10 MR WAGENAAR: Mr Chair, I understand the ruling. If I may just try and explain, I'm not sure that the consent of the NDPP goes that far and in terms of Section 41 referred to earlier by my learned friend his consent, the record may only be used in line with his consent. Now if he does not want to consent to it
15 being on the website then it may not be placed on the website.

CHAIRPERSON: [Indistinct] to this point before I make a final ruling on that question. Thank you. I think our ruling is that only the portion which relates to the cross-examination must appear on our website, otherwise the answers that the
20 witness is going to give will not make sense to the readers of the record. What I'm not certain about is whether we should start with Lawyers for Human Rights or with DoD, I can't recall the order, I can't remember who has made the application to cross-examine.

25 ADV SNYMAN: Chairperson I don't think an order was

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made, but I want to [indistinct] to seniority.

CHAIRPERSON: [Indistinct] seniority. Okay thank you, it makes it much easier for me.

ADV CANE: Thank you Chair.

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**WITNESS : LIEUTENANT GENERAL (RET) PIERRE DERKSEN
STEYN (Hereinafter referred to as LT GEN (RET) STEYN),
GIVES EVIDENCE UNDER OATH**

CROSS-EXAMINATION:

10 ADV CANE: Mr Steyn, would you please take out the bundle of documents which contain your statement and turn to page 151 of those documents.

CHAIRPERSON: [Indistinct].

15 ADV CANE: Chair, I requested the witness to turn to page 151 of the documents which accompanied his statement.

LT GEN (RET) STEYN: I've not located, I'm not with you yet.

20 ADV CANE: Thank you Mr Steyn. What you should be looking at is DoD Policy Directive 4/147, it's a document with a heading at the top of the page "DoD Policy Directive", MoD Policy for Dealing with International Defence Equipment Offers and MoD. Are you on that page?

CHAIRPERSON: I'm sorry Advocate Cane, we've got the wrong document. You say it's page?

25 ADV CANE: It's page 151.

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CHAIRPERSON: 151.

ADV CANE: It's of Mr Steyn's bundle Commissioner.

CHAIRPERSON: Oh, not of your index document? Thank you, we got the document.

5 ADV CANE: Thank you Commissioners.

Commissioners, I should perhaps to make it easier state that I will be progressing through the documents attached to Mr Steyn's statement and where I intend to refer to a document in the DoD bundle I'll make that clear but essentially I'm proceeding chronologically, so as a document from the DoD bundle fits in chronologically, that's when I will divert into the DoD bundle. Mr Steyn, you testified regarding this document, DoD Policy Directive 4/147 and you told us that the signatures, one of them that appears at page 152 was in fact your signature, and that you and General Meiring signed on behalf of the Minister of Defence Mr Modise on 8 August 1997. Do you recall that?

10
15 LT GEN (RET) STEYN: Yes, I do.

ADV CANE: You said it was your *bona fide* understanding that the Minister had endorsed this Policy in the CoD, Council of Defence meeting held on that same day, 8 August 1997. Now the question I want to pose to you is when you subsequently realised that the Minister in fact did not endorse this policy according to you, why did you not give a written withdrawal of this document?

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LT GEN (RET) STEYN: The document was in fact superseded by a decision of the Minister to issue RFI's and the practical outcome of that is that the policies which applied to ARMSCOR would now be applicable. You will recall that the purpose of the Directive 147 was to address the procedure which would relate to unsolicited foreign initiated offers. Now when I make reference to the procedure followed by ARMSCOR their RFI's and RFO's are not directed at [indistinct]. During my evidence in chief this came out, I believe, quite clearly. I think Deputy Commissioner Musi made certain that he understood what I meant.

So yes, from an administrative point of view you might argue that 147 should have been terminated but it was never ever promulgated and the reason is that the next meeting ... No, not the next meeting, the minutes of that meeting does not confirm that the Minister actually mandated the policy and all concerned knew about that but because now we're now redirected to follow the MODAC procedure and issue RFO's as we have always done where a foreign document can support their own industries but they are not solicited to respond.

ADV CANE: Mr Steyn, you have my assurance that I'm going to deal with your allegations as to what 4/147 applied to in the light of your reliance on the words "foreign initiated proposals". For the time being I'm going to call that second horse, I want to only deal with the first horse, the first horse

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being that you said that the Minister did not endorse this policy and for that reason as I understood your evidence this policy never took effect. Now dealing with that first horse, on what day do you say this policy was superseded by a subsequent
5 decision by the Minister to issue RFI's?

LT GEN (RET) STEYN: I wish to refer you to paragraph 6.12.1 of my statement, and I read:

“As directed by the Minister in CoD in September of 1997 ...”.

10 CHAIRPERSON: Give us a chance to go to the statement. If you want to refer to a particular document you tell us where that document is and you give us an opportunity of going to that document before you start reading. So you are saying the paragraph that you want to read, on which page does it appear?

15 LT GEN (RET) STEYN: I apologise. I wish to refer to my evidence statement page 15. And then ...

CHAIRPERSON: Page 15, which paragraph are you reading?

LT GEN (RET) STEYN: I'm going to read paragraph 6.12.1.

20 CHAIRPERSON: Thank you.

LT GEN (RET) STEYN: I'm reading, it says:

“As directed by the Minister in CoD in September 1997 ARMSCOR followed the legal tender process and consideration of international responses to the Request for Information /Offers

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*continued to be directed by the MODAC process,
thus superseding the DoD Policy Directive 4/147”.*

ADV CANE: Mr Steyn, do you recall the question I asked you? It was the date upon which the Minister’s decision
5 was given that resulted in Policy 4/147 being as you term that, “superseded”. Would you give me a date?

LT GEN (RET) STEYN: Ma’am I can’t, it’s 18 years ago.

ADV CANE: Can you give me the specified event that resulted in 4/1417 being superseded?

10 LT GEN (RET) STEYN: By referring to my own statement it was a CoD meeting in September 1997, a copy of which was not provided to me.

ADV CANE: As I understood your evidence in chief the alleged superseding occurred when the Minister sent letters to
15 other governments inviting them to respond to an RFI and that occurred during September 1997, in fact on 23 September 1997. Do you recall that evidence?

LT GEN (RET) STEYN: I do.

ADV CANE: Can we proceed then on the basis that
20 your evidence was that the superseding occurred when the Minister sent his letters to the foreign governments?

LT GEN (RET) STEYN: Correct.

ADV CANE: Then we have the date from those letters
and we will go there shortly, there’s no need to turn there yet,
25 you can take from me that that was 23 September 1997. Now

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what we have in the interim then is a period from 8 August to 23 September where you would say that this policy document remained in place and would have been ..., appeared to those in Defence community as having force and effect. Do you agree with that?

LT GEN (RET) STEYN: No, I don't.

ADV CANE: The period 8 August to 23 September is a document bearing your signature and the signature of the Chief of the Defence Force who I understand at the time was General Meiring giving a policy directive, and you say that you gave that in the *bona fide* belief that the Minister endorsed the policy. How is it then that you contend that others would have understood the policy had no force and effect prior to 23 September 1997?

LT GEN (RET) STEYN: Could you please be more specific about "others", because those who worked with it knew about the decision not being confirmed in the minutes of the CoD meeting and you will recall that in my statement I indicated that I did not get a copy of that minute which actually did not confirm the understanding of myself and General Meiring.

ADV CANE: We know the minute you are referring to, notwithstanding a diligent search, has not been located. Now you asked me to clarify who those would be to whom I'm referring. I am referring to people in the Defence community who would be bound to implement this policy .

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LT GEN (RET) STEYN: You are indicating a period from the date of the CoD until the sending out of letters, is that what you are asking me about?

5 ADV CANE: As a first step that is the period I am confining myself to.

LT GEN (RET) STEYN: Let me concede that during that period there was no correspondence to suggest that 147 has not in fact been mandated.

10 ADV CANE: Then let us move on to the second horse as I termed it, which was your evidence that this policy directive was not applicable to unsolicited bilateral international defence equipment offers. Would you turn to page 154 of the Policy document, and you will recall, if I may remind you, that you limited the application of this policy with
15 reference to paragraph 4 of the document which reads as follows:

20 *“This policy only addresses the defence equipment offer facet of foreign initiated, international government-to-government cooperation proposals. The structure of these proposals dictate the scope of interdepartmental involvement. Non-government supported single product proposals are not addressed in this policy”.*

25 Now you placed much store, as I understood your evidence, on the words “foreign initiated international government-to-

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government operation proposals”, that is correct, I’m focusing on the correct words am I?

LT GEN (RET) STEYN: Yes, you are correct.

ADV CANE: Let us just test what your understanding is. If I were to delete the word “initiated” from that phrase and we were dealing with words that read “foreign international government-to-government cooperation proposals”, would you say then that this would still be applicable to the SDPP’s?

LT GEN (RET) STEYN: Let me understand, you wanted to remove the word “initiated”, why?

CHAIRPERSON: Just hold on. General Steyn, just bear in mind this advocate is meant to ask the questions and you are not expected to ask any questions. If you don’t understand her question properly, say so, and I’m sure she’ll try and rephrase.

LT GEN (RET) STEYN: Thank you Commissioner. I asked that question to understand the question better. To understand your question ...

ADV CANE: Mr Steyn I also am more than willing to clarify to enable you to answer. When you gave your evidence, as I understood it, you were informing the Commission that because the Ministerial letters that went on 23 September 1997 to the various governments who were invited to furnish information was a step taken by our Ministry of Defence, sorry, Minister, that broke the link between the application of this document and the SDPP’s and you placed much emphasis on

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the fact that then it was an initiation by our Minister rather than a foreign initiated offer, am I correct in my understanding?

LT GEN (RET) STEYN: Yes, now I understand.

5 ADV CANE: And is my understanding of your contention correct?

LT GEN (RET) STEYN: My understanding of the use of 147 relates to government-to-government proposals, whether it was invited by our government as in the case of Mr [indistinct], or
10 whether it was initiated by for example the British Government. Our policy, the MODAC Policy, had no content to deal with that, and hence General Du Preez drafted this policy in order for us to be able to deal with that, and therefore he says in the last sentence of paragraph 4:

15 *“Non-government supported single products are not addressed in this policy”.*

In other words, MODAC would apply. Does that answer your question Ma'am?

ADV CANE: Well, you see, the answer you have now given,
20 I must tell you, accords with the understanding of many of the other witnesses who have testified that this policy document did apply to the SDPP's and the answer you have given indicates it would apply to the SDPP's.

LT GEN (RET) STEYN: The SDPP name originated well
25 before this. It was a package referred to by the Minister, a

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bundle of types of equipment, but from September of that year we persuaded him to follow the normal process as dictated by MODAC and although the process of MODAC was followed and it was supported by foreign governments 147 couldn't apply
5 anymore because there are different aspects of the Policy which is not contained in MODAC.

ADV CANE: Let me see if I understand your evidence. It is that if MODAC were applicable to the SDPP's then 147 could not be, they could not operate together, it was either
10 MODAC or Policy 4/147?

LT GEN (RET) STEYN: My understanding is that you can't apply both of them at the same time, so from September 1998 the SDPP which were for a brief period tacitly directed by 147 were now subjected to the MODAC process.

15 ADV CANE: Mr Steyn, that does make your allegation clearer to me, it's certainly not what I have understood you to say in chief, what I'd understood you to say in chief was that this policy document was superseded by reason of the issue of the Ministerial letters in late September because that is when
20 the Minister himself took the initiative and therefore this was no longer a foreign initiative. Was that, is that understanding now no longer the one upon which you rely?

LT GEN (RET) STEYN: No Ma'am, you've got it wrong. The letter issued by the Minister that was a foreign, that was an
25 initiation by our Government to a foreign government through

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the ambassador, and strictly speaking it would fall in the realm of 147, but we pointed out that there are great risks in continuing this way, I was not afforded any counsel on issuing on these letters, it was drafted by a layman instead of a, by the
5 Minister's office.

ADV CANE: Now what were those pitfalls that you were so anxious to avoid that 4/147 would have brought into the SDPP process?

LT GEN (RET) STEYN: Where [indistinct]?

10 CHAIRPERSON: I'm sorry, [indistinct], if you don't mind, can you repeat?

LT GEN (RET) STEYN: Commissioners, I said where I would find that, please give me an opportunity to find that in my own statement please.

15 CHAIRPERSON: Advocate Cane, what was your question to General Steyn?

ADV CANE: Thank you Commissioner. The question was a reference to his answer, in reference to his answer he had mentioned that there were concerns and pitfalls before 147
20 would import into the process relating to the SDPP's and so I asked him to identify what those pitfalls would be and as I understand the witness he's just locating something in order to be able to answer the question.

CHAIRPERSON: Thank you. Thank you.

25 LT GEN (RET) STEYN: May I refer you to my statement

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page 24 and I will now direct you to paragraph 7.15. I read:

5 *"In a letter of the Minister of Defence in
October 1997 (refer to PS10)) PRIOR TO THE cod
MEETING SCHEDULED FOR 31 October 1997 (see
below), I referred to the MoD letter (signed by the
Minister), addressed to eight ambassadors requiring
[sic] specific information on the equipment offered
under the government-to-government strategic
alliance/partnership proposals by 31 October 1997.
10 I furthermore, warned that failure to perform a
principled, disciplined formal evaluation as soon as
possible after 31 October 1997 may produce many
potential pitfalls: (1) such as dealing with
unsolicited proposals received subsequent to offers
15 received in response to the letters written by [sic]
the eight ambassadors, and (2) the failure to adhere
to the MoD policy on international offers".*

ADV CANE: So you say those are the pitfalls that
would have faced or been imported into the process by way of
20 4/147?

LT GEN (RET) STEYN: My letter was written in
October 1997, so it was subsequent to the instruction
concurrently by the Minister to instruct the ARMSCOR to go out
on RFI's and RFO's.

25 ADV CANE: Mr Steyn I'm going to come back to that

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later in some detail but let me deal with this chronologically. I want to take you now, or firstly could you please look at page 157 of Policy document 4/147. You referred the Commission during your evidence in chief to the First Order, Second Order and Third Order as set out there. Now Mr Griesel during his evidence stated that this Ministerial directive contemplated the interdepartmental workgroup which had to develop a Second Order Value System. Do you agree or disagree with Mr Griesel?

10 LT GEN (RET) STEYN: Paragraph 15 on that page refers to the assessment of offers, First, Second and Third Order. Now, now that I'm there, please direct your question again. Mr Griesel said what?

15 ADV CANE: I will repeat it again, listen carefully. He said, and for the record it's at transcript 1941, this Ministerial directive contemplated the interdepartmental workgroup which had to develop a Second Order Value System.

LT GEN (RET) STEYN: I would agree with that.

20 ADV CANE: Would you now turn to page 160. If you are on the correct page you will notice that it's a letter dated 9 June 1997 and it is a letter which I understood you in chief to identify as having been signed by yourself.

LT GEN (RET) STEYN: Correct.

25 ADV CANE: Do you see that this letter is addressed to the Chief of Logistics, who I understand at the time was

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General Du Preez, am I correct in that?

LT GEN (RET) STEYN: Correct.

ADV CANE: And also to Chief Acquisition that would have been Mr Shaikh?

5 LT GEN (RET) STEYN: Correct.

ADV CANE: Let us read it together please. It's headed "Defence Industrial Offer by France":

- 10 "1. *The French offer regarding a 'defence partnership' has reference. See attached executive summary and slide collection.*
2. *This offer should be considered the French equivalent of the British 'package'. The German and Italian versions are expected in due course.*
- 15 3. *We have an acquisition policy and process, but it provides little guidance in the consideration of 'package deals'.*
4. *It is vitally important to provide counselling to the Minister (and Cabinet) regarding the way we should treat these 'packages'. Unfortunately the*
20 *interdepartmental effort with DTI to assess the British offer has not progressed very far".*

We'll leave out 5. Would you turn to 6:

- 25 "6. *You are charged to put together a workgroup (from the staff division, i.e. logistics, finance, acquisition, policy and plans, arms of service*

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see a letter dated 28 October 1997 and headed "Management Directive: Evaluation of International Offers". I trust you have found the page?

LT GEN (RET) STEYN: I have found it.

5 ADV CANE: Well Mr Steyn, just to remind you the Minister's letters to the various governments went out on 23 September 1997, so this letter is written subsequent to the Ministerial letters and if you look at reference A you see that there is a reference to the Ministerial letter to the eight
10 embassies regarding the Strategic Defence Alliances dated 23 September 1997, do you see that?

LT GEN (RET) STEYN: Yes, I do.

ADV CANE: So, we are dealing with the period subsequent to the Ministerial letters where you surely accept
15 then that we are now dealing with the SDPP's.

LT GEN (RET) STEYN: The SDPP [indistinct] is a label that originated only in 1997, maybe even in 1996, and the first proposals received by the British were subsequently followed by the French offers, the Italian offers and so on, and then of
20 course the Minister decided not to stick with those that are unsolicited but also to solicit by way of these letters, so this is my understanding. Let's hear your question about this again please?

ADV CANE: Mr Steyn, would you mind please taking
25 out the DoD bundle, so keep open this document at page 166

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and open up at page 2 of the DoD bundle, and there you will see an example of one of the latest to which we are referring. You see there a letter dated 23 September 1997 and you will notice if you page on it's issued by the Minister at the time.

5 LT GEN (RET) STEYN: I've got it.

ADV CANE: Have a look at paragraph 1 of that letter. The Minister is understanding that he is responding in response to presentations made and proposals received on a Strategic Defence Alliance:

10 *"... herewith a response to such and an overview of the way forward".*

So, when I refer to the SDPP's so that there's no misunderstanding between us, I am referring to the process that ensued in relation to the equipment which the Department of Defence had determined at that time it's required to source from foreign countries.

15 LT GEN (RET) STEYN: If we refer to paragraph 1 it states the Strategic Defence Alliance and you equate that to SDPP. I don't agree. There is no Strategic Defence Alliance document, I've requested it from the Commission, we've not been furnished with that, and I state that I've never seen that document, so I can't agree whether the response to that is in fact equated to SDPP.

20 ADV CANE: Mr Steyn, I'm simply trying to use SDPP as an agreed term between the two of us so that we both

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understand what we're dealing with, and I'm having some trouble. If you turn to page 171 of the documents attached to your statement, perhaps we can agree with one another on what we're dealing with, with reference to that page. I'm simply trying to achieve a common definition between us that we can work with. You will see at that page in paragraph 18 the Defence Equipment is set out and you will see there are six equipment types listed A to F and then there is also a project officer listed next to each project. Can we agree between us that when I refer to the SDPP's I'm referring to the process pertaining to these six equipment types?

LT GEN (RET) STEYN: I will agree that those equipment types relate to the SDPP, but not the process, because we are talking about the process of 147 and we talk about MODAC, the two are not the same.

ADV CANE: We definitely differ on the policy at this stage, but all I'm seeking your agreement in relation to is that we're talking about the equipment types and the acquisition of these equipment types, I will then move on to what policy applied.

LT GEN (RET) STEYN: Okay, let's move on.

ADV CANE: We then agree that when we talk of SDPP's we're talking about what is encapsulate at page 171, are you with me?

LT GEN (RET) STEYN: Yes, I am.

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ADV CANE: Let us, if you wouldn't mind then please turning back to page 166, it's still on the Management Directive of 28 October 1997. We had, I had referred you to reference A which was the Ministerial letter, which had preceded this Management Directive and now I want to refer you to references B and C. Do you see that reference B is the MODAC Policy document of 8 August 1996?

5

LT GEN (RET) STEYN: Yes, I see that.

ADV CANE: And then reference C is the DoD Policy Directive 4/147 dated 8 August 1997, do you see that?

10

LT GEN (RET) STEYN: Yes, it's the directive one year later.

ADV CANE: Yes, and it is the same directive with which we commenced our discussion this morning that appears at page 151.

15

LT GEN (RET) STEYN: Correct.

ADV CANE: Under "Introduction" paragraph 1 reads:

"The Second Order evaluation of foreign initiated, international government-to-government cooperation proposals: ..."

20

I infer from that, and I'm sure you will agree, that this document is dealing with the Second Order evaluation and it's referring to government-to-government proposals, and I would suggest to you that it has to be referring to the projects that are now going to be the SDPP.

25

LT GEN (RET) STEYN: [Indistinct].

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ADV CANE: Well, what other proposals would we be dealing with Mr Steyn, if it is not the SDPP?

LT GEN (RET) STEYN: My answer to that would be when the ARMSCOR invited requests for information or offers they were servicing the SDPP, but they were following the prescripts of MODAC.

ADV CANE: Mr Steyn, you see to be anticipating my questions and focusing on MODAC when actually the question had little to do with the Policy, and I assure you we are going to deal with the applicable policy. My question was, I put it to you that the proposals being referred to are the six equipment types that I showed you at page 177, namely the SDPP as we understand it now between us, and could not be referring to any other proposals, do you agree with me or are there other proposals that you say were still in play to which this document was relating?

LT GEN (RET) STEYN: Let's state that on this date, the Department had not yet received its responses to the invitation for RFO's because you will remember that they were given until the end of October of that year.

ADV CANE: Thank you. I'm grateful for that information but I do want an answer to my question. Should I remind you Mr Steyn what it is I asked you? What I asked you is whether you accept that this document is dealing with the SDPP or whether you contend that there were other proposals

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in play at the time to which it related?

LT GEN (RET) STEYN: It certainly applied to other initiatives from the ARMSCOR. But I must add that those responses received on the RFI's and RFO's found its way into the SDPP. For example [indistinct] listed here for discussion later, [indistinct] part of the SDPP and the Minister directed that Winchester and Ukhozi be aligned with the SDPP. So, there were others outside of SDPP.

ADV CANE: Commissioners, I see I have transgressed and I wonder if this would be a convenient moment.

CHAIRPERSON: General Steyn, I'm getting a bit confused with your evidence. I thought earlier on you had agreed with Advocate Steyn, Advocate Cane, I'm sorry, what you are referring to when you talk about the SDPP's. I thought [indistinct] end up taking you to a page which has got those six [indistinct] and I thought there was an agreement that when you talk about the SDPP's we are referring to that basket of programmes. Now you seem to be saying that that is not what you mean by SDPP's, that you don't mean that the basket of those programmes ..., do I understand you to be saying so, or am I misunderstanding you?

LT GEN (RET) STEYN: I was saying if you refer to any of the letters addressed to ambassadors they have five listed armament types, for example it lists Light Fighter Aircraft. Sorry, that's page 2 of the DoD bundle. If I'm correct the

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advocate referred me to paragraph 3 of the letter and said is that the SDPP and I say no it isn't, it was later adjusted. The Light Fighter Aircraft became ALFA, Advanced Light Fighter Aircraft, and the Lead-In Fighter Trainer was added to this, and that finally made the list of SDPP. So, the first of this is the SDPP, it is not there are others coming after that.

CHAIRPERSON: General Steyn, even up to now I don't seem to be enlightened. I thought you and Advocate Cane, I think you referred us to one of the pages, I think 171 and I thought our understanding was one, if we refer to SDPP we are referring to this basket of programmes. Now you seem to be saying that you do not agree that you know that basket is what was referred to as the SDPP's.

LT GEN (RET) STEYN: I still maintain the list on page 171 has six items. The list in the letters to the ambassador has five , and later the SDPP changed the name from Light Fighter Aircraft, remember this was 1997, changed the name to Advanced Light Fighter Aircraft and added the Lead-In Fighter Trainer which then defined the SDPP. So, in October 1997 this was an incomplete list, the name was given to this list and later items were added to that.

CHAIRPERSON: Yes, apparently we don't seem to be understanding each other. In any event I think maybe let's adjourn and then we will deal with that issue when we come back from lunch. We will come back at 14h00. Thank you.

(Commission adjourns.)

(Commission reopens.)

CHAIRPERSON: Thank you. Can the witness confirm that he is still under oath?

5 LT GEN (RET) STEYN: I do.

CHAIRPERSON: Thank you.

ADV CANE: Thank you Commissioners. Mr Steyn, before the adjournment we were looking at page 2 of the DoD bundle together with page 171 of your bundle. Could you please open
10 both those pages, page 171 of your bundle and page 2 of the DoD bundle.

LT GEN (RET) STEYN: I'm with you.

ADV CANE: Thank you. All I was seeking to do before the adjournment is to find the types of equipment included in
15 the SDPP and thereby between us have a joint common understanding of what we're talking about when I refer to the SDPP. We had got as far as to consider the six equipment types listed at page 171 and you drew the distinction then with the list at page 2 of the DoD bundle by saying that that list
20 only had five equipment types, and you then also drew the Commission's attention to the fact that the Light Fighter Aircraft was subsequently replaced by the LIFT and the ALFA programmes. Now Mr Steyn the list at page 2 actually does consist of six equipment types. If you look at the first line, the
25 Corvettes include the Maritime Patrol Helicopter which is then

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specifically or separately listed at page 171 and so in fact we have two lists of six types of equipment and between us can we accept that when we talk about SDPP we're referring to the these six types of equipment and that later when the three tier
5 system was adopted for the aircraft, the Light Fighter Aircraft were replaced by the LIFT and ALFA programmes, can we agree on that?

LT GEN (RET) STEYN: Not yet, I'll tell you why. Allow me to refer you to the sequential Councils of Defence or
10 [indistinct] of this nature. Just bear with me. If you go to page 177 in my bundle you will read "The Minutes of the Ninth Council of Defence held in Pretoria on 31 October 1997". If you turn the page it starts off with "International Offers: Contender Evaluation". You will find no reference to SDPP.
15 Then if you go to 8 December, "Minutes of the Special Council of Defence Meeting 8 December 1997", 182, and you turn the page to item 4 it's headed "Government-to-Government Offers", nothing on SDPP. Okay? Let's go on. 9th of February 1998 page 188 item 5.4 "Government-to-Government Offers". Right?

ADV CANE: Mr Steyn, may I interrupt you there? When
20 these documents are referring to the government-to-government offers, were you suggesting that they are referring to other equipment types and if so, can you tell me what else we must include?

LT GEN (RET) STEYN: The reason I took you through these,
25

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and you didn't allow me to continue, is simply to indicate that the name of SDPP came later. You had different [indistinct] government-to-government offers and so on. It's only later that the programme adopted by the Minister acquired the label SDPP. Now if you ask me when I'll have to trawl through them again, I don't know, I can't remember, but in hindsight many of us referred conveniently to all these initiatives, government-to-government proposals, Strategic Defence Alliance, which was nonsense, there wasn't such a thing, and there are no official government-to-government agreements, it was later when we brought this thing into order and we said let's allow ARMSCOR to do its job as it's supposed to do sometime in 1998 and you allowed me to go to February 1998. After that the useful name of SDPP was used.

So, you wanted me to put the SDPP package in a nutshell. If you ask me again those listed in the ambassadors' letter, would they be in the SDPP, yes, they would, provided you qualify your answer and say as we later to refer to it, because then the reference was only government-to-government.

ADV CANE: Mr Steyn, it is going to take us a very long time if we continue on this basis. All I was seeking to do was determine a label that you and I could attach to a defined list of programmes that then later changed to include LIFT and ALFA programmes. If you would like to suggest a better name

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that I should use than SDPP, then go ahead, I'm simply looking for a label with an agreed content.

LT GEN (RET) STEYN: Well, let's use the label SDPP with the proviso that it only came about later in 1998 and not in the documents you refer to me.

ADV CANE: Right, so we have after some time now at least agreed we can use the label and I accept that the label actually came about some time later, but for current purposes, for convenience at this stage then we know what we're talking about. Let's go back please to page 166, that's of course of your bundle please. We are still on the document headed "Management Directive" and dated 28 October 1997. We began this interchange with a reference to the first paragraph which refers to certain proposals and now that we have a defined term "SDPP", are you prepared to accept that this document concerns itself with the SDPP?

LT GEN (RET) STEYN: I would agree, I would agree with you that for the use of our discussion, I would agree, but as I pointed out in 1997 SDPP was not used. There is no reference here to SDPP. If there is [indistinct] my mistake.

ADV CANE: Mr Steyn, it seems you are trifling with me. I'm trying to agree an agreed term between us to refer to the six equipment types that were being considered as at 28 October 1997. That's all I'm trying to do. We agreed we would use the term SDPP, we agreed it eventuated at a later

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time and now I seek to use it and you will, you still seek to put up obstacles. This is going to take an enormous amount of time if we can't engage with one another on an agreed basis.

LT GEN (RET) STEYN: Let's talk about SDPP.

5 ADV CANE: Then let me pose my question again. Do you accept that the proposals that are referred to in paragraph 1 and to which this document applies, is the SDPP?

LT GEN (RET) STEYN: Yes.

ADV CANE: Could you please then have a look at
10 paragraph 3 of the document, let me read it out:

*"The MoD management committee will manage interdepartmental (MoD) involvement in evaluation of the proposals in accordance with the policy guidelines contained in reference C additional to
15 those contained in reference B".*

Mr Steyn, I put it to you that reference C and reference B being the MODAC and Policy Directive 4/147 are to both apply, they are to operate side-by-side to the SDPP.

LT GEN (RET) STEYN: I do not agree. You've skipped
20 paragraph 2. Can you talk about that?

ADV CANE: Say what you would like to say.

LT GEN (RET) STEYN: It says:

*"In the absence of international [sic] policy or instructions regarding international proposals,
25 coordination of interdepartmental involvement in the*

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5 *evaluation of proposals accrues to the MoD management committee established (hereby) to address the proposals. This coordination is executed in terms of [sic] of the principles and guidelines contained in reference B, in pursuit of the aim ...”.*

It doesn't say C. C, C has fallen away, it was never, it was never approved and it's merely referred to here as something which existed for a short while.

10 ADV CANE: What do you say then about the express provision in paragraph 3 that the MoD management committee that is referred to in 4/147, and you conceded that Mr Griesel was correct when he said that that contemplated the establishment of an interdepartmental workshop and the
15 development of a second order value system, what do you say then about paragraph 3 stating that reference C applied in addition to reference B?

ADV SIBEKO: Chair, I apologise for interruption. My attention has been drawn to the fact that the camera seems to
20 be pointed at the witness as he is giving evidence, contrary to the directive issued earlier.

CHAIRPERSON: I suppose the camera people [indistinct]. Last time when we gave an order that when Mr Steyn testifies the cameras should not focus on him because that makes him
25 uncomfortable and unable to give his evidence properly. Can

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we stick to that? Yes, in that direction. In any other direction except on Mr Steyn. Thank you. Thank you Advocate Sibeko.

ADV SIBEKO: Thank you Chair.

ADV CANE: Mr Steyn, should we go back to where we were before the ...

LT GEN (RET) STEYN: Yes.

ADV CANE: I am concerned that you may not recall and it was a long proposition I put. Let's break it up and take it step by step if I may. You referred the Commission to paragraph 2 which refers to MODAC reference B. And the last sentence specifically prescribes that there is to be a coordinated effort or coordination executed in accordance with the principles and guidelines of MODAC and it's talking about the management committee, it's talking about an interdepartmental policy as well to coordinate the interdepartmental involvement. Do you see that?

LT GEN (RET) STEYN: Yes, I see that.

ADV CANE: And you are well aware because you testified to it, that MODAC contemplates that interdepartmental coordinating function at the level of the AACB. You accept that?

LT GEN (RET) STEYN: Yes, I do.

ADV CANE: So, we know MODAC is relevant and contemplates the AACB, the Arms Acquisition Control Board to perform that function. Now we go on to paragraph C. There is

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to be a management committee. I suggest to you it's much the same as the workgroup concept with which you were familiar, not so?

5 LT GEN (RET) STEYN: Yes, the Management Committee is described on page 169

ADV CANE: Correct. And you accept that it's to perform the same function as the workgroup which you yourself had contemplated would be required.

10 LT GEN (RET) STEYN: With reference to 147? What is ... Which [indistinct] referring to now?

ADV CANE: No, I'm not referring to 4/147, I'm referring to the workgroup which you charged would be established to give policy guidelines to the Minister and Cabinet. You recall that?

15 LT GEN (RET) STEYN: Yes. And this is the outcome of that offer.

ADV CANE: So, we're dealing with the same workgroup and in this document it's called a management committee or MoD management committee, to manage that interdepartmental policy proposal role and coordination role. When we get to policy which was what paragraph C concerns itself with, it states that the guidelines are to be found in two policy documents, the first is reference C 4/147 in addition to those policies contained in MODAC, and so I put it to you again that
20
25 it was contemplated that both policies would apply side-by-

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side.

LT GEN (RET) STEYN: I do not agree. 147 fell away.

ADV CANE: Very well Mr Steyn. It is of course not so just because you say it's so but we shall continue. Have a look
5 at paragraph 9 please at page 168, we are reading further above, the management committee, and you will see it reads:

"The MoD management committee's involvement in this evaluation will be regulated by policy guidelines of reference C".

10 So, again Mr Steyn it is anticipated that 4/147 is to regulate the MoD management committee's involvement with the evaluation.

LT GEN (RET) STEYN: Again I don't agree. It says "regulated by the policy guidelines" in that reference, it doesn't
15 say the reference C is still applicable, that's my interpretation and you can have yours.

ADV CANE: Let me understand that interpretation. The words "will be regulated by the policy guidelines of reference C" mean that reference C falls away and is superseded on, in
20 your view?

LT GEN (RET) STEYN: Yes, it does.

ADV CANE: Mr Steyn, will you turn to page 171 of this document and I want to draw your attention to the fact that it has been issued on behalf of the Chief of the National Defence
25 Force General Meiring as I understand it, and on behalf of the

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Secretary for Defence, yourself. Do you see that?

LT GEN (RET) STEYN: Yes, I do.

ADV CANE: And I presume you have no issue with the fact that this was issued under your authority and intended to govern the SDPP's.

LT GEN (RET) STEYN: Correct. It is in line with the request that I made [indistinct].

ADV CANE: You see, that takes us to a position where not only did you not withdraw Policy 4/147 and you conceded earlier that there was no written withdrawal of that policy between the period 8 August when it was first issued and 23 September when the Minister issued his letters, but thereafter you yourself were responsible for issuing this management directive which in express terms named this Policy 4/147 as one of the policy documents in the reference list and proceeded to issue guidance to the Defence Community, particularly members of the Management Committee, that they were to find policy guidelines, MODAC and 4/147, and so I put it to you that your evidence in chief and your evidence today that once the government-to-government letters were issued 4/147 was superseded or as you also said the policy reverted back to MODAC alone is not borne out by the documents that existed at the time.

LT GEN (RET) STEYN: There's a list of references, one; letters, two; the investigation for MODAC policy and three;

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reference made to 147. It doesn't state here that they still apply, you've made reference to the fact in paragraph 3 that the policy guidelines contained in reference C could still be used if applicable. Now I'm stating that from this date on, even prior to that when the RFO's were issued there was an absence of government-to-government agreements, there were none, there were none. If there had been a government-to-government agreement 147 indicated as a First Order that there ought to be an evaluation of the interoperability of the participating defence forces.

So, for example if it's the deal between the UK and South Africa where the frequencies of aircraft would be compatible and many other, but that was never done.

CHAIRPERSON: Mr Steyn, if you don't mind can you ask Advocate Cane to repeat the question? Can you ask her to repeat the question because I don't think you have answered the question that she put to you.

ADV CANE: Chair, I will take your directive and repeat the question. Mr Steyn, I put to you that you agreed with me earlier today that there was no written withdrawal of Policy 4/147 between the period that you issued it and the government-to-government or Ministerial letters issued on 23 September 1997. Subsequent to that, far from there being any withdrawal you yourself authorised the issue of this Management Directive which on its own terms made both

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MODAC and 4/147 applicable to the SDPP's. I put it to you that that was contrary to your evidence that 4/147 was superseded and was not applicable to the SDPP's. I'm giving you the opportunity to comment on that.

5 LT GEN (RET) STEYN: [Indistinct], I understand your question. In my mind Policy Directive 147 only applies if there is existence of government-to-government agreements. I'm not allowed to ask if you agree, but that's my statement. So, therefore if from this date there are no government-to-
10 government agreements then 147 is actually irrelevant, whether it states here, or whether I've withdrawn it, it's irrelevant.

ADV CANE: Let me point out to you that this version that you're putting up pertaining to the applicable policy is changing, mutating as you go along. In your evidence in chief
15 you said that what triggered the demise of 4/147 was that within a month of the issue of 4/147 the Minister was ready to issue or to instruct that we go out on initiatives of our own and you were referring to his letters of 23 September 1997, so it was the initiative of the Minister ...

20 LT GEN (RET) STEYN: No.

ADV CANE: ... which you said resulted in 4/147 being superseded and as I understood your evidence you were relying strongly on the words in 4/147 that said that that policy was applicable to foreign initiated proposals. That's your first
25 scenario in evidence in chief and I see you want to answer or

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comment now, so I'll allow you the opportunity.

LT GEN (RET) STEYN: The Minister instructed the Department with a view to ARMSCOR issuing Requests for Offers is not consistent with the letters he sent out. I didn't agree with it, but I had to live with it. The content of that letter, the first paragraph makes reference to a Strategic Defence Alliance and I told you earlier there is no such thing. I put you to the proof of it. I've asked the Commission to give me information on that, I can't, so if you are relying on that I'm saying there is no such thing as an existing government-to-government alliance, so therefore the Minister's instruction in September to offer or to request offers, in other words now the initiative is on our side, it is not the list of letters that he sent out, it is the actions of ARMSCOR to do that and now this applies to that and not to the letters.

ADV CANE: Mr Steyn, just for the purposes of the clarity of the record you said "this applies to that", I'm afraid you are going to have to indicate what it was you were pointing to with your finger.

LT GEN (RET) STEYN: You mentioned the first paragraph of the letter and I requested you to indicate what is meant by Strategic Defence Initiatives, and I don't know what it is. So, to lead me to the set of Request for Offers is incorrect, you can't do that, the letters of the Minister is not the same as the Request for Proposals.

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ADV CANE: Yes. No, I had understood that explanation and I'm coming back to it, but you were pointing with your hand to a document. Perhaps just look at the document that was underneath your hand and just name it for the purposes of the record.

LT GEN (RET) STEYN: I don't know which document ...

ADV CANE: Alright, if you are unable to assist us well, then that evidence unfortunately is not going to have any meaning. The ... Let's then deal with your answer, and this is only the version put up in chief pertaining to the initiative. You now say that there is no Strategic Defence Alliance and you have said similarly today that there are no government-to-government agreements and because there are no such alliances or agreements you cannot say that 4/147 is applicable, is that your answer?

LT GEN (RET) STEYN: It is my answer.

ADV CANE: Mr Steyn, let's relook at page 2 of the DoD bundle and you will read it again in response to presentations made and proposals received on a Strategic Defence Alliance, herewith a response to such, and an overview of the way forward. See Mr Steyn, I put it to you that on an ordinary reading what the Minister was intending to do was respond to proposals received. The proposals pertained to a potential Strategic Defence Alliance and it was to that that the Minister was responding and proposing a way forward. Do you see that?

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LT GEN (RET) STEYN: I see that.

ADV CANE: And so it is not necessary for the Department of Defence to actually produce a concluded Strategic Defence Alliance [indistinct] that existed as at 23
5 September 1997, because what we are dealing with is a negotiation involving proposals and responses to such proposals.

LT GEN (RET) STEYN: The page you are referring to is His Excellency Mr Perron, High Commissioner of Canada. On the
10 23rd of September 1997 there were no proposals from Canada and the [indistinct] result, I don't know whether I should go on, but the first paragraph is misleading because some, if not all of them did not make presentations in terms of a Strategic Defence Alliance. That is my statement.

ADV CANE: Mr Steyn, would you confirm for the record that certainly as at 23 September 1997 there had been a French proposal, there had been a British proposal and German and Italian versions were expected as at June and presumably would be imminent, would you confirm that?
15

LT GEN (RET) STEYN: I confirm but not in terms of any Strategic Defence Alliances or payments, there weren't any there.
20

ADV CANE: Yes, you and I do not differ on that, that there are no Strategic Defence Alliances as at this point. What
25 we differ on is that this response made perfect sense because

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proposals had been received and the Government had decided on a way forward in relation to them, including the expansion of the invitation to pursue other initiatives from other countries in relation to the equipment it required. Surely you do not agree, disagree with me on that?

LT GEN (RET) STEYN: I agree with your statement, but I don't understand the point you are making. He writes the same letter to everybody, whether they received an unsolicited response or not. Certainly in the case of Canada and Brazil there weren't any unsolicited proposals in terms of a Strategic Defence Alliance, I don't know how the ambassador took that letter, I'm not sure.

ADV CANE: Yes, we needn't speculate on whether he understood it or not. For the purposes of this discussion I have dealt with your suggestion in evidence in chief that it was the initiative, but our Government, the South African Government that caused 4/147 to be inapplicable. Your next suggestion this morning was that MODAC and 4/147 could not apply side-by-side and that was the reason you said that 4/147 did not apply to the SDPP's. I have shown you in your own document, your own policy directive, sorry, Management Directive that commences at page 166, that it was contemplated at the time that the two documents could and would apply side-by-side, do you agree with me?

LT GEN (RET) STEYN: Could not, should have.

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ADV CANE: Now the third reason you have said that 4/147 lapsed was that there were no government-to-government agreements in existence at this time. Why do you say that that means that this policy document was inapplicable?

5 LT GEN (RET) STEYN: First of all let's get it right. 147 never had status as a policy. The Minister did not approve the policy as we understood it and which was signed by me and General Meiring, so I would like to state that it didn't lapse, it was simply not applicable anymore. Now the second part
10 suggests that if there were no government-to-government agreements then 147, if it had been in existence, could have, would have lapsed. It is of no consequence. The aim of 147 is to deal with the consequences of a government-to-government agreement with regard to offerings of this nature.

15 ADV CANE: Yes Mr Steyn, I have listened intently to your answer and I must put it to you that the documents are not consistent with your evidence. Moreover Mr Griesel gave very clear evidence that 4/147 was a document specifically set out or done he said, at the onset of the SDPP's and pertained
20 specifically to the SDPP's. In addition the evidence of Mr, Admiral Howell was that he understood as a member of the Defence community, he understood that he was to implement the Policy Directive 4/147 in relation to the two projects for which he was moderator, and so I point out to you that your
25 evidence is out of kilter with the other witnesses and out of

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kilter with the documentary record.

LT GEN (RET) STEYN: Ma'am, are you referring to Mr Griesel's recorded evidence in chief here, or may I refer you to these slides, [indistinct] slides?

5 ADV CANE: Mr Steyn, we are not going to have a debate as to the content of Mr Griesel's evidence. In fairness what I think you should do is simply place on the record the slide to which you intend to refer and I shall place on record the reference to the transcript and we shall not then have a
10 debate about who is right about what is said, we'll leave that to the Commission to determine. The reference to the transcript then Commissioners is at page 1870 going on to 1873. Mr Steyn, if you would like to place your reference on record?

LT GEN (RET) STEYN: Is that the reference to the
15 transcript of Mr Griesel?

ADV CANE: It is.

LT GEN (RET) STEYN: Okay. But even here at ..., but what I used in my evidence in chief is at "PS4". My pages are not numbered but it is slide 25, if you could assist me please?

20 ADV SIBEKO: Chair, the slides start at page 124 of the witness bundle.

LT GEN (RET) STEYN: My attention has been drawn to page 131 and I've taken four slides on one page, so it's the top left hand side, and I wish to quote from it, it says: "Policy Directive
25 4/147 is only relevant to International Defence Equipment

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Offers”.

ADV CANE: Yes, thank you for that reference. As I intimated I think we should leave it there, it speaks for itself and I will be arguing and suggesting to the Commission that that is exactly correct.

LT GEN (RET) STEYN: But may I continue?

ADV CANE: Mr Steyn by all means if you, what you are saying is relevant to the proposition I put to you then you must complete your answer and you are invited to go ahead.

10 LT GEN (RET) STEYN: Thank you. The next bullet says:

“The numerous non-SDPP acquisition programmes were being managed by ARMSCOR in parallel to the SDPP’s”.

And then it says the next bullet:

15 *“The Policy Directive did not amend any of the standard policies or practices”.*

And therefore the Management Directive of General Du Preez uses some of the guidelines that’s created in 147 to be applicable in his new Management Directive. Thank you for allowing me.

ADV CANE: Thank you, my pleasure. Mr Steyn please then turn to page 173 of your bundle. This is the letter to which you referred the Commission earlier in answer to one of my questions and I said we would revert to it. It’s a letter dated October 1997 and I understand from your evidence in

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chief that you agreed, or you have no qualms with this letter in the sense that you authored it and sent it out to the Minister of Defence in October 1997 and it pertained to the International Offers, am I correct in that regard?

5 LT GEN (RET) STEYN: Yes Ma'am.

ADV CANE: Let us look at paragraph 2, which is the paragraph you referred to earlier:

10 *“Preparation for the contender evaluation phase, due to commence after receipt of the requested information, includes weighting of the elements of the top level value system presented to the AAC on 19 Sep 97. The value system endeavours to determine which proposal offers the best value for each of the product systems. See Appendix A. The value systems associated with the three elements of the top level value systems (military utility, industrial participation and finance) have been finalised, and are under configuration control at ARMSCOR”.*

15

20 Mr Steyn, you will agree with me that you are here addressing the issue of the value systems to be applied in evaluating the offers, and in particular the Second Order, second level?

LT GEN (RET) STEYN: Yes, correct.

ADV CANE: And if we look at Appendix A we see that your heading states exactly that, that it's the Second Order

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Evaluation value system consisting of three elements, Military Value, Industrial Participation and Financing Consideration. You agree with that?

LT GEN (RET) STEYN: I do Ma'am.

5 ADV CANE: And so what you were confirming is that although we unfortunately cannot locate, notwithstanding diligent search that AAC minute of 19 September 1997, according to you this value system had been approved by the AAC and is now under configuration control, do you agree?

10 LT GEN (RET) STEYN: Yes, it seems so.

ADV CANE: We will return to the Second Order evaluation system but let us proceed to paragraph 3. When I deal with paragraph 3 one thing I would like to understand is if you intend to refer to the policy document which we know as
15 MODAC and which was referred to in your Management Directive at page 166 as MODAC, I presume you would always just use the term "MODAC"?

LT GEN (RET) STEYN: Yes. The policy document is
20 MODAC. The document you're referring to now is an attempt to coordinate and to evaluate and to bring to bear the constipation of [indistinct] Industrial Participation itself. MODAC didn't make provision for that.

ADV CANE: Well I suggest it did in that the AACB was intended to perform that sort of coordination role but let's
25 leave that aside for now, I was asking you about how you would

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refer to MODAC and you're very clear that MODAC is MODAC. When we refer to 4/147 in the documents at page 166 it's got this very long name, "MoD Policy for Dealing with International Defence Equipment Offers in the MoD" and I suspect that that long description is lifted off 4/147, it's the same heading. Do you see that very long heading? And so if you were writing about the MoD Policy on International Offers, I suggest to you that you are referring to the MoD Policy for dealing with International Defence Equipment Offers in the MoD, but in a shorter way. Would I be correct?

LT GEN (RET) STEYN: I hear the question but where is this all ... In connection with what were you asking this?

ADV CANE: We will get to that shortly Mr Steyn, but would it be fair of me to assume, or would there be another document which you would refer to by the name MoD Policy on International Offers?

LT GEN (RET) STEYN: Where are you reading, I'm not on the same page, page?

ADV CANE: Mr Steyn, look at page 166.

LT GEN (RET) STEYN: I'm on page 166.

ADV CANE: Thank you. Now reference C captures the very long name of 4/147 and that is where I'm reading from, that very long name, "MoD Policy for Dealing with International Defence Equipment Offers in the MoD". And what I am suggesting to you is when you refer, if you say MoD Policy on

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International Offers, it is to this document that you are referring. Could you suggest another document?

LT GEN (RET) STEYN: No, I cannot.

ADV CANE: Then if you would be so kind as to return
5 back to page 173 and I want to deal with paragraph 3 at this point, you raised it earlier. You've already read the first sentence relating to your concern that there would be a failure to perform a principled, disciplined formal evaluation. Let's read the second sentence:

10 *"These pitfalls along with the failure to adhere to the MoD policy on international offers, have the potential to derail the strategic/alliance partnership initiatives causing severe embarrassment to the DoD".*

15 Now there Mr Steyn are the words, "the MoD policy on international offers" and I was locating them as belonging to the document we are calling 4/147. Do you have any other suggestion as to what you were actually referring to, or are you willing to accept that you were referring to 4/147?

20 LT GEN (RET) STEYN: The first paragraph of that letter says I refer to the MoD letters.

CHAIRPERSON: Just hold on Mr Steyn, just listen to the question carefully and try and answer the question. Ask Advocate Cane to repeat the question so that you can be able
25 to answer the question.

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ADV CANE: So Mr Steyn, my question, if you look in paragraph 3, second sentence you will see the words after “These pitfalls along with failure to adhere to ...”, mark the words for yourself, “the MoD policy on international offers”.

5 You are referring there to something specific and I suggested to you it can only be 4/147, but I’m inviting you to suggest anything else to which those words could fairly have referred.

LT GEN (RET) STEYN: You refer to 147 as an annexure to that and you invite me to offer anything else. I can’t.

10 ADV CANE: Very well. Now if indeed as at October 1997 when you addressed the Minister on issues that are causing you concern and are clearly important because they warrant his attention, you are advising that it is important to adhere to the MoD policy on international offers and that unless in fact there
15 is adherence to it, it could even derail these initiatives and cause embarrassment, do you see that?

LT GEN (RET) STEYN: I see that, but remember I said I am not aware of any of these policy initiatives or grievance. I see initiatives but it contains no obligation, so if there was an
20 obligation indeed between two governments, then 147 will no doubt be relevant.

ADV CANE: Yes, I’m happy with that Mr Steyn. We agree then that if there are initiatives 147 is indeed relevant and it can be the only reason why you’re referring to it in this
25 very important letter to the Minister.

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LT GEN (RET) STEYN: What did you say the letter was, this, what letter?

ADV CANE: I said it was a very important letter. Very well, then we agree then that that is yet another indication that you considered 4/147 to be an appropriate and relevant document to the SDPP's. You had an annexure to that letter, it's the Appendix A to which we have referred, and then at page 176 there is a further annexure, if you would please turn there. In your letter you refer to the Appendix B as being "International Offers: Evaluation Schedule" and we see that as the heading of this document, and interestingly the very first item in your schedule is the document or a date of 8 August 1997 and the activity is to establish the Policy. Now Mr Steyn, what policy other than 4/147 was established on the 8th of August 1997?

LT GEN (RET) STEYN: It's 147.

ADV CANE: Thank you. Sorry Commissioners, would you bear with me for one minute. Mr Steyn, please then refer to page 177 which is a Council of Defence Minute for the Meeting held on 31 October 1997 and it appears from the heading that it's the ninth Council of Defence Meeting, number 9/1997. Were you there?

LT GEN (RET) STEYN: Yes, I was.

ADV CANE: Thank you. You will see that in the "Action" column you are to receive the third copy of this

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particular minute, I can just point that out to you. If you would then turn to page 178 of the bundle and at paragraph 5 we see there's a heading "International Offers: Contender Evaluation", and we are told in 5.5.1 that Captain (SAN) Dewey joined the meeting.

5.5.2. *Mr Haywood introduced the items stating that to ensure best value for South Africa, three aspects were important: firstly the military value (what the Arms of Service wanted), secondly offsets (industrial participation) and thirdly overall financial considerations.*

5.5.3 *Captain Dewey presented the evaluation value system (refer appendix C) explaining the various components".*

Now would you have a look at Appendix C for me please, you will find it at page 181 and you will see at a glance that it contains the same evaluation system that you had set out in your letter to the Minister and that was at page 175. Do you confirm that?

LT GEN (RET) STEYN: I confirm.

ADV CANE: And so we have that value system being presented to the Council of Defence in your presence and presumably it bore your full endorsement at that point. Mr Steyn, you chose not to comment on that but I shall proceed

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regardless. You earlier confirmed that this ...

CHAIRPERSON: Just hold on Advocate Cane. I think in all fairness the witness must be given an opportunity of commenting to this statement. Just put the statement to him again unless he [indistinct].

ADV CANE: Certainly Chair. Mr Steyn, I put the statement to you that you had no difficulties and in fact endorsed the value system as set out at page 181 and presented to the Council of Defence.

LT GEN (RET) STEYN: Correct.

ADV CANE: Now you agreed earlier that this value system was the Second Order or second level value system that was being formulated for the purposes of the SDPP's. You confirm that?

LT GEN (RET) STEYN: I do confirm that.

ADV CANE: Your evidence in chief you had taken issue with whether a Second Order value system had ever been established at all and the reason, as I understood your evidence, and was contained in your statement, was that there was no First Order value system established and therefore there could be no Second Order value system and therefore no Third Order value system. Do you recall that part of your evidence?

LT GEN (RET) STEYN: I would appreciate it if you could point that into my, into my statement and that will allow me to

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answer fully.

ADV CANE: Mr Steyn, it will come up in the course of my cross-examination, I don't want to take time locating it at this moment because I know I've cross-referenced it and it will
5 come up again, so let's just pen that for now, you can think about it in the meantime. Let me carry on then.

LT GEN (RET) STEYN: No before you carry on, let me then respond to your question.

ADV CANE: Do respond.

10 LT GEN (RET) STEYN: If you refer to page 157, this is the 147 document.

ADV CANE: Yes.

LT GEN (RET) STEYN: Okay? You will see there that at paragraph 15 ... Commissioners, are you with me, page 157
15 paragraph 15a "First Order" evaluation. Now I explained that in the context of government-to-government agreements and the offering and acceptance of proposals:

*"An authorisation to evaluate the defence equipment offer is to be obtained from the Minister of
20 Defence".*

Then there's a workgroup which does the First Order evaluation, it incorporates military evaluation, supply government [sic] and then criteria established in interoperability and best value. That was never done. That
25 was never done. Now the note says:

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“These recommendations and the first order value system are to be prepared for presentation at the interdepartmental level”.

The Second Order there says:

5 *“Upon acceptance of the first order evaluation, implementation of the recommendations should be via appointment ...”.*

I’m suggesting my referring to this page that the Second Order evaluation mentioned by you on page 177 is not the same as referred to in 147, since the First Order was never conducted and never informed the workgroup to do a Second Order evaluation. So, the Second Order evaluation in this particular context merely refers to that diagram where you populate the best value equals military value plus Industrial Participation divided by financial consideration, and I don’t know what the figures look like anyway. But don’t, in my mind I don’t equate this Second Order evaluation with the 147 because that never happened.

ADV CANE: Mr Steyn I accept that in my mind you didn’t previously equate them for the time being, for the purposes of the SDPP’s and for the purposes of MODAC, the AACB and also this management committee that was established in terms of your management directive and also your letter to Mr Du Preez and Mr Shaikh, you will accept then that this is the Second Order value system that was to be

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applied to the SDPP's.

LT GEN (RET) STEYN: Yes. But it relates to the formula depicted in very simple terms on Appendix "A".

ADV CANE: Yes, I accept that it was fleshed out in far
5 more detail, this was a high level summary. Now I also then
realise that the only point of dispute between us is whether the
Second Order value system find its origination in 4/147 or
whether it finds its origination solely in the string of documents
to which I subsequently referred you. To be fair let me take
10 you through the string. The string would be starting off with
your letter at page 160 and you agreed with me that in
paragraph 6 when you refer to the putting together of the
workgroup to produce policy advice, you were referring to the
formulation of the Second Order value system. So that is the
15 first link. The second link is at page 166, your Management
Directive, and in particular paragraph 3 where the management
committee is there told to formulate policy guidelines. Do you
see that? The third link is at page 173 which is the letter
which we have just read to which you annex the Second Order
20 evaluation value system for the purposes of the Minister's
information, do you see that?

LT GEN (RET) STEYN: Yes, Ma'am.

ADV CANE: The next link is at page 177 which is the
Council of Defence Minute 9/1997 and to which we had just
25 referred where page 178 we are told that Captain (SAN) Dewey

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presented the value system and we see that it is again set out at a higher level with Annexure "C". There's one more link, if you would like to please turn to page 225, it is another letter from you, it is a letter dated 14 April 1998 and in paragraph 2
5 you say:

"This evaluation is restricted to the domains military value, industrial participation and financing reflected in the second order evaluation value system (Appendix A)".

10 And Appendix "A" you see comes at page 227, it's headed "Second Order Evaluation Value System" and we have the same diagram at 228 with the three fundamental elements. Do you see that? So, let me summarise and you can see whether we disagree at all. For the purposes of the SDPP a Second Order
15 evaluation system was indeed in place, it had been properly adopted, put before the Council of Defence and repeatedly communicated to important people by yourself, and so it was properly in place for the purposes of that Second Order evaluation, do we agree on that?

20 LT GEN (RET) STEYN: The Management Directive that you referred to on the 28th of October, is that the one that you are referring to now?

ADV CANE: Yes, I ... Yes, you are quite correct.

LT GEN (RET) STEYN: Yes, then we are on the same page.

25 ADV CANE: Thank you. I would like you then just to

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explain the one area where we differ, the Department of Defence, or the Defence community based on your and General Meiring's policy directive issued on behalf of the Minister of Defence on 8 August 1997 commonly called 4/147 specifically contemplated Second Order evaluation system and I do see your difficulty that it was linked to a first order which you say didn't occur, but what I put to you is that subsequent to that document there are repeated and convincing references to a Second Order value system in place for the SDPP and that therefore the disavow by yourself of the existence of that value system we need to revisit.

We need to revisit because firstly it seems that it was delinked from the necessity for the First Order value system because you yourself implemented a workgroup to formulate it, went through the CoD, went to the Minister, was communicated by yourself to apply and therefore it was in fact applicable. Let's see where we differ.

LT GEN (RET) STEYN: Okay. Please refer to page 157 paragraph 15b, "Second Order". Second sentence:

"Presentation of this second order value system ..."

Not [indistinct]:

"... must embrace international [sic] departmental and political sanction to pursue detail solicitation of the information on a competitive basis for the individual equipment elements of the offer".

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I cannot see that linked to the equation that you've used, I'm sorry, I don't.

ADV CANE: Sorry Mr Steyn, I wasn't with you. Just indicate to me where you were reading.

5 LT GEN (RET) STEYN: Okay, page 157, it is in the 147 document and I refer you to paragraph 15b, the second sentence which starts with "Presentation ...". Now the writer says this second order presentation must be embraced interdepartmental and political sanction to pursue detail
10 solicitation of the information, so it hasn't been created yet, so I would make a counterargument and say your linkage after two appendices that reflect the equation is convenient, I don't agree because the whole document 147 has, is full of international considerations, political sanction. There is
15 nothing like that in the appendix that you referred to, so I concede that the two appendices for Second Order that you've referred to, it should be linked, the one mentioned in the CoD and the one in the 28th of October document, but I hardly see a link to this one.

20 ADV CANE: Mr Steyn, that is where you and I will then differ. I put to you that it is very clear that there is an interdepartmental element to the Second Order value system consisting of the military, financial and industrial participation elements and you yourself instituted a workshop across various
25 departments. It's clear from your letter to the Minister and the

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fact that the “ministerially”-chaired CoD was presented with this policy or this value system, that it entailed political sanction, and you would also have to controvert the evidence of Mr Giesel who said, and you agreed earlier, that this
5 Ministerial Directive 1/147 [sic] contemplated the interdepartmental workgroup which had to develop the Second Order value system and so I will submit that there is a link and I’m putting to you that indeed the link is a strong link.

LT GEN (RET) STEYN: That’s your contention Ma’am, not
10 mine.

ADV CANE: Very well, we will move on. Oh, I want to put one other thing to you and ask for your comment on that. In this regard Mr Shaikh wrote a letter which you will find at page 221, it’s a letter dated 7 April 1998, and it is a letter in
15 relation to which you took some umbrage because it seems Mr Shaikh had signed the letter purportedly on your behalf and your evidence was the first time you saw this letter was when you were preparing for this hearing. Have I correctly captured your evidence?

LT GEN (RET) STEYN: That’s correct.

ADV CANE: Now in the first paragraph Mr Shaikh refers to two documents, you will see long references there. The second is “The informally constituted management committee to provide counselling to the Minister regarding the way to treat
25 the packages” and you will see the reference there and the

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date 9 June 1997 are the same as those that appear at page 160 which is your letter to him and to General Du Preez of 9 June 1997. You can take my word for it, I checked them. The letter that Mr Shaikh is referring back to is the very letter
5 in which you agreed that you charged him and Du Preez to put together the workgroup for the purposes of the policy advice, do you see that?

LT GEN (RET) STEYN: Yes, but the memorandum is ...
Sorry. The memorandum is addressed from me to General Du
10 Preez and not to Shaikh, so he has no business to activate my instruction, that is for General Du Preez to do and he acted upon that by issuing Management Directive evaluation of International Offers 28 October 1997, your page or my page 166. That is what is referred to, not his committee.

15 ADV CANE: Right, so you say that Mr Du Preez was authorised to issue the Management Directive and the management committee he established which is set out at page 169 is under authority of your letter, is that your evidence?

LT GEN (RET) STEYN: That is my evidence.

20 ADV CANE: And you will see if you look at page 169 that the management committee is made up of Mr Du Preez, Mr Esterhuyse, Mr Raubenheimer, Mr Shaikh and so on, including Mr Howell, do you see that?

LT GEN (RET) STEYN: I see it.

25 ADV CANE: And so Mr Shaikh right from the beginning

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of the management committee established under your authority was part of the management committee, you accept that?

LT GEN (RET) STEYN: Yes, but subordinate to the chairman. General Du Preez hardly ever chaired any of the meetings, most of them [indistinct] were according to my information chaired by Mr Esterhuysen and you have included in your bundle one of the minutes of that meeting.

ADV CANE: Yes. Now this management committee was the committee that had to establish and advise on policy and develop the Second Order evaluation value system, we've agreed on that, you're with me there?

LT GEN (RET) STEYN: Yes.

ADV CANE: And so when Mr Shaikh's letter refers to the Second Order evaluation system, let's go back to 221 ... Sorry, it doesn't actually refer to those words yes, it simply refers to a workgroup convened for establishing policy guidelines, I see. The Second Order evaluation used to evaluate the competing offers was a concept with which you were familiar and you knew exactly what it entailed.

LT GEN (RET) STEYN: I knew of, but I wouldn't say that I knew exactly what it entailed.

ADV CANE: You understood it involved these three elements?

LT GEN (RET) STEYN: I'm familiar with the concept and trusted those who worked with the formula to populate the

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blocks with values that make sense, because that particular diagram is of no use without populating it with the relevant figures.

ADV CANE: Very well. We conclude then on the
5 Second Order value system that the point of departure between us is simply whether it originated in 4/147 or subsequently to that but in either event it was authorised and it applied to the SDPP's.

LT GEN (RET) STEYN: If I may, refer to your own bundle
10 page 22.

ADV CANE: Mr Steyn, we are coming to this document, are you quite sure it's relevant at this point?

LT GEN (RET) STEYN: [Indistinct].

ADV CANE: Very well.

15 LT GEN (RET) STEYN: Okay, now this document, the page of which I've indicated, is a meeting held under the chairmanship of Mr Eric Esterhuyse, it is the International Offers Management Committee. Tabled at this meeting paragraph 6.3:

20 *"Capt Dewey tables a Draft meeting constitution (Appendix D) ..."*.

That is your page 31. Okay? It looks exactly the same as the document appended to Mr Shaikh's letter dated 7 April 1998. And the meeting took no decision on that and our information
25 suggests that this particular draft policy were never discussed

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at subsequent meetings, that's my point.

ADV CANE: Thank you, we'll return to that topic. Mr Steyn, I'm going to actually move on to the question of SOFCOM and where it originated. Your evidence was that SOFCOM was a tool for circumventing the Secretary of Defence and the MODAC structures of the AACB and the AASB. You used words "circumvented, subverted, undermined" in your statement, in particular I refer for example to paragraph 8.3. You accept that?

10 LT GEN (RET) STEYN: If you consider on page 221 the first paragraph you pointed out that he made mention of the document on the 9th of June. Now in accordance with the management instruction issued by General Du Preez it was envisaged there ought to be a workgroup to coordinate. I submit that Mr Shaikh had no business as an [indistinct] on that to use this to create in parallel yet another workgroup to coordinate okay, and in fact he got away with it.

ADV CANE: Let me understand your evidence. You say that in addition to the workgroup which you yourself instituted and which found its formal expression in the Management Directive issued by Mr Du Preez on your behalf, in addition to that he created yet another workgroup or management committee that operated alongside the one you instituted, is that what you are saying?

25 LT GEN (RET) STEYN: That's what I'm saying.

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ADV CANE: And his purpose, you say in doing so, was to circumvent your role as authorising the MODAC structures, am I understanding you correctly?

LT GEN (RET) STEYN: I submit that the Management Directive Evaluation and International Offers issued on the 5 28th of October 1997 captures the intent to create a workgroup to coordinate. It is in there. And by doing what Mr Shaikh did, he simply duplicated something and took charge of it, he had no business doing that. His letter on the 7th of April was un-10 mandated, he had no right to do that.

ADV CANE: And let me put my question again. According to you the purpose for Mr Shaikh in creating this parallel structure that you are alleging, was to circumvent the Secretary of Defence and the MODAC structures of the AACB and the AASB, is that what you say the reason for it was? 15

LT GEN (RET) STEYN: I did, and I explained in my evidence statement [indistinct]. Would you like me to take you there?

ADV CANE: No, we are traversing the topic now. I just need to understand clearly why you say Mr Shaikh was doing 20 this. It was to circumvent your role and as I understand you, you accepted that the AASB did not have decision making power in relation to cardinal projects, including the SDPP, but that it had an ability to influence the recommendation that would be presented to the AAC.

25 LT GEN (RET) STEYN: Exactly, that's correct.

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ADV CANE: Let's then examine whether what in fact occurred that results in you being circumvented Mr Steyn, and whether the AASB was circumvented. I'd like you to please turn to page 234 of the documents and you should find a
5 combined AAC and AASB meeting, a minute for the meeting of 30 April 1998. Do you have that?

LT GEN (RET) STEYN: I do.

ADV CANE: Would you then turn to page 235 ...

CHAIRPERSON: Advocate Cane I'm sorry, you know, not
10 that I want to curtail your cross-examination, I just want to know how should we arrange our affairs. More or less how long do you think you are still going to be busy with your cross-examination?

ADV CANE: Commissioners, I'm relieved that you
15 interfered because I had in my head the normal court time of 16h00 and I had been watching the clock thinking I would carry on without regard for your ordinary times for which I apologise. I am going to need some time tomorrow morning to complete the cross-examination, if you would allow me to continue in the
20 morning that would be convenient.

CHAIRPERSON: My question was how long do you think you are still going to require, more or less, more or less?

ADV CANE: Yes, my estimate at this stage is another hour.

CHAIRPERSON: One hour.

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ADV CANE: And Commissioners, may I also report on the issue pertaining to the documents. The two documents to which I referred have now been declassified and they are available, so we will distribute them as soon as the Commission adjourns, which will allow the witness the opportunity to study them overnight.

CHAIRPERSON: So you say about an hour or so?

ADV CANE: Yes Commissioner.

CHAIRPERSON: Thank you. Maybe let me find out from Lawyers for Human Rights more or less how long do you think your cross-examination is going to be.

ADV SNYMAN: Thank you Chairperson, I estimate around a half an hour to around 40 minutes.

CHAIRPERSON: One hour. Advocate Gcabashe?

ADV GCABASHE: Commissioner, I really only have two questions, so I shouldn't be more than five minutes.

CHAIRPERSON: So, we can safely give you about five minutes?

ADV GCABASHE: I think so.

CHAIRPERSON: I think we are talking about two hours. What I intend doing probably, my suggestion is that give the witness the documents to go and have a look at it, we adjourn and we'll come back and we'll continue until we finish this witness, because our difficulty is that if we don't do that, tomorrow we have one witness to call and we might fall behind

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with our schedule. If at all maybe an additional two hours, we are prepared to sit here until 18h00 until we're finished with this witness. So, in the meantime I think I'm going to adjourn for tea, in the meantime you can give the witness the two documents that you referred to. We'll only adjourn until tomorrow if the witness is of the view that in order to consider the documents that you are going to give him, he'll need some time, he will be unable to continue with the cross-examination today. And then if he can, I would want to proceed and we can sit until 18h00 until we finish with this witness, otherwise we are going to fall behind with our schedule.

MR WAGENAAR: Mr Chair, if I may just say, come in and say that unfortunately we will not be able to return tomorrow, we are not available tomorrow, so if we don't finish today, another date will have to be arranged for this witness to return.

CHAIRPERSON: Yes, that is one thing that [indistinct]. So, in that case give him the documents, give the witness the documents, let him have a look at it, we'll take a break of about 15 minutes and then we'll come back and continue until we finish with this witness, even if it means sitting until 18h00, 19h00, we want to finish this witness today.

ADV CANE: As it pleases you Commissioner.

CHAIRPERSON: Thank you. Then in that case maybe let's adjourn for 15 minutes for tea, in the meantime you will make the documents available to Mr Steyn so that he can have a look

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at them. Thank you, we'll adjourn.

(Commission adjourns.)

(Commission reopens.)

5 CHAIRPERSON: Mr Steyn, can you confirm that you are still under oath?

LT GEN (RET) STEYN: I do Sir.

CHAIRPERSON: Thank you.

10 ADV CANE: Thank you Commissioners. Mr Steyn, we are dealing with the topic of SOFCOM. Could I ask you to turn your bundle to page 213. You will see it's the Third Council on Defence Meeting held on 21 March 1996. Are you on the correct document? Sorry, 1998, my mistake.

LT GEN (RET) STEYN: Yes, I'm on page 110, Minutes of the Third Council Meeting.

15 MR WAGENAAR: Page 213, sorry.

LT GEN (RET) STEYN: It was the CoD meeting held on the 20th of March yes, I'm there.

20 ADV CANE: Good. I would like to refer you to page 217. At the foot of the page there's a paragraph 5.3.11 where General Du Preez says the following, that "the second requirement of the briefing was guidance on the management structure for the evaluation sub-phase". He refers to a management committee and you will see he takes this topic up again on page 219 paragraph 5.3.19, also at the foot of the page, General Du Preez asked if he may have guidance on the

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SDP management plan and structure and there's a decision there:

“Council will come back to the workgroup with a final decision. In the meantime nothing is stopping the workgroup from continuing with their work”.

5

Now Mr Steyn you were present at this meeting, you will see your name is listed as present on page 213, and you would have heard the discussion on the workgroup which you had initiated. General Du Preez is asking for guidance and there's a decision that the workgroup must continue its work. Do you see that?

10

LT GEN (RET) STEYN: Yes.

ADV CANE: You had no difficulty at all with that at that point.

15

CHAIRPERSON: Just hold on. Can the witness, when you say yes can you just press the mic so that it can be recorded?

LT GEN (RET) STEYN: Yes, I will do.

CHAIRPERSON: Thank you.

ADV CANE: Thank you. Let us now please go to the DoD bundle at page 19. The reason I'm taking you there next is because it follows in date order.

20

MR WAGENAAR: Page?

ADV CANE: Page 19. It's a document headed "International Government Offers Management Committee Meeting" and it's the minutes of the meeting held on

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1 April 1998. You will see Mr Steyn that the people present are the people who were listed in the Management Directive as constituting this management committee. Do you confirm that?

LT GEN (RET) STEYN: The one referred to on
5 28th of October?

ADV CANE: Yes.

LT GEN (RET) STEYN: Yes, I agree.

ADV CANE: And then at page 22 paragraph 6.3 is the paragraph to which you sought to refer earlier where Captain
10 Dewey makes his presentation and tables a constitution which is Appendix "D". What he says is that "it's for consideration prior to the next meeting", and I'm reading at page 22, and he gives this to people present at the meeting, and I want to then pick it up at the next meeting if I may, that's just the
15 background. We then proceed to the next meeting. Forgive me Commissioners, I'll find my place in a moment. I meant to say that his next reference is his letter with which you are well-familiar at page 221 of the bundle, we've had a look at that letter already and you will see now that he on the 7th of April,
20 after having given it to the whole management committee on the 1st of April, he now writes his letter indicating that "this is the way the management committee will operate in future in accordance with these rules". Now what I want to put to you is that Mr ..., Admiral Howell who participated in this
25 management committee said that it was really a seamless

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transition, it's the same management committee, but it was called SOFCOM from 1 April 1998. And you see, that makes sense because Mr Du Preez, General Du Preez had asked for directions and formality in the CoD meeting and was told to
5 continue functioning and consequent upon that a constitution is circulated to all the members and the next step is that the draft constitution is then adopted as the way that same management committee will operate.

MR WAGENAAR: Mr Chair if I may my learned colleague has
10 now made various, various statements, I see that my learned colleagues from the Commission is not going to say anything. I submit that what my learned colleague has just done is not fair on the witness, I request that you direct that she break up her statement and give the witness the opportunity to testify on
15 each statement. Thank you Mr Chair.

ADV CANE: Mr Chair, I have no difficulty. Mr Steyn sorry, I'm attempting to save time by painting a broad picture, a broad picture is the request for directions, the instruction by the CoD to continue operating, then the tabling of the
20 constitution on 1 April, ...

LT GEN (RET) STEYN: There's so many things, I don't know where to go to. Please direct me to the CoD meeting, which one are you referring to? The one on 234 or where?

ADV CANE: The first page of the CoD meeting is at
25 page 213 and the relevant passages to which I have referred to

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were 217 and 219 and the decision to which I referred you to is put at 219 where the workgroup is told that there is nothing to stop them from continuing with their work. Are you with me?

LT GEN (RET) STEYN: I'm with you on the CoD meeting.

5 ADV CANE: Right.

LT GEN (RET) STEYN: I have a difficulty in connecting what you want me to look at here with an IOMC meeting where I'm not present.

ADV CANE: Very well. The order of the documents
10 that are available to us are such that we then have the document at page 19 in the DoD bundle which is the Management Committee Meeting of 1 April 1998 and we learn that "Captain (SAN) Dewey tables a Draft constitution for consideration prior to the next meeting".

15 LT GEN (RET) STEYN: Prior to the next IOMC meeting, not CoD. This is an International Government Offers Management Committee and in that meeting Dewey tables a Draft of SOFCOM. Now as far as I'm concerned, having tabled a draft
20 the same, the same meeting at the next date should either confirm the draft as applicable, in which case I would say they have no business to confirm it. This IOMC has no mandate to approve a policy of this nature. It's a subordinate committee, I'm not there, I'm being represented by Mr Shaikh, he is one of the attendees, and the chairman is Mr Esterhuyse. So, if they
25 want to do anything with that draft, the same meeting at a later

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date should confirm this and then take it to a CoD.

ADV CANE: Very well Mr Steyn. Now what I want to put to you is that the evidence of Admiral Howell who served on this management committee is that the same management committee continued to function, it had been called a management committee or the label you give to it, the IOMC, and as from about April 1998 when the Acquisition Division was established it was renamed SOFCOM, it continued to function and perform the tasks conferred upon the management committee, that is his evidence.

LT GEN (RET) STEYN: Please repeat where you say that something was transformed, what was transformed into what?

ADV CANE: I'm not sure I used the word "transformed" but I may be open to correction, I thought I used the word "renamed"?

LT GEN (RET) STEYN: Okay, what was renamed?

ADV CANE: What I put to you is that Admiral Howell's evidence was that this management committee on which he served was called SOFCOM from about 1 April 1998 and continued to function with the same members in the same way as it had when it was called the management committee.

LT GEN (RET) STEYN: I do not agree. I do not agree because if that was the case then this same meeting should constitute itself as SOFCOM which it didn't, you can't show me a minute of that.

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ADV CANE: And you would then say that when SOFCOM presented anything to higher authorities at which you were present, you would obviously have asked what this body now was and why it was purporting to perform the tasks of the management committee.

LT GEN (RET) STEYN: In my mind when presentations were made on evaluations it was the IOMC workgroup reporting, whether they referred to themselves as SOFCOM, I don't care, they never had a mandate to reconstitute. This Draft here was never approved either in IOMC or subsequently in one of the management meetings where I preside, they cannot usurp authority.

ADV CANE: Mr Steyn, I understand they cannot usurp your authority and we're getting to that topic, but your answer to my proposition as I understood you then was that it didn't matter what name they were called, if they were performing the functions of the management committee that is what they were doing.

LT GEN (RET) STEYN: Yes, but the IOMC has different workgroups created on the 28th of October, worked in accordance with MODAC. As I indicated in my evidence it became quite clear to me during the middle of 1998 that Mr Shaikh running as the chairman of that SOFCOM did not adhere to these prescripts of MODAC.

ADV CANE: We've cross swords on the applicability of

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4/147 and traversed that at length, so ... Sorry Mr Steyn, I'm not going to re-traverse the issue of the applicability of 4/147, particularly to the management committee's work, we have gone through that already. I'm going to move on because there are time constraints. Could you turn to page 238 of your bundle please, and there you will find the Special AASB Meeting of 8 July 1998, and I point out to you that you were present there. Do you see your name is first, stated to the chairman on the first page, do you see that?

10 LT GEN (RET) STEYN: Yes, I do.

ADV CANE: Please turn over the page and in paragraph 1 we see you as the chairman open the meeting and emphasised that this presentation to the Special AASB was to report on the progress made with the international offers. And then if you cast your eye down to paragraph 2b you see that the Chief of Acquisition is reviewing the process, "stressing the integration of the results of four independent evaluations per equipment undertaken by the SOFCOM":

20 *"Due to the disproportionate influence of the financing result at the top level value system the SOFCOM accepted a modified equation prior to integration i.e. RANKING = TECHNICAL + IP + FINANCING".*

Now you would have been party to this meeting to the report back by the Chief of Acquisition and to the application of the

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Second Order evaluation value system being presented. Do you confirm that?

LT GEN (RET) STEYN: The only thing I confirm is my presence at the meeting. I do not confirm the minutes of the meeting, because it was signed by somebody else months after I had left. Now I've pointed out in my evidence in chief that [indistinct] quotation from the Minister at the previous AAC and AASB meeting puts a question mark over the total and totality of this minute, so I'm not going to talk to this minute, it's not confirmed by myself.

ADV CANE: Let me understand the extent to which you disavow this minute and whether you have any recollection of the meeting. Do you deny every aspect of this minute, do you deny that Mr Shaikh gave a report back on the value system as recorded and do you deny for instance at page 242 paragraph 27 that you raised the concerns there stated? Do you deny all of that?

LT GEN (RET) STEYN: I don't deny it, I simply cannot refresh my memory after 18 years from a document where at least one of the vital statements is false. It's ... I quote from the minutes on page 242, 27d:

"The decision by the AAC during the 30 April 1998 briefing on the shortlist of offers required the project team to consider a solution taking cost into account, and a solution where cost was not taken as

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a deciding factor”.

That is not true, it is not so reflected in the minutes and therefore I question the accuracy of this document and I cannot speak to it.

5 ADV CANE: Mr Steyn, there are a variety of levels upon which I need to take issue with you. The first aspect of that answer with which I take issue is your emphatic insertion that the Minister did not mandate any consideration of an option which did not include cost. I understand you to be
10 saying that that was not requested and not discussed at the AAC meeting of 30 April 1998, am I correct?

LT GEN (RET) STEYN: If he used other words and the correction is made and determined as allowing a costed and a non-costed option, then I say it's nonsense, [indistinct] state it
15 clearly and he didn't. The minutes were not correctly reflected as it appears in the special AASB meeting.

ADV CANE: Mr Steyn, ...

CHAIRPERSON: Sorry, can I ask you just to [indistinct] simply is not correct to say it's not correct and not nonsense, if
20 you don't mind [indistinct] that?

LT GEN (RET) STEYN: I will do that.

CHAIRPERSON: Thank you.

ADV CANE: If you now say that the reference in the minute is not clear enough for you, what would you say if you
25 had understood it perfectly well at the time, and there is

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evidence that you understood it perfectly well at the time.

LT GEN (RET) STEYN: You are suggesting that if it had been correctly reported, what my view would have been?

ADV CANE: I'll tell you what, due to a shortage of time
5 let's just go straight to the Section 28 proceedings, if you take the DoD bundle and open up at page 65, and then I'm reading from line 22, ...

CHAIRPERSON: Which page?

ADV CANE: It's page 65. Page 65 line 22, it reads:
10 *"You will recall that there was a so-called cost option ranking and the minister instructed us at a previous occasion to leave out cost.*

Was that a specific instruction?
That was a specific instruction. I objected
15 *vigorously.*

Can you recall when that instruction was given?
No. It was given in one of the previous Armaments Acquisition for Council of Defence meeting".

Now Mr Steyn, I put it to you that at that time you understood
20 in no uncertain terms that the Minister had given such an instruction and it was one with which you had disagreed but nonetheless understood that it had been given. Do you see that?

LT GEN (RET) STEYN: As recorded. That is recorded here
25 so, but let me remind you that at this particular investigation I

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have been afforded no prior information regarding any minute and you will note that throughout the transcript I was given a brief moment where I could view something in the minute completely out of context. So, as far as I'm concerned I
5 objected that there ought to be a non-costed option. Now whether that is consistent with the minutes, which I dispute in any case, I don't know where you were going with this?

ADV CANE: Mr Steyn, the point is the one I had put to you, which was that you understood in no uncertain terms that
10 the Minister had given such an instruction. The fact that you disagreed with it, I note that, but you had understood that he had furnished such an instruction, not so?

LT GEN (RET) STEYN: Look, I'm just trying to collect again, if we look at line, if you start at line 22 on 65, I read:

15 *"You will recall that there was a so-called costed option ranking and the Minister instructed us at a previous occasion to leave out cost".*

Now what is your question with regard to that Ma'am?

ADV CANE: Mr Steyn, we've been through it three
20 times already, let's do it once more. I put to ... I had put to you that when you testified in the Section 28 proceedings, and I remind you that those were during 2001, you had had a clear understanding that the Minister had given an instruction to present a non-costed option.

25 LT GEN (RET) STEYN: Negative. As I was [indistinct] there

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the Minister instructed us at a previous occasion to leave out cost, so a non-cost, to leave out cost, a non-costed option.

ADV CANE: Very well, we'll progress from there.

LT GEN (RET) STEYN: And I objected ...

5 CHAIRPERSON: Just hold on. Just hold on. I don't quite understand you Mr Steyn. The statement says that you said the Minister said let's leave out cost. I thought Advocate Steyn [sic] is talking about a non-costed option. Now you seem to be saying that those two statements are different points, that you
10 don't understand something?

LT GEN (RET) STEYN: A non-costed option to me is the same as a leaving out cost on an option.

CHAIRPERSON: So there's no difference between those two? Thank you. Thank you.

15 ADV CANE: The learned Commissioner was quite correct to intervene Mr Steyn because it seems you trifle, the moment I change the words slightly you pick up on it and make an issue of it, when in truth there is no issue to be made and so this is really taking an inordinately long time. I wanted to
20 put to you that you understood the Minister had given such an instruction, it's clear, it's in your own words, it's very close to the time and it seems we're still not at the point where you are prepared to accept that you had understood that the Minister had given an instruction in this regard to leave out cost or
25 present a non-costed option. Can we at least overcome that

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hurdle so that we can move on?

LT GEN (RET) STEYN: I agree with that.

ADV CANE: Thank you. Now it really should have been agreed to 15 minutes ago. Commissioners, it doesn't seem to me as if I complete this cross-examination this afternoon. I have a number of topics to cover and I see I've used half my allotted time already and I'm not even through one topic. I just can carry on for as long as you'll permit me, but I am beginning to think that I'm not able to traverse the material in the hour.

5
10 CHAIRPERSON: You know, we already have someone who is coming tomorrow, there is someone coming Monday and Tuesday and I would be reluctant to try and disturb those days because it was [indistinct] those days, so if we don't finish with Mr Steyn today then it means that we will have to try and find another date which would be suitable and acceptable.

15 ADV CANE: Commissioner, ...

CHAIRPERSON: And I think Mr Wagenaar said Mr Steyn is not available tomorrow.

ADV CANE: Yes, I am in your hands. I have had some informal discussions with my learned friend representing Mr Kasrils and I understood we could rearrange for next week and possibly still manage within the times available, but with Mr Steyn not being available tomorrow it seems that that in any event is not an option, so I'm afraid I don't have the solution because I just do not, I cannot see myself giving you the

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assurance that I can comfortably finish this cross-examination even if we sit very late this evening. You've witnessed for yourselves the length of time it takes to even traverse one little point.

5 CHAIRPERSON: Mr Wagenaar, is it possible for your client to be available tomorrow, even if we can get two hours in the morning, start at 08h00 until 10h00?

MR WAGENAAR: Thank you Mr Chair. Mr Chair, we are ... We will make ourselves available from 08h00 to 10h00.

10 CHAIRPERSON: From 08h00 to 10h00?

MR WAGENAAR: Yes.

CHAIRPERSON: Thank you. Advocate Cane, will that suit you?

15 ADV CANE: Certainly Chair, I will definitely be here and do my level best to traverse as much of this as I can until you decide to adjourn today.

CHAIRPERSON: Yes, but then I mean Lawyers for Human Rights also need their 40 minutes.

20 ADV CANE: I'm very mindful of that, which is why I stopped myself at this point.

CHAIRPERSON: Okay, thank you. Then we will have to adjourn and start tomorrow morning at 08h00, unless if at all there is an objection? Advocate Gcabashe?

25 ADV GCABASHE: I thought we might be able to push for another 30 minutes to an hour just to buy a bit of time

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tomorrow morning.

CHAIRPERSON: But Advocate Cane says that she needs a bit of more time in order to [indistinct] proper cross-examination. Are you available tomorrow morning at 08h00?

5 ADV GCABASHE: Yes, I am Commissioner.

CHAIRPERSON: Advocate Snyman?

ADV SNYMAN: Yes Chair.

CHAIRPERSON: Thank you. Advocate Sibeko?

10 ADV SIBEKO: Chair, Advocate Sello will be present to take care of the proceedings.

CHAIRPERSON: That's good enough. No, that's good enough. Then we'll adjourn and then we'll start tomorrow morning. You were suggesting that we adjourn now?

15 ADV CANE: No Commissioner, I am very much in agreement with my learned friend's suggestion that we sit for another half an hour if you would indulge me. I would far more comfortable to continue for half an hour and know then that we can finish tomorrow morning.

CHAIRPERSON: Alright, let's go on then.

20 ADV CANE: Thank you. Mr Steyn, may I ask you to turn to the minute which commences on page 234 of your bundle. It's the minute of the combined AAC and AASB meeting of 30 April 1998. The passage to which I want to refer you is paragraph 9 which commences at the foot of page 235:

25 *"The Minister of Defence cautioned the meeting that*

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5 *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
chances to be part of the Global Defence market
through partnership with major international defence
companies, in this case European companies. With
this vision the most inexpensive option may not
necessarily be the best option. The Minister
requested that DoD acquisition staff should bear
10 this vision in mind during the selection process".*

And so Mr Steyn, I put it to you that the discussion of this
meeting, however imperfectly captured in this note pertain to
the vision of the Minister in wanting to forge new alliances and
mindful of the fact that an inexpensive option may not be the
15 best option. You agree that that discussion was held?

LT GEN (RET) STEYN: Yes, I do Ma'am.

ADV CANE: And so when the Minister requests that the
acquisition staff bears this vision in mind, surely you
understand, as you did during the Section 28 proceedings that
20 the Minister wanted an option other than the most inexpensive
option presented to him.

LT GEN (RET) STEYN: In my mind there's a difference
between leaving out cost and ticking an option which is not the
cheapest one. I've participated in many of these exercises and
25 it's not strange to select an option other than the cheapest

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one, but you cannot leave it out, and therefore I state that his
mention of a visionary approach is not necessarily equated to
leave out cost. I understand he says the most inexpensive
option may not necessarily be the best option and I agree with
5 that.

CHAIRPERSON: Just for my own understanding Mr Steyn,
what do you agree with, because I think Advocate Cane was
trying to say that in that meeting the suggestion from the
Minister was that also he must also look at the non-costed
10 option. As I'm saying I thought you agree with that and now
you seem to be saying that that's not necessarily the right
approach.

LT GEN (RET) STEYN: No, what I ...

CHAIRPERSON: What is your answer to Advocate Cane's
15 questions so that I can also understand it?

LT GEN (RET) STEYN: I have said in my statement and in
my evidence in chief that I do not agree with the interpretation
of a visionary approach as to mean don't use cost.

ADV CANE: Now Mr Steyn, when you dealt with the
20 minutes which we find at page 238 of your bundle which is a
special AASB minute of 8 July 1998. When you dealt with this
in Section 28 proceedings you explained with reference to
paragraph 27 which you find at page 242 that you vigorously
objected to the non-costed option and you put up various
25 reasons, you named the four of them listed here under 27a, b,

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c and d as to why this should not be the preferred route. Really you repeated paragraphs 27a to d virtually *verbatim* and commented on them expressing your concern and saying that 27 was indeed your reaction and the expression of your concern as to the inadvisability of going with the non-costed option. You will find all of that in the trans..., oh sorry, at page 66 of the DoD bundle. I've summarised it instead of reading it to try and move us along and I put to you that really at that stage, 2001 you had a good understanding that the Minister had given an instruction to present or leave out cost and that you had referred to this minute as correctly capturing your own opposition to that option.

LT GEN (RET) STEYN: I remind you and myself that 2001 I was not allowed to study the document. Number one; I didn't even realise that I never signed the document off as being accurately reflecting the contents thereof and I told you that the one paragraph which I object to was recorded falsely as to [indistinct] the decision made in the previous CoD or AAC meeting. And therefore, therefore in the 2001 proceedings I certainly had to take the minute as pushed before me, I never questioned the validity, now I do.

ADV CANE: The paragraph which you contend is false, because it's not reflected in the previous minute is paragraph 27d and it pertains to whether a non-costed option should be considered and taken into account, not so?

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LT GEN (RET) STEYN: Correct.

ADV CANE: And I have shown you a passage which indicates that that is what the Minister required and I have shown you a passage in your own evidence that indicates you understood that that was what the Minister required.

LT GEN (RET) STEYN: The evidence here or the evidence in 2001?

ADV CANE: It doesn't matter the source of the evidence, I had given you your own evidence that you understood what the Minister required and I've shown you that the relevant discussion could only mean that the Minister wanted another option. You understood he required an option that left out cost and you dealt with this minute and that option on the basis that you voiced your strenuous opposition as captured in paragraph 27.

LT GEN (RET) STEYN: Yes, but it doesn't link with the exact words in 2001 and I told you why.

ADV CANE: We've had a lot of difference between us today on exact wording Mr Steyn, and I'm not engaging in exact words.

ADV SIBEKO: I apologise for interjecting at this time. Chair, this issue on page 242 of the bundle at paragraph 27d, the witness has pointed out that he had a difficulty with the report [indistinct], and the report there relates to a decision by the AAC during 30 April 1998. In the last 10 or so minutes the

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question has been put to this witness as objecting to this, as a discussion. Now if one has regard to the discussion and the passages to which the witness has been referred, indeed a discussion relating to this matter is set out but at the end of paragraph 9 to which the witness has been referred, there is a recordal of a decision. Now to the extent that the question sought to be put to this witness relates to a discussion there has to be a difference borne in mind that there is a decision recorded at paragraphs 10, 11 and 12 regarding the discussions that ensued at the meeting of the AAC, the combined AAC, ASB [sic] meeting of 30 April 1998, so in fairness to the witness it is therefore incorrect to refer to a discussion as opposed to a decision that the witness is objecting to at page 242.

15 ADV CANE: Learned Commissioners, the discussion recorded at page 236 is indeed a powerful decision [indistinct]. What follows in the decision of paragraph 12 is a list of contenders to receive RFO's as being the Aermacchi MB 339, the aircraft which this witness was referring and recommending and included in the list at c there's British Aerospace Hawk 20 100. It was known at the meeting that there was a vast [indistinct] price between the MB 339 and the Hawk, they were both put up as contenders to receive RFO's and was both under consideration, and accordingly discussion giving this context 25 that the Minister is asking the acquisition staff to take into

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account his vision and that the most inexpensive option is not necessarily going to be the preferred option. It must be understood in the light of the witness's own concession in 2001 that he had understood the Minister to give an instruction to leave out cost. His own words are that this was a specific instruction and that he objected vigorously and so I have not put anything unfair to the witness, I've put to him what an overriding reading of all this evidence put together would lead to, I've put to him that at the time, 2001, when he gave evidence, he didn't raise concerns with the minute itself, instead he adopted aspects of the minutes to indicate his own opposition to the non-costed option, and so in my submission nothing unfair has been put to this witness at all.

MR WAGENAAR: Mr Chair, may I address you on this point? It relates to the question that was put and the inferences made from the answers by the witness.

CHAIRPERSON: Can you repeat?

MR WAGENAAR: I would like to address you on this point, it relates to the question put to the witness and inferences drawn from his answer.

CHAIRPERSON: I'm going to allow you to address me if you think the question is unfair, but I will not allow you to give an answer for the witness.

MR WAGENAAR: Indeed. Indeed.

CHAIRPERSON: If at all you are going to talk about the

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fairness or otherwise question, then I'll allow you to can raise this.

MR WAGENAAR: Thank you Mr Chair. Mr Chair, ...

CHAIRPERSON: Maybe let me do that after Advocate
5 Sibeko, because he's the first one to object.

MR WAGENAAR: Mr Chair, I think he would also like to respond to what I'm going to say and that's why I interjected at this stage.

CHAIRPERSON: Advocate Sibeko, what is your view? Mr
10 Wagenaar says that he must come before you, but you are the evidence leader, he is not the evidence leader.

ADV SIBEKO: Chair, to the extent that he represents the interests of his client who is also a witness of the Commission, that is my witness, and I have no difficulty if the Chair allows
15 Mr Wagenaar to make submissions.

CHAIRPERSON: No, no, that was not the point, whether it was after you, first raise the objection and I [indistinct], unless if at all you are going to raise new points and then I'll ask Mr Wagenaar to continue, if at all you are not going to raise any
20 new points and [indistinct] ask Mr Wagenaar to kick off first.

ADV SIBEKO: He may kick off first.

CHAIRPERSON: Thank you.

MR WAGENAAR: Thank you Mr Chair. Mr Chair, my understanding is that my learned colleague is now equating the
25 evidence given in 2001 to the minute of 30 April as it appears

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on page 235. I submit that is unfair, the witness has already testified that in order for my learned colleague to do that she has to regard the non-costed option and visionary approach referred to in this minute as the same thing. He already indicated that he did not and he does not regard it as the same thing and it wasn't the same thing. Now once you accept that answer of the witness, then any further questions on this point by my learned colleague is in my submission unfair.

CHAIRPERSON: Thank you. I don't think the question is unfair. I've also got a difficulty because in the Section 208 statement it clearly said that the non-costed option was requested for by the Minister.

MR WAGENAAR: That is indeed ...

CHAIRPERSON: That much he clearly said and I think the question of Advocate Cane revolves around that issue. I also need clarity on that issue, so I don't think that question is unfair. Advocate Sibeko.

ADV SIBEKO: Chair, I can take the matter no further.

CHAIRPERSON: Thank you. I think I'm going to allow the question because I'm also a bit confused. The statement at that time when the statement was taken in [indistinct] he clearly said that the Minister gave them those instructions.

MR WAGENAAR: Mr Chair, may I then just remark, make one more remark, he never in 2001 equated the non-costed option with a visionary approach. Thank you Mr Chair.

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CHAIRPERSON: Thank you. That's not what I understand, [indistinct]. Advocate Cane, I think you can proceed with that question.

ADV CANE: Thank you Chair. In fact the questions
5 had all been asked, it was more a question of my seeking to avoid any striking out of relevant evidence that I was defending. The witness has given his answer, which is now on record. I wish to proceed to the next minute if I may Chair. Please would you turn to page 260 Mr Steyn, it is a special
10 AAC meeting of 19, oh sorry, of 13 July 1998, page 260. 260. This meeting of 13 July 1998 is together with the meeting to which we have just referred of 8 July 1998, a minute that you contest, or did contest in your evidence in chief. Let me just understand clearly the basis of your alleging that the minutes
15 of 8 July and 13 July 1998 cannot be relied upon. Do you say that no draft minute recording these meetings was produced whilst you were still in office, and I understand that you were in office until 30 November 1998.

LT GEN (RET) STEYN: No, they weren't. You will notice
20 that most, if not all of the meetings never give consideration to [indistinct], it's drafted when the secretary has the time and it is then brought for signature. I was never afforded the opportunity to sign off on that.

ADV CANE: Is it correct that you remained in office
25 until 30 November 1998?

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LT GEN (RET) STEYN: Correct.

ADV CANE: And whilst you remained in office as Secretary of Defence would you have continued to chair the AASB meetings held up until the end of November 1998?

5 LT GEN (RET) STEYN: Yes.

ADV CANE: So whilst you were there, to your knowledge, nobody else would have chaired an AASB meeting that was still your responsibility?

LT GEN (RET) STEYN: Up until the end of November, yes.

10 ADV CANE: And you say that up until that time no minutes were prepared for the meetings of 8 July and 13 July 1998 and they were only produced some time later when you had already left your office.

LT GEN (RET) STEYN: Correct.

15 ADV CANE: Now Mr Steyn, looking at this meeting of 13 July you were present, it's a Special AAC meeting, so you were not the chairman, it's chaired by the Minister. In paragraph 2 ... Sorry Mr Steyn I have created some confusion here, the two minutes which you dispute are both AASB
20 meetings and so I'm quite correct to ..., incorrect in referring to this as a disputed minute. The disputed minutes, I beg your pardon, are those of 8 July and then if I'm not mistaken, 16 July.

LT GEN (RET) STEYN: Correct.

25 ADV CANE: Thank you. I apologise for the error.

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Then we proceed on this document as on the face of it, Special AAC meeting of 13 July 1998. Please look at page 261 paragraph 2 and you see there:

5

“Due to time constraints the meeting proceeded directly to the overall summary of consolidated results, co-presented by the co-chairpersons of the SOFCOM (Strategic Offers Committee)”.

10

Now when the co-chairperson presented the results of the SOFCOM, did you understand they were doing so as the management committee?

LT GEN (RET) STEYN: Yes, because nothing else was created as far as I'm concerned.

15

ADV CANE: And so if they by this stage called themselves by a different name they were performing the same functions as the management committee?

LT GEN (RET) STEYN: That I don't know. And I will, if you allow me later I will show you where there was an attempt made by Mr Shaikh to circumvent the AACB and the AASB.

20

ADV CANE: I'm sure we'll get to it in the documents and I will allow you that opportunity. We're going to address that issue. Have a look at page 266 of this minute please, and I'm referring in particular to paragraph 30 under the heading "Way Ahead":

25

“The chairman instructs that the bargaining negotiating must proceed without eliminating any of

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the contenders or exposing the results. The tactics to be employed are to be devised by the SOFCOM”.

Now Mr Steyn you being present in this meeting would have been present when the Minister delegated this important task to the SOFCOM. Why do we not see any objection from your side as to the SOFCOM’s role and to this delegation?

LT GEN (RET) STEYN: You will notice that on many occasions I have questioned decisions by the Minister, but on this occasion as far as the instruction to SOFCOM was concerned I was happy that it would be done in the context of the IONC, the one that adheres to the MODAC procedures.

ADV CANE: Yes, in other words you were happy for the management committee to carry out the task delegated to it by the Minister?

LT GEN (RET) STEYN: Yes.

ADV CANE: And if you look towards the foot of that document, the last sentence under the heading “Note”, is:

“The valuation results of the equipment elements are contained in SOFCOM record dated 1 and 2 July 1998”.

Presumably when you got your copy of this minute, you will see you were to get copy number 3, you did not raise any objections in relation to the role of SOFCOM as recorded there.

LT GEN (RET) STEYN: [Indistinct].

ADV CANE: Thank you. That is the reason I would

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have expected would have been established between us which is that you were quite happy with Management Committee to carry out these functions, we just didn't accept a secondary body by the name of SOFCOM.

5 LT GEN (RET) STEYN: I realise now that it was a different body, if I had known it was not the same I would have objected.

ADV CANE: Mr Steyn, your realisation of course is at odds, as I have told you, with the evidence of Mr Howell, Admiral Howell who participated in that management structure.

10 Nonetheless let us proceed to the next minute please, at page 277, and this is the minute of 16 July 1998 which I understand is the minute of the AASB that you do dispute the correctness of.

LT GEN (RET) STEYN: Correct, for the same reason as I
15 dispute the minutes of the 8th of July.

ADV CANE: Please turn over the page, in paragraph 6 we get the Chief of Acquisition making a contention pertaining to the visionary approach and your evidence as I understand it is that you don't accept that this was actually discussed at this
20 meeting with you present. Am I right or wrong in that?

LT GEN (RET) STEYN: The recording I don't agree with, if it was recorded like this I would have objected.

ADV CANE: Have a look at paragraph 7:

25 *"The chairman rules that the AASB must submit a logical and rational recommendation to the AAC".*

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So this is your response to the visionary approach that there must be a logical and rational recommendation to the AAC. You surely don't dispute that that would have been your reaction and is accurately captured?

5 LT GEN (RET) STEYN: You must point me from where you were quoting Ma'am?

ADV CANE: I'm quoting from paragraph 7.

LT GEN (RET) STEYN: How far do we go down, there are several subparagraphs [indistinct].

10 ADV CANE: Mr Steyn, perhaps if you just listened to me. I read the relevant part:

"The chairman rules that ...".

You:

"... made a ruling that the AASB must submit the logical and rational recommendation to the AAC".

15

And I put to you that you surely do not dispute that this indeed was your ruling in reaction to paragraph 6?

LT GEN (RET) STEYN: The chairman is the Minister, not me.

20 ADV CANE: This is an ...

LT GEN (RET) STEYN: Oh sorry, my mistake. I admit that, okay? I apologise, please continue.

ADV CANE: Do you accept that that would have been the kind of ruling that you would have made in those
25 circumstances?

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LT GEN (RET) STEYN: I need to read all of it in order to give a real ..., or disagree with you.

ADV CANE: Very ...

5 LT GEN (RET) STEYN: Can you sum it up and then I can respond to it?

ADV CANE: Well, let me take you into paragraph 7b. Look at the very last sentence at paragraph 7b:

10 *“The chairman advised that from the DoD perspective only the costed option could be considered and that the AASB thus support the first recommendation A”.*

15 And I'll give you the context of the first recommendation A would have been an option taking cost into consideration, and the question is the same, surely this accurately captures your stance.

LT GEN (RET) STEYN: Yes, it does.

ADV CANE: And similarly would you cast your eye over the last sentence of 7d, it reads:

20 *“The chairman rules that the AASB recommendation is the MB339FD as evaluated and noted that this result is the SAAF preference within the envisaged SAA Fighter Training System required by the SAAF”.*

Again that would have been a ruling you would have made, surely you do not dispute that.

25 LT GEN (RET) STEYN: I don't dispute that, it's accurate.

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ADV CANE: Let me take you to page 318 of your bundle, in fairness at 316, you may wish to just locate yourself, you get the first page of the minute, it's the Seventh Council of Defence Meeting held on 21 August 1998, and you are present.
5 And the passage I want to refer you to is at 318 in paragraph 3, sorry paragraph 7.3.7. It's the second last paragraph on page 318 and I want to read the second half of the paragraph:

*"The strategic decision required is do we choose the MB339 or the Hawk. The recommendation of the
10 AASB is the cheaper option namely the MB339".*

Mr Steyn, what I'm putting to you is that your attitude and your rulings captured in the minute of 16 July and which I've read to you just now, are being conveyed to the Council on Defence. This is your recommendation emanating from the AASB that the
15 choice should be for the cheaper option, the MB339, do you see that?

LT GEN (RET) STEYN: Yes, I do.

ADV CANE: And the reason I'm putting this to you is because it indicates that on the vexed topic of the choice
20 between the MB339 and the Hawk, the AASB indeed grappled with the issue, debated it, formed a view and made a recommendation to the CoD. Do you accept that?

LT GEN (RET) STEYN: Yes. The recommendation was then, as supported here, the MB339.

25 ADV CANE: And that means that far from being a tool

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for circumventing you as the SecDef and the AASB, you did have every opportunity to play the role that MODAC envisaged and indeed the documents indicate that SOFCOM did not prevent the AASB from playing that role, far from it, the AASB's
5 recommendation was conveyed to the Council of Defence.

LT GEN (RET) STEYN: Yes, it was conveyed. But the rest of the, of your contention is that you absolve Mr Shaikh from trying to circumvent the AACB and AASB, is that what you are saying Ma'am?

10 ADV CANE: No. What I am saying is that your thesis as to a second and unauthorised structure being run by the Chief of Acquisition under the name of SOFCOM is deeply flawed. I am saying that in fact the management committee as duly authorised by you and by the Management Directive
15 continued to operate throughout the process, performed the Second Order evaluation and that the AASB continued to meet, it was not circumvented as alleged, neither was it subverted and its recommendations and imprints on the process are evidenced in the 21 August 1998 minute of the CoD.

20 LT GEN (RET) STEYN: Yes, but you said we will come back to that. That doesn't mean that Mr Shaikh had a nice time at the CoD meeting on the 20th of March 1998 "PS16". Would you like me to continue on that one?

ADV CANE: I'm sorry, unfortunately given your answer
25 ... You may give your answer?

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LT GEN (RET) STEYN: Just give me a minute to find it please. Please refer to my statement page 29. May I continue?

ADV CANE: Yes.

5 LT GEN (RET) STEYN: Right. The contents of the CoD meeting on the 20th of March was predicated on the fact that the timescales presented to the Minister didn't suit him. In paragraph 7.37:

"The Minister was alarmed ..."

10 You will notice that the period allowed by the team would have continued through 30 November 1999 on top of the page. He was alarmed and he said that "we can forget about the acquisition – it will be stone dead":

15 *"He said 'he could not accept this continual moving of the timeframe ...'"*

So that's the background. Now in 7.38 I state:

20 *"The Chief of Acquisition Mr Shaikh said that by the end of July (1998) the DoD would be able to make a decision on what to buy. The timeframe suggested (by Chief of Logistics) allowed for consultation with the AACB and AASB as required by MODAC. He then argued ..."*

"He" being Shaikh:

25 *".. that by eliminating the roles of the AACB and AASB, the timeframe could be moved to the left"*

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And I state there that:

“No decision was taken ...”.

So that attempt was thwarted.

ADV CANE: Mr Steyn, I read your evidence very
5 carefully pertaining to this. It's to be found at transcript 6150 to
6051 and I can tell you that you made no suggestion at all that
that suggestion emanating from Mr Shaikh was implemented or
found favour, it was something which concerned you deeply,
clearly, but it didn't find favour and it was not implemented.

10 LT GEN (RET) STEYN: Correct, and [indistinct] was it.

ADV CANE: Commissioners, I would suggest that we
break at this point because I now am in striking distance of
getting through, and I thank you for your indulgence.

NOTE: Caucus.

15 CHAIRPERSON: Advocate Cane, we agreed that tomorrow
morning we will start at 08h00, or is there anybody who wants
us to shift that time because I really want to finish with the
evidence of Mr Steyn.

ADV CANE: Commissioners, my position is I will do
20 whatever suits the Commission. We are actually in Mr Steyn's
hands and it really is determined by his availability.

CHAIRPERSON: That's right. Advocate Sibeko.

ADV SIBEKO: We are in Mr Steyn's hands Chair.

CHAIRPERSON: Thank you. I suppose, because Mr Steyn
25 will only be available until 10h00 it will be better if we start at

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08h00 and hope that you know that within those two hours we'll finish his evidence, or is there anybody who wants to comment?

MR WAGENAAR: No, that is in order with us Mr Chair.

CHAIRPERSON: Is that in order? Thank you. Then we'll

5 adjourn until tomorrow morning at 08h00. Thank you.

(COMMISSION ADJOURNS)