ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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CHAIRPERSON: Good morning everybody. Mr Kasrils do you confirm that the evidence that you are about to give, will be the truth.

MR KASRILS: I do. I do, Commissioner.

CHAIRPERSON: Thank you. Advocate Lebala?

ADV LEBALA: Distinguished Commissioners, you will know that I have my jacket off, not out of disrespect. Distinguished Commissioners, you will note I that I have my jacket off, not out of disrespect to this [indistinct] forum. I know that they have permitted me before to proceed without my jacket. Once again, I am requesting that permission.

Mr Kasrils, when we adjourned on Friday, we traversed a number of issues that have become common cause. We unfortunately, noted that, whilst our finger pulse, our fingers were on your pulse, it appears that the Commissioner's fingers were elsewhere.

So, we want to avoid that today, to make it a point that we run through your testimony steadily. Perhaps the right way to do it is to tell you how we intend dealing with your testimony to prepare you. The basis of this approach is because your statement is lean, very lean.

Most of the issues that this commission would like to hear about, as far as your concern are not in your statement. As evidence leaders, we cannot short change the commission. We will have to traverse those issues.

But, let us set out the approach. The first approach that we will do is we will go back to that minute in Steyn's bundle. Remember, we traversed that minute in Steyn's bundle on Friday, PS13, where the, the council of defence was deliberating on the funding and the budget and the Minister's view that it must not be disclosed that the offsets would be R6 billion, against the estimate of R23 billion.

From there, when you are done with that minute, we will go to another important minute. The second minute of the second council of defence, you will find it on page 15. We will run through a few pages of that minute, not all the pages.

From there, we will go to another important minute of the combined AA council and armament acquisition steering board, very important minute. From there, we will go to the minute of the second council on defence meeting, on the 31st August.

From there, we will go to the minutes of the special briefing to the Deputy President Mbeki. Then we will deal with the allegations of Christoffel [indistinct] and Ourigsteel and we will take you through what the critics say.

We will focus on, on the powers of the AAC against the AASB. What do you know of, is to be constituted, what powers they have had in your view? Then

we will close your testimony. Now, those things are not touched in your statement.

Your statement just deals with common cause things, except where it highlights where you took trips abroad in Namibia, functioning as a Deputy Minister, where the Minister requested you to assume those important functions. That is how we will approach your testimony.

Now, with this background, then you will have to appreciate something very critical. The reason why we have to take you through this minute that we have been basking you with on Friday, it is because the critics are saying, the butt of this [indistinct] debate, why did we go to procure these capabilities, when we had funding and budgetary constraints.

That is why those deliberations are very critical and there is no better image, you could deal with them, other than taking your focus to them and eliciting your comment. I wish you could make it to explain.

But, because you are, we are leading your testimony, we have to focus your attention on those important issues now. Where there is a need for us to make you to explain, we will make it a point that you explain.

That is how we will approach your testimony, unless there are questions, before your testimony, we are ready to take you through that testimony Deputy Minister. I am going to be calling you Deputy Minister, if need be,

Minister if need be, Mr Kasrils, if need be. What do you prefer me to?

MR KASRILS: As you wish. I am not fussy at all. Commissioners, I would like to point out, when learned council says that my submission is lean, I did have discussion with the leaders of evidence in Cape Town, about a year ago, indicated the extent to which where and not and of course, I am working with my own learned council, in terms of their advise to me and not wishing to waste the time of the commission. It was clear that there have been so many witnesses preceding me, relating to minutes of meetings, relating to acquisition, the question of the defence procurement and so on, that I am advised that I should not simply repeat these things in my submission, Sir. With all due respect, that is what I wish to make clear.

ADV LEBALA: Thank you, Deputy Minister. Thank you. Thank you. I am not winning. Thank you, Deputy Minister. What has become clear is that there is a need for us to traverse some of these minutes, where the previous witnesses have never been part of, they never participated now.

We still want to draw your attention to the Steyn's bundle, which is standing before the commission. Commissioners we are still relying on the documentations that we drew your attention to. The witness's statement, Steyn's bundle and Steyn's bundle is stubbornly standing before this commission. We cannot ignore.

I would like to draw your attention to page, ANNEXURE PS13, starting on page 187, going up until page 192. There are one or two pages and paragraphs that we need to traverse, to conclude what we intend taking you through.

Now, what has become clear, in as far as this minute is concerned, is that, the report of that meeting. It is a very important meeting of the council of defence, which is chaired by the Minister. It is common cause that you also chair this meeting, when the Minister is not present.

The issues that were deliberated are very critical in the procurement of the capabilities. Of significance is the fact that funding and budget were the issues. Of significance, what is common cause is that the estimate as far as the equipment and the capabilities were concerned, was R26 billion.

The likelihood of the offset to be returned was R6 billion. The Minister addressed concern about that. The Minister said that this should never be mentioned with that, or without. Now, let us proceed on page 190, paragraph 5.14.16.

MR KASRILS: If I may, Sir. I if I may, with all due respect.

ADV LEBALA: Please proceed.

MR KASRILS: I do not agree with you. I certainly made the point, Commissioners, that my interpretation of the R6 billion, mentioned by the minister, in terms of assessing

this, that he was not referring, he might have been confused. But, this could not have been with reference to the total offset, at that time, of R26 billion. I made the point that Mr Ron Haywood was reporting on a meeting he had had, with Mr Alec Irvin as Minister of Trade and Industry, Sir. Haywood reports, at the top of that page, at 4.3 that Mr Irvin is positive about the whole issue and then makes mention of the fact, in his terminology he said, if R6 billion came into the country in the form of stable and ongoing investment, we stood a good chance of succeeding. I attempted to explain and I do so again, in the light of learned council's point that in fact, it seems very clear to me, Sir, at four, 549, that Modise is confused, that the R6 billion is about a particular investment that Irvin is talking about. I mentioned, Sir, that I felt that was probably to do with the Kouger project, which was a key project for him. If one reads through what follows, I think it becomes clear, council, that it is not R6 billion. It does become clear. It is a confusion, I would say. But, I understood what he is saying there. So, I am, Sir, I am making this point, just for clarification, Sir.

ADV LEBALA: Thanks, Deputy Minister. In actual fact, we have got more clarity. But, let me remind you of what you have said, you could say yes or no. You remember that, whilst I was reading paragraph 5.4.3 on page 189, on Friday, I did ask the following question, after I read this sentence. In his terminology he said:

"If R6 billion came into the country in the form of steady and ongoing investment, we stood a good chance of succeeding." I asked you that, would this relate to investment, you said, yes. I also asked you would it also refer to offsets, you also said, yes. Am I correct?

MR KASRILS: Yes, you are. But, hold on a minute please, allow me.

ADV LEBALA: Yes, Mr Kasrils ...[intervene]

MR KASRILS: I, I did then say ...[intervene]

ADV LEBALA: Mr Kasrils, just a minute, just a minute.

MR KASRILS: Ja.

ADV LEBALA: I assure you that this commission would not like to hear me. They would like to hear you. Be rest assured that if I wanted you to explain, I am certain that they will allow you to explain. I do not want us to be strife. But, I will, I will allow you to explain this time.

MR KASRILS: Yes. Because, Commissioners, I then added, one was trying to interpret a complicated minute. This is interpretation and I gave myself time to check through the entire minute and I distinctly remember stating, that in fact, I then thought that Minister Modise was being confused about that R6 billion figure, that it was never and could never have simply been R6 billion. It was clear to me that he must have been talking about a particular investment that Mr Irvin had in mind and that was not the total figure. Councillor, I have got a good memory. I am sure you have

too. But, I distinctly went on to try to help the Commissioners understand and made that follow a point, Sir.

ADV LEBALA: I, I.

MR KASRILS: Sorry.

ADV LEBALA: Our team does not intend spending a lot of time on this. But, I assure you that this matter is very critical, because we will come and demonstrate to this commission, based on what the critics are saying, not that we believe what the critics are saying.

The critics are simply saying, the rational, why we purchased this equipment. This is a very important term of this commission, was informed by certain deliberations that took place even before, even before parliament adopted and approved the defence review.

Now, these deliberations are very critical, because they tell us what was in the minds, more or less, of the decision makers, the [indistinct] and the government, in debating about these acquisitions. But, let us leave it, let us leave it. I just want to close, by saying, this contradicts what you are saying. Look at paragraph 5.4.9 on page 149. I am going to remind you what we said on, on Friday and my read, the Minister, while at the figure of R6 billion must never be mentioned. Now, we, we discussed that.

"If we do, we fail irrespective of what Mr Irvin says. Our aim remains the one to one ratio."

We said on Friday, please tell me whether I am right or wrong, the Minister was concerned about the returns against

the R26 billion would be R6 billion and this ought not to be disclosed. You mentioned that it ought not to be disclosed to the bidders. I drew your attention that no, no, no it cannot be bidders only, it must also be the citizens inside the country and you agreed. Am I right?

MR KASRILS: Yes. Exactly, but you have proved the point, Commissioners, because exactly, Minister Irvin goes on to say our aim remains a one to one ratio. That is why my interpretation was that the R6 billion, Irvin mentioned, it could not have been what Modise initially thought, that Irvin was talking about the final figure. It is as simple as that and I did my best to make that explanation the, on Friday.

ADV LEBALA: Can I close by asking the following, because we have to move on? If I were to say to you, the R6 billion refers to investment and also offset, would you agree?

MR KASRILS: Yes. A part of that, a part of the figure of R27 billion.

ADV LEBALA: Let us proceed. Let us proceed, Deputy Minister. I would like to draw page 190, paragraph 5.4.16 and I would like to read it to you. I wish this minute was made part of your statement. Unfortunately, it was not. Hence, we have to deal with it, the way we are dealing with it. May I take the liberty to read it?

"The Minister said that the final decision will not be taken by the secretary for defence and his counter part in the Department of Finance."

Now, did you agree with the Minister?

MR KASRILS: Yes.

ADV LEBALA: Let us read further:

"It is decision that will be taken by higher authority. When he had raised the question of defence not being able to find the funds, from its own budget for the acquisitions, the response was that we should not look at our own budget. That problem will be solved by government."

The Minister was realistic. Am I right?

MR KASRILS: Very, he is referring to the higher authority, government.

ADV LEBALA: What informed the Minister? Do you have an idea, to think this way? I am not saying go into the mind of the Minister. Remember, you testified to the commission about it. You assumed certain functions, within the department. The Minister took you into his confidence. You were fortunate to have a good relationship with the Minister and it has become common cause that where you assumed functions, you assumed. Where you were at, you were at. That has become common cause. I would like to know, were you aware, what made the Minister to come, with what appears to be, this realistic approach?

MR KASRILS: I would say it was common cause that there were discussions between the Minister and other cabinet Ministers, concerting, how we would be able to afford the equipment that we were going to require for a modern, up to date defence force. This was common cause and the

Minister had had his discussions with such as the Minister of Finance, Minister of Trade and Industry and others, including President Mandela, who made reference in a speech to the need for a modern defence force and for procurement.

ADV LEBALA: Now, what about the Minister and the Deputy Minister of Defence, in as far as this aspect is concerned? You are telling us about the Minister of Defence, with his colleagues in other departments and President Mandela. What about the Minister and the Deputy Minister of Defence?

MR KASRILS: Well, of course, the same applies. If I might, Commissioner, this goes back to the transitional council, pre-94 election, when there was a sub-council on defence. That on Friday, Sir, I made reference to. Already then, there were discussions about the future defence force, the future arms industry in South Africa. This is why I say, it is common cause. There is no secret about the fact that the Minister would be raising the question of other forms, of budget forms, of founding the funds for the kind of investment that we anticipated would be required.

ADV LEBALA: Let us push it on Deputy Minister. Paragraph 5.4.73 in page 190 ...[intervene]

MR KASRILS: Sorry, sorry, repeat, 5 point?

ADV LEBALA: We are still on page 190.

MR KASRILS: Oh.

ADV LEBALA: Paragraph 5.4.73.

MR KASRILS: Thank you.

ADV LEBALA: May I take the liberty to read it to you

MR KASRILS: Thank you.

ADV LEBALA:

"The Minister said we must not be in a hurry and it is wrong for us to let people know that we cannot pay for the packages."

What informed the Minister's thinking here?

MR KASRILS: Well, I come back to the fact of the R6 billion, that that would be such a short fall. In terms of wrong for us to let people know that we cannot pay for the packages, is his feeling from some of the statements made, that there would be a huge headache in acquiring the kind of funds to pay for the packages. I would say, people here and again, I am trying to recollect or interpret, would be the business people, the parties, the governments abroad, who we would wish to have dealings with and who were already knocking on our door.

ADV LEBALA: Deputy Minister, it appears that the Minister has always been realistic, the cost ...[intervene]

MR KASRILS: Always been?

ADV LEBALA: Has always been realistic and, and I will tell you why. Mr Irvin, in paragraph 5.4.3, we are not going back there, it is common cause, has always been saying that we should go ahead with the packages, we stood a good chance of succeeding. The Minister in paragraph 5.4.9 says it is not only about Minister Irvin, unknown, he says that

Deputy President is also involved, because he was concerned about this estimate of R36 billion. But, the Minister becomes more realistic again in this paragraph. Let us read further:

5 *"Government has a strategy. It is more of a business strategy, than it is, it is why there is so much."*

I beg your pardon, I am, I am, my eye sight is struggling. I beg your pardon Distinguished Commissioners, my eye sight is struggling. Paragraph 5.4.17, I am reading a clear page.

10 Let me start afresh.

"Government has a strategy. It is more of a business strategy and that is why there is so much emphasis on a business plan. If the business plan is not attractive, there will be no funding."

15 What was the Minister visualising here? Was he thinking, have an idea, have you discussed with him? That place that he had some vision.

MR KASRILS: Yes. I agree. He had a vision and that business plan, would relate, Commissioners, to the fact, that

20 we would be perfectly aware, that on defence budget terms, there would be short fall in the purchase of the envisaged equipment and that therefore, the business plan is something much broader. It refers to government to government partnerships, strategic partnerships, business

25 plans with the companies concerned, how best to acquire the best financial arrangements for such deals and so on. This would be the business plan. The offset issues for defence

and national industrial participation. So, it is a very big issue. This is why he is obviously, so concerned that we needed to discuss this in a very judicious internal way. So, you are perfectly correct in that. You know, although, I cannot remember detail, I certainly can remember the, the context of all this. I agree.

ADV LEBALA: We, we also know, that was has become common cause, I am not going to take you back to that part is that the Minister was alive to the fact that, in as far as the budget of these capabilities is concerned, it was not going to be funded from the department. Am I right?

MR KASRILS: That is correct, Sir.

ADV LEBALA: Now, let us go to page 191. We are not going to deal with each and every aspect there. We will just take only the relevant ones, because we have to conclude this matter. I would like to take you to the paragraph 5.4.19, page 191, paragraph 5.4.19. Remember, it is before the defence deal was being approved and the deliberations are going on. This is very critical. This is during February 1998. The defence review gets approved in April 1998. Deliberations are going on. May I take the liberty to read it: *"The Deputy Minister (yourself) pointed out that the department will say, in fact, that we can fund half, R1.4 billion per year, into, or three years' time."*

Would you say that the department had no money?

MR KASRILS: It had funds. There was a budget for the all round defence needs. But, out of that, for capital

acquisition, the amount was R1.4 billion. I think that is, that is self-evident. What that then means, that this would be half, as I say here, of what would be required, per year.

ADV LEBALA: Now, to be precise, what informed this position, which has been espoused? Is it because there was no precise budget for the SDPP's or there was no overall budget, adequate, within the department, to cater for the SDPP's and the other activities of the Department of Defence?

MR KASRILS: Well, it would be the latter, I would think.

ADV LEBALA: Thank you. Let us read on:

"The whole question is very political and flexible. In council, it can be said that defence might find itself in a situation where government might say, you cannot have, fund the packages. But, we should not mind ourselves with such a possibility. We must just keep it in mind, in the President's speech on 6 February 1998, he said that government can now go forward in terms of the acquisition plan. What is going for us, is that if government finds the business plan favourable and they accept it, we will in be in the favourable position of government, assisting us with the package deal."

It appears that there was some vision, in a form of a business plan that was being espoused now. Is it the same business plan that you are talking about, that the Minister talked about? Remember, you were referred to paragraph

5.4.17, where the Minister was talking about a business plan.

MR KASRILS: Agreed, Sir.

ADV LEBALA: And towards the end:

5 *"There are various ways in which government can assist and one way is increasing the budget."*

Now, was it your view, or was it the Minister's view, or was it all the Ministers views?

MR KASRILS: Well, that is really hypothetical, the fact
10 that one way is, increasing the budget. Any Minister's dream, Sir, is that government will increase the budget, for education, for health, for defence. That would have been the easiest solution and we were not saying it was not possible. Maybe, we could still, through the Minister, in
15 cabinet persuade. But, in general, we were feeling, we needed the vision that you referred to, Sir, the business plan and so on.

ADV LEBALA: Now, I asked you a compounded question. I am going to break it down.

20 *"There are various ways in which government can assist and one way is increasing the budget."*

Now, was this the Deputy Minister's view, of course, Sir? Am I right?

MR KASRILS: Yes. But, I would be, it would be in keeping
25 with Minister Modise, for sure.

ADV LEBALA: And other Ministers?

MR KASRILS: Well, it is hypothetically the case and I, I, one has, trying to, it is not even possible to remember. But, it is the kind of thing that an Alec Irvin would say: 'Well, you know, guys, maybe we can get government to provide a bigger budget.' It is, it is a manner of speaking, what I am saying here.

ADV LEBALA: Now, am I right to say, up to so far, the deliberations on the SDPP's were being considered. Views were being expressed. Visions were coming in, but there was no budget.

MR KASRILS: I think we have made the point. I will agree. There was not sufficient budget. Not that there was no budget.

ADV LEBALA: Paragraph 5.4.23, we are completing now, at the bottom:

"The Deputy Minister felt, there was little that can be done about the situation. We are presently busy with negotiations and consultations with the President, Deputy President, Trade and Industry. Everything hinges on industrial participation and the business plan."

Was it part of the vision that the department was talking about?

MR KASRILS: Agreed.

ADV LEBALA:

"He again stressed the fact that if the business plan fails the whole exercise falls flat."

Now, as at that stage, was this business plan already formulated or it was just something that was being thought of?

MR KASRILS: Well, not the nuts and bolts, but it was not something that was just a whim, or that was just thought of. These discussions about this, would have been taking place, actually, for several years and in fact, Sir, I would say to the time of the sub-council on defence in the TEC, the transitional executive council, pre-94, the pre, the April election of 1994. These things do not just come out of a hat. They come through discussion, debate and it was over many years, post the election of 1994 and moving through the white paper, when the question became really a possibility, how to re-equip a defence force with obsolete equipment and the fact that there would not be sufficient on budget funding for defence. This idea of the business plan, what is called the Minister's vision, this gets developed and it goes through the various stages. By the time we are talking, it is quite well formulated and it gets into its nuts and bolts, with the appointment of the chief negotiator, Mr Jayendra Naidoo, Jayendra Naidoo, who appeared before Your Commission, yesterday.

ADV LEBALA: Now, come back, come back. We are way ahead. Remember, this is the 9th of February 1998, before even the successful bidder was chosen during November 1998, before even the contract was signed on the 3rd of December 1999. We are still busy with deliberations on the

9th of February 1998. This position, that has been mentioned here, was it the position of the Minister of Defence, or was it the position of the government?

MR KASRILS: Well, it was the position of the Minister, for sure, shared with his colleagues. The government decision has come about at a later time. But, already, incidentally, the defence review first stage was already accepted by cabinet at an early stage of 1997. So, this is ongoing deliberation. It is very hard for me now, to be able to identify much more than that generalisation.

ADV LEBALA: What are the significant, as at that stage, the, is the thinking within the department about the industrial participation and the business plan and we know it is the position of the department and not the government. We are still at page 192 at the top. I just want us to conclude this main portion of this merit.

"What we are saying to each other is that we can be confident and happy."

Is it about the industrial participation and the business plan?

MR KASRILS: Yes. Sir.

ADV LEBALA:

"The Minister knows how strong the party and the Deputy President feel about the package deal and its cost."

What party are you referring to?

MR KASRILS: Well, in the first place, the ANC members of parliament, the ruling party. And we would have to get the

co-operation of the ANC caucus in parliament. I cannot remember any, the discussions that might have taken place. But, we were clearly confident. At this stage, the defence review was almost approved, the state, that the ANC ruling party, its members of parliament were behind us.

ADV LEBALA: What has become clear, at this stage, that, because the Deputy President is involved, then it is at the cabinet level. Let us read on:

"There will be problems around fund, however Minister Irvin feels he can score by getting the major investment off the ground and it is therefore, important for us to be positive in that bid so that the defence industry can also become excited. Optimism is needed, because it will have a spin off effect on government."

Now, are you talking about investments, industrial participations and offsets?

MR KASRILS: Yes, Sir. I think this actually reinforces what I have been saying about the R6 billion. The major investment off the ground, this would have been in reference to what had been reported by Mr Haywood, earlier on in that meeting, that R6 billion.

ADV LEBALA: Let us conclude my leading, what we see in page 192, paragraph 5.4.25. I do not have to take you through paragraph 5.4.34, because you have already made sense from what has been said in paragraph 5.4.25. The Minister differed, everybody knows that defence cannot fund the whole package along that comes the realistic Minister:

"Fears are already founded, but we must be confident government commitment will be obtained when negotiations are finalised and when the details of the business plan are known."

Now, we are done with this matter. What has become clear, is in that case that there was a realistic approach, in as far as the packages are concerned as at 9 February 1998. The issue of funding and the budget was affected that the council of defence will get, including some Ministers in cabinet. Am I right?

MR KASRILS: Yes.

ADV LEBALA: Now, I would like us to go to the next minute, page 205. I am not going to spend a lot of time on that minute. I am just going through one or two aspects. We have already laid the foundation on this minute on Friday. Now, the Commissioners are going to appreciate why you took them through the dates of the RFI as early as 23 September 1997, why Mr Rayhan will play this significant role and why you had to start there and come back. I think [indistinct] if we go through this minute. Now, page 205, the minute starts on page 205 of Steyn's bundle and then it ends, like, on page 212, Commissioners. Now, let us look at page 205, it definitely said that the minutes of the second council of defence meeting 2/1998, held at Obedi on 6 March 1998. This minute is manufactured in your statement. Am I right?

MR KASRILS: Yes.

ADV LEBALA: In your statement, that is where you say you chaired this meeting after the Minister extricated himself. Am I right?

MR KASRILS: That is right.

ADV LEBALA: You will see that after we are done with these minutes there might not be need for us to go back to your statement. In actual fact, we will be done with your testimony. Now, let us look who was present at that meeting. Mr J Modise, the Minister of Defence was present. Mr R Kasrils, yourself, was present. Mr Steyn was present, Mr Henry [indistinct] and others. Can you see?

MR KASRILS: Yes, Sir.

ADV LEBALA: Of course, the Minister chaired the meeting. Am I right?

MR KASRILS: Yes, Sir.

ADV LEBALA: Now, there is a [indistinct] on page 206. Item 6.8, column AAC, what does that item refer to? Item, page 206, Commissioners, item 6.8, column AAC, What does that item refer to?

MR KASRILS: That is the arms acquisition council.

ADV LEBALA: Now, let us proceed and ask some questions. What was the relationship between the council of defence and the arms acquisition council? You will appreciate why I am asking you this question. They are both chaired by the Minister. Am I right?

MR KASRILS: Yes.

ADV LEBALA: Do you want to explain to the commission, the similarities, in terms of their functions, if you can, in the context of the SDPP's and acquisitions?

MR KASRILS: The AAC was a special structure, created by the Minister, to deal with the acquisition package. It had its own constitution that was drawn up and its own structures. Under the AAC there were a variety of structures that I believe you are aware of and the work that was being done would be referred up, through the chain, through to the Minister at the AAC, whereas, the council of defence was the structure that existed, headed by the Minister, looking at all aspects of defence, not simply the acquisition. So the AAC was dedicated to the acquisition issue, the specific acquisition issue.

ADV LEBALA: Now, would the council of defence also deal with acquisition issues?

MR KASRILS: They, aspects would be referred through to the council. But, the actual decision making and the detail, et cetera, was under the AAC. So, for instance, at this particular meeting, it seems to me and it sometimes happened that the council of defence is sitting, as was the case that day and there was a need for an item from the AAC to be presented, perhaps earlier, because officials were not going to be present the whole day. Therefore, there could be a change, from the council defence, sitting into a convenient, the same people, which made it easy and the same venue, into the AAC to receive a report from

officials, residing under those AAC structures. So, it was an issue of convenience, I would think, in terms of time.

ADV LEBALA: Now, if they have the same composition, other than the fact that the Minister chaired both of them?

MR KASRILS: Yes. The, yes, the same people sat on the COD, council of defence, Minister, Deputy, chief of the defence force, secretary for defence and the chief of Armscor, Mr Haywood, all five. I think, Haywood on the, yes, Haywood in the council of defence, as well as the AAC.

ADV LEBALA: Now, just to, to complete this. Am I right to say, the council of defence dealt with all aspects of defence, including acquisition, if it wanted to.

MR KASRILS: To a point. It did not supersede the work of the AAC at all. But, it is possible and we would have to look at the minutes carefully. I cannot recall, whether a decision of the AAC might be noted for this council of defence. I am not sure, in terms of recollection.

ADV LEBALA: Yes.

MR KASRILS: It is probably not necessary, because the AAC with the same people there and headed by the Minister, could then report from the AAC to the Deputy Present's ministerial committee through that, to cabinet.

ADV LEBALA: Now, could the meeting of the council be found dealing with the subjects of the AAC?

MR KASRILS: No. I, I would, I am sure it would go against grains. That is why the AAC had been set up as a dedicated structure.

ADV LEBALA: Now, but, something significant happens in this minute. Look at page 205, financial [indistinct] 15. We know that it is a minute of the second council of defence meeting, held on the 8th of March 1998 in Pretoria. We know the Minister is there, you are there, the secretary of defence is there, the chief of the South African National Defence Force is there and the other members Mr Haywood and Mr Snowball. But, in page 206, there is an item, exclusive, within this meeting, dealing with the subject of the armaments acquisition council. Would you like to explain?

MR KASRILS: You are talking about item 6.8 AAC.

ADV LEBALA: Yes, Sir.

MR KASRILS: Yes. Well, Commissioners, I thought that I had covered that already, when I said that, at this particular point, the COD in effect, reconvenes as an AAC. Now, obviously, if the minute taker had made that point clear, it would be self apparent. But, certainly, although there is a long period of time and I have said it is very difficult to recount aspects of the work. I am very clear, that, in fact, AAC is different to COD and that when one reads a minute and it says item AAC, that must mean that there is reconvening with the same individuals presiding and the same venue at the same time, when it becomes AAC, which is why we have item 6.8 AAC. There is no deception if that is what learned council is trying to get at.

ADV LEBALA: Not at all, not at all, I assure you Deputy Minister. Not at all. Remember, I am just here to bring evidence before the commission.

CHAIRPERSON: Yes.

ADV LEBALA: [Indistinct].

CHAIRPERSON: I am sorry [indistinct] and Mr Kasrils, in all fairness to council, that is not what council was trying to say. In fact, we do have evidence on record, which is saying that COD and cannot discuss matters, which are reserved for the AAC. That minute was questioned. Somebody end up with the suggestion that the decision seems to be and the intimate decision that was taken on that day. It was not clear whether they were sitting as AAC or as COD. So, council basically is trying to clear up that point.

MR KASRILS: Thank you and apologies, Commissioner.

ADV LEBALA: Thanks for clearing that my learned Chair, I was just about to rather be [indistinct]. Let proceed to page 208, paragraph 6.8.14. Are we looking at the minute of council of defence, or are we looking at the minute of the armaments acquisition council? Page 208, paragraph 6.8.14.

MR KASRILS: Yes. I think it is clear. The minute carries on from 6.8. Every item is 6.8 and the item you refer to is 6.8.14. So, that is clearly the AAC.

ADV LEBALA: Now, please, Deputy Minister, Deputy Minister, is there an example of a minute of the AAC that you would like us to look at? Have you ever seen one?

MR KASRILS: I am not aware of that off hand, here. But, I, there must be, I am sure.

ADV LEBALA: In actual fact, in all fairness to you, that is why I am asking you this question. The only minute that I see of the AAC, it is where the AAC is jointly combined with the armaments acquisitions, here involved. I also see, this minute, which is headed the minute of the council of defence, which you say, is the minute of the AAC. We will leave it. I think we will leave it. Nothing turns on it. But, there are issues that come out of paragraph 6.8.14. Let us have a look at it on page 208. I think it would be better to read it to you:

"Mr Kock presented the list of potential contenders."

Now, who is Mr Kock?

MR KASRILS: Mr Kock, it is, I would not have remembered, but since we were here on Friday, I looked carefully through the minutes and he is the management, the managers, sorry, the manager of the lift program and that is something that resides under the structures, under the AAC and its various lower structures.

ADV LEBALA: Now, given the fact that the COD can deal with all matters, pertaining to defence and we have clarified that the distinction that draws a line between it and the AAC, that the AAC focuses on acquisition. Now, am I right to say that the COD could also deal with the lift program?

MR KASRILS: Well, I would think so. But, I have said already that there is a dedicated structure dealing with this.

ADV LEBALA: Now, let us look at it as and if we are just being dealt with by the AAC, according to you. Now, if approved, we are still on paragraph 6.8.14:

"Mr Kock presented a list of potential contenders. If approved a request for information RFI will go out on Monday, with a closing date on 6 April 1998."

Now, we are talking about lift. Am I right?

MR KASRILS: We are, Sir.

ADV LEBALA: Now, I am trying to clarify something and that is where the Commissioners were, were surprised on, on Friday, why were we hackling with you about something, which goes way back? Mr Griessel came before this commission. He testified about what I am going to tell you. Mr Burrowsmith testified about what I am going to tell you. Rob Vermeulen testified about what I am going to tell you. I could even give more, but let me park there. They said the Minister of Defence, Mr Joe Modise, as early as the 23rd September 1997, directed Mr Haywood to take out RFI's on seven cardinal equipment parts and it is common cause that those seven cardinal equipment type and I do not want us to waste time on you. I am stating it as a fact, include lift and I am going to read those seven cardinal equipment type to you. They are Corvettes, submarines, advance light fighter aircraft Alpha, lead in fighter trainer lift, main battle tank, maritime patrol helicopter, light utility helicopter LEOH. Now, I think you should bring clarity to the commission on

this aspect, as to why, in April, or around March 1998, the same thing happens of issuing RIF's for lift.

MR KASRILS: Well, I would like to see the references to lift in the instruction by the Minister, back in 2007. I am not suggesting now, Sir, in halting and making proceedings any longer. But, I would like to see that, if in fact, the documentation is there, Sir. I would think that Minister Modise realised the mistaken in that, in terms of including the lift in a package discussion back then. The month, did you say September 2007?

ADV LEBALA: I beg your pardon, 23rd September 1997.

MR KASRILS: Yes.

ADV LEBALA: And you were the, just to complete.

MR KASRILS: Sorry.

ADV LEBALA: There was a response, the closing date was the 31st of October 1997, 37 responses to the RFI's were received from eight countries. Actually, 11.

MR KASRILS: Okay.

ADV LEBALA: 11 countries, yes. The RFI's were sent to 11 countries on the 23rd September 1997, under the signature of Mr Ronald Haywood, in his capacity of executive chairman of Armscor. You know what, I will show you Deputy Minister, the commissioner's work of [indistinct] of his testimony. You know, when you want to lead it, the Commissioner said you are not going there. I think it is so common cause that I will be wasting time, if I had to find it.

MR KASRILS: No, no. Can I help?

ADV CANE: Sorry, Commissioners, I do hesitate to interfere, with the leading of the evidence. May I please point out that the request for information, the [indistinct] on 23 September 1997, included a narration to the aircraft, a program called light fighter aircraft and not the Alpha and lift programs, which were substituted for the light fighter aircraft, once the three [indistinct] had been adopted.

This was in fact, canvassed during the evidence of the former secretary of defence, Mr Steyn. So, what is the [indistinct] witnesses partially for the evidence? But, he is overlooking the nuance but in relation to the Alpha and the lift. They came, or beneath the item particularly that was important to us, the notes and such. As you please.

CHAIRPERSON: Advocate Lebala, can I give you some directions, as per admission of [indistinct] and other files. We have had enough evidence about that and I that even people who actually were the authors have already testified. You must actually move on to the next point.

J MUSI: Just maybe, maybe to add on, just a point of clarification. I am sorry. I think, just following up on what Advocate Cane is saying. I think she is correct. You will recall that General Steyn also made it clear that the lift program was brought onto the SDPP's at a later stage. You remember, I had some issues with him around that, that part of the story. So, the lift was not originally in the, in the RFI's that were issued in September 1997.

ADV LEBALA: Commissioners, then, then we stand corrected. Remember, the following and may the record reflect and in all fairness to the witness, another lesson comes about the synergy of leading testimony. You see, if, if for instance, we led the testimony on the aircraft, if we led the testimony of General Steyn, I think it would have simplified things. We read it to mean that there were two processes in which lift RFI's went out and we just wanted clarity from the witness. Now, following up on what Ms Cane says and what the Commissioners are saying. Perhaps, it would be appropriate for us to close this subject, by asking you to clarify. I know what the Commissioners are saying, ms Cane says, we are partially correct. Do you want to bring clarity, if you can, on this aspect?

MR KASRILS: Well.

ADV MOERANE: I think, at this stage, I must object. The matter has been clarified by, by the Commissioners. It had been clarified by my colleague Cane. I do not think we should be flogging this horse.

CHAIRPERSON: I do not think we want to. Let us get to the next point.

ADV LEBALA: We will part ways with this aspect and we will deal with it, when we make submissions. If need be, we will seek further clarity. It means, when we close, addressing the commission, to the exclusion of witnesses, we will deal with it, if need be.

MR KASRILS: Well, Commissioner, if, if that is the case, I just would, very, with all due respect.

CHAIRPERSON: No.

MR KASRILS: Okay.

CHAIRPERSON: Mr Kasrils, just, sorry, I have made a ruling. I am not going to depart.

MR KASRILS: I am terribly sorry.

CHAIRPERSON: Thank you.

ADV LEBALA: I would like us to look at ANNEXURE PS19, PS19, on page 234, 237 of General's Steyn`s bundle, ANNEXURE PS19.

CHAIRPERSON: Which page is that?

ADV LEBALA: Page 234 to 237, page 234 to 237 of General Steyn's bundle, please, ANNEXURE PS19. I, I see the Commissioners are nodding and the, are you on the same, let us start on page 234. If we look at the, the subject, the minutes, are minutes of a combined AAC and AASB meeting convened in the MOD conference room on 30th April 1998, to consider the shortlist of contenders for the project Winchester lift requirement. Now, if I may ask, was it dependant that the armaments acquisition council could have combined meetings with other [indistinct]?

MR KASRILS: Not that I recall.

ADV LEBALA: We assumed the, the armaments acquisition council shared a minute and you have explained that, it could be the scribe of who have created that, sharing the minute with the council of defence. Now, here it is specific,

it is a combined meeting of the armaments acquisitions council and the armaments steering board. Was that allowed?

MR KASRILS: Yes. I do not see anything wrong with that. The AAC has the executive in that line, could call on the lower structure to meet with them.

ADV LEBALA: Now, if we know the distinction between the council of defence, looks at all the issues of defence. We know the armaments acquisitions council focuses on acquisition. Now, what is that which confide the AASB to share a meeting with the AAC? Simply put, draw the distinctions quickly. We know that, even the Commissioner has stated. From your own mouth, what were the functions of the AASB. Do not tell us about the AAC. We know. In relation to the AAC, Deputy Minister, what were the functions of the AASB?

MR KASRILS: They would be supervising the work groups that resided below them, in term of the whole question of acquisition and the immediate structure below the AASB, the minutes refer to this several times. I cannot remember the exact title, arms acquisition, maybe monitoring board, is that correct? So, that is the structural line and under that monitoring board, there would be various work groups, which were engaged in dealing with the various items for procurement. They would make their report to that AAMB, which in turn, would come and report to the AASB and so on. So, for some reason, which I cannot possibly recall, it was

decided that they would have a joint meeting that day, possibly a time issue, chairperson, come to think of it. Because what was at play here, was the attempt to bring the lift project on line with the other six, five, six projects of the package, so as it finally bring it on board with the package, for reasons, which you can ask me at some stage if you wish to.

ADV LEBALA: In [indistinct] you are saying relating the AAC and the AASB could be together, because one could look at the overall issues of the defence force and the other one was busy with acquisitions, in as far as below structures below the AAC are concerned. That is why this meeting was joint. Am I right?

MR KASRILS: Yes. Certainly, I would think this is the case with any form of business. A higher structure can call in the lower structure to have a common meeting.

ADV LEBALA: Now, what happens in such a meeting? We know that the AAC is chaired by the Minister. In his absence, it is chaired by the Deputy Minister. Now, we know that the AAC has been distinguished by the different function. Now, what happens when they have a joint meeting?

MR KASRILS: Well, the higher authority would chair the meeting, obviously.

ADV LEBALA: Okay. Let us look at page 234. We are not going to spend time on this minute. We see who was present, Minister Joe Modise was the chairperson, yourself,

you were present, Mr Steyn was present. That is what matters now. Let us look at page 235, paragraph 8. Now, we know that this meeting dealt with project Winchester, the lift requirement. Paragraph 8, let me take that one and read it to you:

"The project team presented a meeting with an affordability announcement of lift contenders, without cost considerations. The selection process is biased towards the higher performance category of aircraft."

Now, this position was not shared by yourself and the Minister.

MR KASRILS: Well, certainly, in the outcome, I cannot remember when. Possibly, by that stage, I am aware and I can state that I was always quite of the same mind as the minister, in relation to that, the Hawk the, in terms of the lift, which was the Hawk, as opposed to the Italian Aronagi. So, yes.

ADV LEBALA: We are, okay, we.

MR KASRILS: Sorry, sorry.

ADV LEBALA: We are getting there. We see that the issue of cost and higher performance category starts there. Now, you are saying and confirming that this position was shared by yourself as Deputy Minister and the Minister. Let us read on:

"These aircraft are however, also significantly more expensive to acquire separate (I beg your pardon) to acquire, operate and maintain. Thus unless, additional

funding could be found to support the acquisition of a more superior aircraft, the air force would have to take cognisance of budgetary constraints in the selection process."

Now, this position was it shared by the Deputy Minister and the Minister?

MR KASRILS: Yes, Sir.

ADV LEBALA: Now, let us read paragraph 9:

"The Minister of Defence cautioned the meeting that the visionary approach should not be excluded, as the decision on the acquisition of a new fighter trainer aircraft would."

I start to struggle to read there, because of the [indistinct].

CHAIRPERSON: Would, would impact.

ADV LEBALA: Thank you, Chair.

"Would impact on the RSA defence industry's chances to be part of the global defence."

Well, one can follow the things of what this sentence is saying, if you go to the next page. But, let us look at what we can see and not read out of contexts. We know that, in the, earlier on, after issue of costs and highest performance that the value was shared by the Minister, the question of additional funding to support acquisition of a superior aircraft was shared by the Minister and the Deputy Minister, that the monitory constraints in this selection process have to be taken care of, was also shared by the Minister. Now, we are dealing with paragraph 9:

"The minister of defence cautioned the meeting that the visionary approach should not be excluded."

Let us pause here. What was the Minister envisaging about the visionary approach?

MR KASRILS: This would be that business plan that we have been discussing earlier today, in other words, the industrial participation aspects, the investment into the country, the government to government arrangements and assistance with the finance in that way.

ADV LEBALA: Now, that position, was it only shared by the Department by Defence, or it was also shared by the colleagues of the Minister in other departments?

MR KASRILS: Well, that is certainly a process that had been underway, as previously mentioned and shared, to a large extent with other colleagues of the Minister. I think the Minister of Finance, I cannot, he came on board at a certain stage, obviously more judicious and quite a lot of discussion must have been taking place with him.

ADV LEBALA: What was the position on the Deputy President on the, on this visionary approach? Do you have an idea?

MR KASRILS: I cannot say, at, I was intimately involved and one might judge from the August meeting of that year, when, when the presentation was made and later accepted by cabinet.

ADV LEBALA: Now, do you have an idea about the, the position of the neighbouring officers. Remember, we high,

we are at the higher level. The Commissioner said about the test that it starts lower levels, there are teams that debate, whether we acquire the lift program or not. Then it gets pushed to another level. It goes to soft com and from soft com it gets pushed up, up until it comes to the armaments acquisition council. We are there. Do you have an idea what was the position of the, permit to use this way, the psychologists and the naval officers, air force officers, army officers, down, in as far as the visionary approach is concerned? Do you have an idea?

MR KASRILS: Well, I would think that there might have been some, some who might not have agreed. I believe that, in general, there was a buy into this. There might have been some people, like Mr Steyn, who we know from the minutes raised concerns. I am not aware of resistance at all, elsewhere.

ADV LEBALA: Was there a time where, yourself and or the minister discussed this visionary approach down below?

MR KASRILS: Well, it would have been heard in speeches and statements of the Minister. But, we did not cut over the heads of services, who represented navy, air force, army and so on. We did not have our dealings directly with such people. Of course, it was not as though there was a Chinese wall between us. Although, I cannot give anything definite, there were people who one worked closely with, in terms of the defence review task team, who one had developed quite close relationship with. I found them

always very supportive, Commissioners, of the whole project. They might have had questions, which when answered, they certainly seemed to accept.

ADV LEBALA: Now, let us look at what is standing before us. It is the 30th April 1998. It is the same self month on which parliament approved the defence review. Am I right?

MR KASRILS: Yes. I think the 6th of April, was the day.

ADV LEBALA: Issues had become clear that we are dealing with the lift program, affordability is an issue, cost considerations are an issue, funding is an issue. We have taken you through the minute. I have been mentioning the Minister had a vision, was also realistic about these conflicts that, this budget limit, this funding. Then comes the visionary approach:

"Let us face that, South Africa has to be part of a global defence industry. We have to consider the interest of South Africa in as far as the decision in regarding the acquisition of the fighter trainer is concerned."

Now, do you see contradiction there, or not?

MR KASRILS: No contradiction, in terms of what the Minister's position is, no.

ADV LEBALA: Let us read further. Let us go to page 236.

"What has becoming clear is that it appears that the visionary approach is confined to the South African defence industry being part of the global defence industry. The most inexpensive option may not necessarily be the correct option."

Is that part of the visionary approach?

MR KASRILS: Yes.

ADV LEBALA: Now, given that, are you not seeing contradictions? Remember, you have sat in meetings, where there has been deliberations where costs, funding, budget are an issue. Are we likely to get the investment, which equates on a one to one ratio? The Minister says we have to be careful in handling this. General Steyn says we cannot fund it within the department. The GDP, it moves from two per cent into 1.5 in as far as allocation of the defence is concerned. The defence has got budgetary constraints, then comes the thinking that the most inexpensive option may not necessarily be the correct option.

MR KASRILS: Sir, I think that statement applies to any business discussion. I do not see any contradiction. I think, a motor works, a company of any kind discussing these things. You might have the chairperson, the managing director, the CEO saying: 'The cheapest option is not necessarily the best option for us.' We go for quality, we go for partnership, we go for offset, we go for investment. Minister Modise here, in his inimitable style is hammering home, which he tended to do, the vision that he had and certainly that there was the buy in from his, his colleagues and government and he was being very didactic.

ADV LEBALA: Now, let us read further on page 236 and test what you are saying, at the top:

"Whilst this vision."

Remember, we are dealing with a visionary approach:

"Whilst this vision."

I beg your pardon.

5 *"With this vision, the most inexpensive option may not necessarily be the best option. The Minister requested that the DOD acquisition staff should bear this vision in mind, during the selection process."*

Now, let us look at what we have. As at that stage, on the 10 30th of April 1998, we know that funding was an issue. Am I right?

MR KASRILS: Yes.

ADV LEBALA: There was no certainty as to where the budget was going to be coming from.

15 MR KASRILS: I think, by this stage it was, it must have been clear that there was the buy in, in terms of having, having purchases off budget through, for want of the better term, the business plan vision. The government to government partnerships, et cetera.

20 ADV LEBALA: But, that is, I think followed up at that first COD meeting that we took you through, noted. But, what was very clear also, is the fact that there was no certainty as to where the budget was going to come from, whether it was going to come from the department itself, or from 25 outside government.

MR KASRILS: There can never be certainty, Commissioners, until the final nod, the final as in, the final

approval, of the highest executive authority, being cabinet, which comes at the end of the year, December the 3rd. But, by this time, the signs are there. We are feeling must more positive.

ADV LEBALA: Okay. Let us read further, then go to the numb of the issues. There is a paragraph heading, decision, paragraph 10:

"The Minister instructed the project team to issue the approved shortlist of contenders with RFO's, to thus bring the lift program in line with the other offers to sift under these pertaining defence packages costs."

Paragraph 11:

"The Minister further instructed the project team to include the option of a lease in the RFO's."

Paragraph 12:

"The meeting approved the list of contenders to receive RFO's as being, A. Aramagi, MB339FDYAK130."

This is an aircraft from which country?

MR KASRILS: The it, that is the Italian aircraft.

ADV LEBALA:

"B. Iovodavochi L159."

Which country?

MR KASRILS: I think that must Czechoslovakia, as it then was, I think. I do not think it is Russian.

ADV LEBALA: And C is from, this is British Aerospace, the Hawk 100. Now, there were three contenders as at that stage. Am I right?

MR KASRILS: It is clear, yes.

ADV LEBALA: We will come back to, to this topic. There are other minutes that force us to come back to this part, all that we have to reflect, which is very critical at the start. As that date, there were three contenders, in as far as the lift program is concerned, as at 30th of April 1998. There were three contenders in as far as the lift program is concerned. Now, I would like us to go to PS24. The minutes of the second council of, on defence meeting, held on the 21st August 1998 at 10:30 in Pretoria. It starts on page 316 and it goes to page 321. We are not going to take you through each and every page of this minute. We will just take you to the relevant portions, because we still have to go back to the visionary approach. Page 316 and it is PS24. Present at that meeting of the council of defence was the Minister Modise and yourself, Mr Steyn. Now, let us go to the issues that relate to your testimony, page 317, item 7.3, briefing on government to government offers. Now, this meeting on the 21st of August follows the meeting that we have just parted ways with, on PS19, which was on the 30th of April 1998. In all fairness, Deputy Minister Kasrils, a lot of things must have happened from April to, to August, a number of issues that we have to clarify. Let us start on paragraph, if you can, on paragraph 7.3.2. Mr Shaik, I am, I am reading from 7.3.2, page 317:

"Mr Shaik said the team would like to brief council on six aspects."

Of course, you were part of that meeting, that is obvious, that is why I read the fact that you were present and the Minister was present, 7.3.1 lift/Alpha program strategic issues, MB339, or Hawk. Here is a mention of two contenders. Am I right?

MR KASRILS: I think there are not two contenders. You are talking about the lift program light fighter trainer, linking in with the advanced light fighter aircraft, so they put the two together. Is that what you are asking me?

ADV LEBALA: Well, let us clarify, in terms that you have rescued and brought all that now. Let us look at lift only. I know that it mentions lift/Alpha program. Let us look at the lift program. When you look at the lift program only, it mentions two contenders. Am I right?

MR KASRILS: Oh. I see, sorry, that does, that does, ja. I do not know why the Alpha program is there. But, that is it, it is lift and it is either MB339 or Hawk, ja.

ADV LEBALA: Now, MB339, does it reflect to the Italian?

MR KASRILS: Yes. It does.

ADV LEBALA: Now, at this stage, we are looking at two contenders, whereas at the previous minute, three contenders were shortlisted.

MR KASRILS: Yes.

ADV LEBALA: Can you explain why you were looking at two at that stage?

MR KASRILS: Well, there must be a minute at some stage, which ruled out that, that aircraft, which was from Czechoslovakia. So, it dropped out.

ADV LEBALA: Fair enough. I think that explanation makes sense. Let us look at page 318, paragraph 7.3.5, I just want us to go through the relevant portions of it. We are still busy with the lift program.

"The expected lift issue had resulted in the department having to re-plan [indistinct]."

We are in paragraph 7.3.5, page 318. Actually, the relevant portions are at the bottom. The them of that paragraph, where we say at the last, actually, the sentence before the last:

"And the lift aircraft remain at 24, however, the cheaper option MB339 was chosen."

Can you see that?

MR KASRILS: Yes. Yes, I can.

ADV LEBALA: Now, am I right to say, as at that stage, the, the lower ranking officers, had chosen the MB339, which we know has become the Aeromach?

MR KASRILS: Yes.

ADV LEBALA: It was chosen because of being the cheaper option.

MR KASRILS: On, on those grounds, at that lower level, yes.

ADV LEBALA: 7.3.6, I think three sentences from below, going up. The relevant portion still emphasizes:

"On the cheapest option of the lift program, MB339, the air force had budgeted."

Now the Aeromach is a cheaper option, once again.

MR KASRILS: Yes. That is clear. I think that is common purpose.

ADV LEBALA: Now, at that stage the visionary approach was not known to the officers, who chose the Aeromach as a cheaper option.

MR KASRILS: Yes.

ADV LEBALA: Now 7.3.7 that is where we will read everything:

"If the Hawk aircraft is chosen instead of the MB339, the air force has a deficit of R2.986 billion, instead of R680 million. The Hawk increased the total expected deficit to R9.761 billion, instead of R7.349 billion. The statutory decision required that this, do we choose the MB339 or the Hawk. The recommendation of the armaments acquisition steering board is the cheaper option, namely the MB339."

7.3.8:

"The secretary of defence remarked that the Hawk doubled the cost of the lift aircraft for increasing performance of approximately 15 per cent. Hence, the AA has been recommendation that the cheaper option be recommended."

Now, this minute refers to the recommendations that are being made. I would like us to look at ANNEXURE PS19. Let us go back to ANNEXURE PS19, particularly on page 236. We should bear in mind that paragraph 7.3.7,

especially the last sentence that I have read to you states the following:

"The recommendation of the AASB is the cheaper option, namely the MB339."

Now, let us look at page 236, paragraph, paragraph 5. I would like you to explain why, this minute, if you can, mentions the recommendation of the AASB, whereas paragraph 12 says nothing about that recommendation.

MR KASRILS: Sorry, I am not quite following you. Can you just guide me?

ADV LEBALA: Look at. Okay. Let us start page 318, 7.3.7. Now, we are at the stage where we know about the visionary approach, we know what it entails. We have seen the challenges of the budget. We have heard about the funding. We have heard about the preferences of the lower structures and what is significant is that this meeting, this joint meeting, I mean, I beg your pardon, this council of defence meeting, of the 21st August 1998, refers to a recommendation, paragraph 7.3.7, the last sentence, one, two, three, four, starting with:

"The recommendation of the AASB is the cheaper option, namely the MBB339."

Are you with me Deputy Minister?

MR KASRILS: Yes, thanks.

ADV LEBALA: Now, I went back to the minute of a meeting where the AASB sat. Hence, I am failing. It will be PS19, page 236. Please go PS19, page 236.

MR KASRILS: Okay. I am with you.

ADV LEBALA: Paragraph 5. You will remember, if you go to paragraph, page 234, just to refresh you. That is a minute of a combined AAC and AASB meeting of the 30th April, when the subject of the lift was elaborated upon. Can you see?

MR KASRILS: Ja.

ADV LEBALA: Now, paragraph 12, in relation to what I have just read to you, paragraph 7.3.6, page 318. They do not shake hands, that is all that I am saying. I am looking for the recommendation. Are you able to locate it?

MR KASRILS: Yes, sure and your, and your question again?

ADV LEBALA: My question is, the meeting in which you attended with the Minister of the council of defence, of the 21st August 1998, in page 318, paragraph 7.3.7 states that:

"The recommendation of the armaments acquisition steering board, is the cheaper option, namely the MBB339."

Which we have, we know that is an Italian Aermach. Are you with me?

MR KASRILS: Mmm.

ADV LEBALA: Now, I am looking for this recommendation, because I cannot find it anywhere. Now, I am referring you to the meeting, where the AA has been, was part of. Hence, I am taking you to ANNEXURE PS19, page 236, paragraph 12. Are you with me?

MR KASRILS: Yes.

ADV LEBALA: Now, let us be specific. Is it correct that paragraph 12 talks of approved? It says:

"The meeting approved the list of contenders to receive the RFO's."

Am I right?

MR KASRILS: Yes.

ADV LEBALA: The meeting says nothing about recommendation. Is that not so?

CHAIRPERSON: Oh, yes, it does recommend it somewhere.

MR KASRILS: Yes. But, the, the structure goes back to do its work and comes to the following meeting with this recommendation and detail.

ADV LEBALA: Now, but that is where I want relation as a team comes. We have been looking for this recommendation. Is there any minute? We can pause if you want us to search for that minute that confirms what you are saying that the AASB recommended a cheaper option, namely the, MMB, the MB339. I agree with you that the structure goes back and does its work. I cannot find any minute of the AA, as to where the recommendation has been made.

CHAIRPERSON: I have already one. Can I assist? I think I remember there is one minute, where it is noted that the AASB recommended the cheaper option, although I cannot remember which one it is, wherein the AASB did make such recommendation. I think this got cleared during the

evidence of Mr Steyn. You can accept [indistinct]. I remember this is what happened.

ADV LEBALA: Thank you, Chair.

CHAIRPERSON: Oh. Advocate Cane was here. You were also here, do you know, recall such a statement?

ADV CANE: Yes, Chair. There certainly was minute read, the contents were considered and you will recall at the end we both heard all the minutes, including, in particular the AASB minute that you will find in page 277 of this bundle, the minute of 16 July.

I think that is what the chair has in mind. We were at page, page 279, there were, these two recommendations from the chairman, who was Mr Steyn, the secretary of defence. The ones you are enquiring is in the last sentence of paragraph b on page 279, that the AASB supported the recommendation A and went on to justify that in the same paragraph that recommendation A pertained to MB339.

The second such similar statement is to be found in paragraph e on the same page. There and then the chairman rules that the AASB recommendation is the MB339MD and that then is carried forward, as Mr Steyn acknowledged as then the recommendation of the AASB, conveyed to COD on 21 August 1998.

Now, as I understand my learned friend, he is concerning himself, perhaps more widely, not only with the recommendation of the AASB, but the recommendation

pertaining to the, the Hawk issue. You will recall that in the special meetings of both the AASB of 8 July, which is to be found on page 238 and the special meeting of the AAC of the 13th of July, which is to be found in page 260, the various evaluations of all the equipment types were considers.

In relation to the lift program two different options were put forward, the one the cost deduction and the other the non-cost deduction. So, at the end of that process, we then come to this process on 21 and 31 August. As you please, Chair.

CHAIRPERSON: Thank you. Advocate Lebala, in short, you have heard that there was such a recommendation.

ADV LEBALA: Thanks for the clarity and I am indebted to Advocate Cane. I would like to draw your attention to page 321 of the self same minute of the council of defence, of the 21st August 1998. For you to appreciate what I intend taking you through, on paragraph 7.3.24. Let us start on paragraph 7.3.23, let me read it to you:

"In reply to a question from Mr Shaik, if the principal of a three tier or two tier training system should be raised in future briefings, Major General Beukes said, no. The decision on a three tier lift system had already been taken. At issue is whether lift should be the Hawk or the MBB339. From a purely training point of view, the air force can do the job with either. The Hawk is more expensive, because this operational capabilities, which the MB339 does not offer."

Paragraph 7.3.24:

"The Minister said that, said the political decision needed must revolve about operational aspects of the aircraft. That is part of our recommendation. Government must decide if they want to enter the European market and if so, through which partner."

Now, this approach, does it go to the visionary approach?

MR KASRILS: Yes. Of course, it does.

ADV LEBALA:

"The defence industries of the world are forming consortiums. If we are not part of one of consortiums, our aircraft industry will be lost. He said we must not prejudge, let the politicians decide."

Now, who was he referring this to?

MR KASRILS: That would be to cabinet.

ADV LEBALA: But, if I may ask, were there technocrats? You know, you know who the technocrats, were there technocrats within government and outside government who were opposed to this visionary approach?

MR KASRILS: I would think they were very approving, would have been very approving, Sir.

ADV LEBALA: Now, this visionary approach and what we see in paragraph 7.3.24, are you confidently saying it excluded even that, which is shared by technocrats?

MR KASRILS: I, I, sorry.

CHAIRPERSON: Advocate Lebala, I think, let us stick with the approach, let us stick with the approach.

ADV LEBALA: I think it has become clear that the visionary approach was even discussed. You said that people below structures heard about it. They bought into it. Now, being specific with what we see in paragraph 7.3.24, which is in line with the visionary approach. I just want to know that, as at that stage, remember, what is significant is I would like you to look at the dates. We are looking at the 21st August 1998, after the approval of the defence review, before the appointment of a successful bidder and before the signing of the SDDP packages, Sir. Were there descending voices, were there any other parties that were opposing this visionary approach that you know of?

MR KASRILS: No. You are talking about in this meeting, Sir?

ADV LEBALA: Including this meeting.

MR KASRILS: Well, certainly not in the meeting. Once the, sorry. Is it me to speak? I beg your pardon, Sir? No, not in the meeting. Once the Minister het gesê, this is a phrase we learnt from the previous dispensation, with public servants and certainly with our dispensation, we allowed people to speak up and you can see that from the minutes, under Minister Modise's leadership. But, in the end, in the minds of these public services and particular those from the old order and a lot of them were present here, if the Minister het gesê, that was it. In terms of another phrase, finish en klaar. The Minister spoke and once that happened and you have seen that, even by Mr Esterhuizen, in his testimony

that the final decision lies with the executive. Whatever, Mr Steyn's anger, or critique brings out in his statement, Minister, Mr Steyn was then, certainly in his demeanour and in his silence accepting what the Minister's final statement was, Sir. Outside is another question, of course, there are many parties outside in the wider society that we certainly had the, their support unanimously. The defence review in parliament.

ADV LEBALA: This, this is my last question on this, because we have to deal with the final minute that relates to the special briefing to President Mbeki and then I will ask you full questions and we will be done with your testimony. Other than Mr Steyn and or Mr Esterhuizen, I am talking about technocrats, were there technocrats, outside the department, who were opposed to this approach?

CHAIRPERSON: Advocate Lebala, I am not going to allow this question. It is too late. Sure, there are [indistinct], I would not know what other people else are thinking.

ADV LEBALA: Chair, with respect and humility, if the Deputy Minister knows the views of others below the AAC and the COD that goes without saying that he would have an idea and you will appreciate when you make closing submissions, why this aspect is very important. With respect, either he knows or not.

CHAIRPERSON: I have made up my mind.

ADV LEBALA: Thank you. I would like us to go to the last part of the minutes, because you see, it is minutes that have

been making us to go wayward, before we are dealing with specific questions. I see you want to say something.

MR KASRILS: No. Thank so much for your courtesy. If I might address the Commissioner, could me permit me five seconds and no more, so to bring out one point, which council has not referred to, which appears on this page and substantiates my submissions, Sir. Thanks very much, 7.3.23, Sir, that paragraph ends with Major General Beukes, who was the, at this point in time the chief of the air force and he ends the paragraph, by saying:

"The Hawk is more expensive, because it has operational capabilities, which the MB339 does not offer."

And this is something that I have been making very clear, as to why I supported the Hawk and Minister Modise as well. In 7.3.24, the Minister said the political decision needed, must not blah, blah. He himself, he is saying political decision and goes into the business plan. This question of the operation capability of the Hawk trumped the, the MB339 in operational terms, very much. Thank you, Sir.

ADV LEBALA: Thanks for the clarity. I would like us to deal with the last aspect, where we confine ourselves to the minutes. I would like you to look at the minutes of the special briefing.

J MUSI: Sorry, sorry, Advocate Lebala, I am not to interrupt you, before we, we depart, can, can we see what paragraph 7.3.26 said? On that same page, it says, in reply

to it. No, no, I am sorry, 7.3.25, not point 26. Major General Beukes said:

"A similar argument can be expected, regarding the maritime helicopter, the Linx is a much better helicopter, but is more expensive."

Thank you for [indistinct]. Thank you.

ADV LEBALA: This is a time where I, I am taking you to ANNEXURE PS25. Now, I am going to request to take, or I am going to take ANNEXURE PS25, PS27 and 26, PS25, PS26, PS27 and an additional annexure, which is not marked as an annexure, which is not marked as PS, ja. We will start from page 322. This refers to the minutes of the special briefing on 31st August 1998 at 19:00 to the Deputy President, Mr T Mbeki on the progress of the strategic defence packages program for the SANDF. Now, I would like you to look at page 322 to 325.

MR KASRILS: Okay.

ADV LEBALA: Together with 327 to 329 and I will tell you how I am going to deal with it and 330 to 332. That is PS25, PS26 and PS27. Please look at page 322, against page 327 only.

CHAIRPERSON: Advocate Lebalo can I suggest that you, can you give the witness the [indistinct] then we take the tea adjournment. Then I am sure that you will deal with it much quicker when we come back from tea.

ADV LEBALA: Thank you, Chair.

CHAIRPERSON: Can we have a tea adjournment until quarter past, quarter past 11.

ADV LEBALA: Thank you, Chair.

CHAIRPERSON: We will adjourn then.

(COMMISSION ADJOURNS)

(COMMISSION REOPENS)

CHAIRPERSON: Can we just confirm that he is still under oath?

COMMISSIONER: Do you confirm that you are still under oath? Say I do.

MR KASRILS: I do.

MR LEBALA: When we took an adjournment we were just about to take you through the minutes of the Special Briefing on 31st August 1998, briefing the Deputy President Mr T Mbeki. Now, I am going to take you through pages 322 to 340. We are just going to be looking at the specific parts of these pages, not all of them and I am not going to deal with these minutes paragraph by paragraph, because there are similarities between these minutes. Now, I requested you to look at ANNEXURE PS25, page 322, ANNEXURE PS25, page 322, ANNEXURE PS26, page 327. Would you kindly flag them, deputy minister? ANNEXURE PS27, page 330 and page 337. Without wasting time, there are similarities between these pages. [Indistinct] if you look at page 322, the topic is the same as in page 327, 330 and 337. Am I right?

MR KASRILS: Yes, sir.

MR LEBALA: Please feel free to let me slow down if you think I am hurrying. Thanks for Ms Xabashe for being [indistinct] to see to it that we could expedite the testimony as far as these documentations are concerned by flagging them. Commissioners, we are just trying to… Ms Xabashe is just trying to flag this documentation [indistinct] expedite [indistinct] deputy minister quickly. Are we… are we done with flagging? Now, you will see that what is common between these pages is the topic is: 'The minutes of the special briefing on 31st August 1998, briefing the Deputy President, Mr Mbeki.' Am I right?

MR KASRILS: Yes, indeed.

MR LEBALA: Now, if you look at PS25, I would like you to look at page 324. You will see that that minute has been prepared by Mr Esterhuise. Am I right? Look at page 324 at the bottom.

MR KASRILS: Yes, indeed.

MR LEBALA: And if you look at the minute on page 326 you will see at page 329 that it has been prepared and signed by Mr Shaik, if you look at page 329.

MR KASRILS: Yes. Yes, sir.

MR LEBALA: And if you look at page… ANNEXURE PS27, page 330, I would like you to look at page 332. You will see that it has been… I beg your pardon. If you look at page 330 you will see ANNEXURE PS27. It has been prepared by Mr Shaik and signed by him. Look at page 332.

MR KASRILS: Yes.

MR LEBALA: And if you look at page 340… I beg your pardon, page 339 and I would like you to look at it against page 337. Page 337 signifies that is the same topic minutes of the special meeting briefing the Deputy President, Mr T Mbeki on the 31st August, but you will see on page 339 the minute has been signed by one, two, three, four, five signatories. Am I right? Page339.

MR KASRILS: Yes, I agree.

MR LEBALA: Now, do you agree that the content [indistinct] could be different, the content and the substance of these minutes are similar?

MR KASRILS: They are similar. There are some changes or differences.

MR LEBALA: Now, we just intend dealing with brief differences so that you can help us understand the real issues enveloped by these minutes. If you look at page 332 against 327, against 330, it means I would like you to flag those pages, against 337. You will see that 330 and 337 informs the reader through the members of the ministerial special briefing and you the invitees are. Am I right?

MR KASRILS: Yes, indeed.

MR LEBALA: Now, let us be precise. For instance, let us take PS27 and 330, they tell us that Mr T Mbeki, the Deputy President, Mr J Modise, Minister of Defence, Mr A Irvin, Minister of Trade, Ms S Sigcau, Minister of Public Enterprise, Mr R Kasrils, yourself, Deputy Minister are members and the rest are invitees.

MR KASRILS: Yes, that is 330, right?

MR LEBALA: If you take 330 and 337…

MR KASRILS: Yes, both of them have those… that notation member and invitee.

MR LEBALA: Now, do you agree that these minutes are minutes of the Special Ministerial Briefing?

MR KASRILS: Yes, indeed.

MR LEBALA: Irrespective of what we see on 332, because 332 does not specifically mention. It just says 'Minutes of the Special Briefing.' Can you see?

MR KASRILS: Yes, sure.

MR LEBALA: Now what… now what has become clear is that this was minutes of the Ministerial Briefing. Now, let us look at what is significant in as far as these minutes are concerned. I would like you to look at page 323, paragraphs, 9, 10, 11, 12, 13, 14. But I could take you to all the pages in which paragraph 11… 9, 10, 11, 12, 13, 14 are contained. Would you agree with me that paragraph 11… actually paragraph 9, 10, 11, 12, 13, 14 in all these minutes are similar? I mean, these paragraphs are similar, the content is the same. Do you agree? Or you want us to complete it? In all fairness, let me allow you to talk. Okay, look at page 323, paragraph 9, 10, 11, 12, 13, 14 again. Page 328, paragraph 9, 10, 11, 12, 13, 14 and 15. Look at page 328, 329 and then look at page 331, 332, paragraph 9, 10, 11, 12, 13 against page 338, 339, 9, 10, 11, 12, 13, 14, 15. You may take your time if you want to, but the content and the

form is more or less similar. Do you agree?

MR KASRILS: Yes, I wonder if I could help the commission in cutting time. So, we could go through each of these paragraph by paragraph, all four and that is going to take considerable time. I have glanced through it. I know that there are some differences of words here and there. The main difference relates to the issue of members and invitees and the most important is that the one final minute is signed by various ministers including myself. So, if you would like commissioner to save time I can accept that there are slight differences between the sets of minutes, but that the one that I signed is the correct one, because various drafts were provided.

CHAIRPERSON: [Indistinct]. The last one that you signed… that you signed… there are other people who allegedly signed this document. Can you recognise your signatures? The one which… look at page 339. That is the minute that you signed.

MR KASRILS: Yes, sir.

CHAIRPERSON: You recognise that signature? Is that your signature?

MR KASRILS: I do indeed, sir.

CHAIRPERSON: Can you recognise the other signatures [indistinct]?

MR KASRILS: Yes, Irvin's signature I am well acquainted with, because he has been around for a long time, the same with Joe Modise's. I would accept that that is Stella

Sigcau's signature and Mr Shaik's.

CHAIRPERSON: Thank you. The one allegation yesterday or the day before yesterday is that the people who signed this minute, there are chances that they signed the minutes without reading it.

MR KASRILS: Commissioner, anything that I ever signed, ever, ever signed, I read thoroughly given the [indistinct] and the detail that one has… knows occurs and although I have made it clear, sir that of course after all this time there are many things that I cannot remember. I am absolutely sure that this is my signature. I do remember the meeting, if not full detail, the minutes have brought that back and there were other aspects at this meeting that I remember well in terms of Mr Shaik coming to me with a first version which he did with all the ministers to ask whether we felt that was a true… a true reflection of the meeting and I recall indicating to him that there was one element that should have been added which was then added to this minute that I signed, sir.

CHAIRPERSON: [Indistinct].

MR LEBALA: Okay, let us just be precise to just note whether were there form differences, substance differences or grammatical differences. Let us take [indistinct] minute on page 324 against Mr Shaik's minute on 338. I would like us to look at paragraphs 11 and 12 in both minutes. Let us start with the minute of Mr Esterhuize on page 324 and may I [indistinct] just to read it, paragraph 11, page 324.

"After discussion it was decided that both the Hawk option B and the MB339 option A…"

Which we know is the [indistinct]

"… should be investigated further with the view of structuring an industrial alliance between the country supplying the aircraft in the South African Aerospace Industries. Both countries will be requested to submit further information in this regard."

Let us go to page 338, Mr Shaik's minute which was signed by yourself and the other colleagues. Paragraph 11:

"After a discussion it was decided by the ministers present that the Hawk option B should be recommended as the preferred option."

It is a difference in form. Am I right?

MR KASRILS: Yes. Yes, that is an important difference.

MR LEBALA: Now, let us read further:

"This decision to recommend the Hawk was based on national strategic considerations for the future survival of the defence aviation sector and the best teaming up arrangements offered by the respective [indistinct]."

There is still a difference, is it not?

MR KASRILS: Yes.

MR LEBALA: Let us read further:

"Strategically important industrial participation programmes offered with the best advantage to the state and local industries was also a determining factor in the final recommendations for the preferred [indistinct] brought per

programme."

There is still a difference.

MR KASRILS: Yes, I follow here.

MR LEBALA: Now, let us take paragraph 12 on page 324, Esterhuize`s minute and paragraph 12 on 338, Shaik's minute which was signed by your good self and your colleagues. Let us start with page 324:

"A shortfall of funds towards the SDP as indicated in the DOD planning deficit will be funded from outside the present defence allocated budget."

Let us go to 338, paragraph 12:

"The shortfall (deficit) of funds towards the SDP as indicated in the DOD planning was noted. This matter was to be raised with the Department of Finance to determine the mechanism for financing the SDP over the projected period in view of the shortfall. The results of this interaction would be crucial to the final discussions. The Minister of Trade and Industry would also liaise with the Department of Finance on this matter."

There are obviously differences.

MR KASRILS: Certainly.

MR LEBALA: Now, minister, would you like to… are you able to explain why Mr Esterhuise, the [indistinct], Mr Shaik prepares a minute which he signs and that was a minute which is signed by yourself and your colleagues.

MR KASRILS: Well, commissioner, how can I speculate about the minute that Mr Esterhuize signed and the two

versions thereof? Until seeing those minutes in this presentation I would never have thought that the… that anybody other than the person who Mr Modise asked to draw up the minute would have drawn up a minute. I can only say that the minutes that I saw were both from Mr Shaik in accordance with the procedure of that meeting and who came to me with the first version, ask me to comment on it. He wanted to make sure it was a correct reflection and I made some comment to him. He came back to me as he did to the other ministers. I was aware that he was meeting with everybody, from Mr Modise to the others to ask if they agreed that that was a true reflection and on that basis I signed the minute. I have got no knowledge of what on earth could have developed regarding Mr Esterhuize and the other two copies. I found that… and I find it quite bizarre, sir, but I cannot help you. I can only speculate and I do not think that is worth wasting time on.

MR LEBALA: In all fairness to your good self, I assure you that the commissioners would not allow me to ask you a speculative question. Neither would senior colleague Moerane and Mr [Indistinct]. Now, back to my question, actually let us simplify. Look at page 325?

MR KASRILS: Of?

MR LEBALA: ANNEXURE PS25.

MR KASRILS: Oh, 325.

MR LEBALA: 325. Let us call it the Esterhuize draft minute or Esteruize minute. I see that it has been distributed. For

instance, look at 'distribution'. Your name appears one, two, three, four, five… one, two, three, four, five… you are number 5 on page… on that page 325 in the list of distributees, persons whom the minute was distributed to. Am I right?

MR KASRILS: It is a copy of something I never saw… I never signed. So all I can assume is that it was a draft of something that never went out, sir.

MR LEBALA: So, you are telling the commission that you have never seen this draft minute of Mr Esterhuize?

MR KASRILS: I really feel that I could not have seen it. It would have stuck in my head, the anomaly that a person who was not asked by the minister to draw up the minute has drawn up a minute. That clearly is not signed by any of us.

MR LEBALA: Let us look at Mr Shaik's minute starting on page 327. I would like to draw attention to page 329. What is glaring is that it was signed by Mr Shaik. Am I right?

MR KASRILS: Indeed.

MR LEBALA: Let us look at… let us look…

MR KASRILS: Sorry.

MR LEBALA: Thank you, senior colleague, Moerane. Let us look at the list of distributees, persons to whom it was distributed to. One, two, three, four, five:

"This seeks to inform the reader that it was also distributed to you."

Is that correct?

MR KASRILS: Yes, certainly brought to me for consideration

and amendment and I see there that there is no distinction between the ministers and the invitees and I do not know if it was myself who pointed this out to him. It could have been the minister or anybody else. That in fact present for discussion were ministers and then there were invitees that needed a distinction. That is the difference between this… one of the key differences between this minute, sir and the copy we signed.

MR LEBALA: Was this minute brought to you?

MR KASRILS: Yes. I would think it was this minute signed by him. He came to me and asked me, as I have said, whether it was a true reflection of the meeting and I made some comments to him.

MR LEBALA: Now, what is becoming clear is that you do remember with precision that the minutes signed by Mr Shaik, ANNEXURE PS26, page 327 to 329 was brought to yourself, but you cannot tell us with precision as to whether the minute PS25, 322 to 325 are signed and prepared by Mr Esterhuize was brought to you?

MR KASRILS: Absolutely not and I made myself clear the way I answered that I would be clear in my mind. You see, use of the word 'precision', I do not have that kind of memory, everything there precisely. If I had not seen the minute after these 18 or so years, it would have been very difficult for me. The minutes of course bring back the occasion, the event which in certain sense was an unusual event or let me rather say an important event.

MR LEBALA: Thanks for the clarity, but do you want to assist us as to what makes you to precisely remember that the minute of Mr Shaik was brought to you and not of Mr Esterhuize, if you can?

CHAIRPERSON: Advocate Lebala, I am not going to allow that question. The witness has never used the word 'precisely'. The word 'precisely' comes from you.

MR LEBALA: I will remove the adjective. Thank you. Some of these terms end up making me to testify. Now, you have ...[intervenes]

MR MOERANE: I do not know where we are going with this particular issue. I think the evidence of the witness is very clear. He signed a particular document. He is prepared to vouch for that document. He sees the draft by Mr Shaik which was brought to him. He suggested certain amendments. The other two documents he cannot vouch for. His signature does not appear. One signed by Mr Esterhuize~~uize~~ it is unusual, because that was not the minute taken. I really do not know where we are going with this.

MR LEBALA: Chair, I do not see merit in this objection and I will tell you why, esteemed Commissioners. I am talking about the drafts minute, not the one which was signed. At best what senior colleague Moerane says could be explained by this witness. I would actually have expected the witness to explain what senior colleague Moerane says and Chair, I would like you to request the witness and invite the witness

to explain. I will remove precision, because terms like 'precision' end up making me to testify and I could refresh my question if ...[intervenes]

CHAIRPERSON: Can you rephrase your question, because I have also forgotten?

MR LEBALA: Deputy Minister, I have taken you through two draft minutes. I have not even gone to the one that you have signed. You remember I have taken you through the minute which was drafted by Mr Esterhuize and the minute that was drafted by Mr Shaik?

MR KASRILS: Yes, you have, sir.

MR LEBALA: And I have tried to demonstrate to you that the one which was brought to you by Mr Esterhuize was not signed and the one which was brought to you by Mr Shaik was signed, but both minutes have distribution lists.

MR KASRILS: Yes, sir.

MR LEBALA: And you mentioned to the Commission that you cannot remember whether the minute that was prepared by Mr Esterhuize was brought to you.

MR KASRILS: Yes. I cannot precisely, commissioner, but if it had been I would have been so astonished and I would have raised very serious questions which would have lodged in my mind, sir. Here we are as a ministerial committee. I am part of it as a deputy minister. We are discussing this key question at that point of the packages. We later sign the minute and if somebody else, another functionary of the Department of Defence had come to me with a version I

would have been astonished, sir and I would have remembered that. So, I can safely say that I do not believe I have ever seen this minute before, sir.

MR LEBALA: Would I be correct to say within the department members of different structures were allowed to express their opinions?

MR KASRILS: Yes, they were.

MR LEBALA: We have even seen it in the first minute of the Council of Defence, the views that were expressed by Mr Steyn that the minister did not agree to.

MR KASRILS: Yes, indeed.

MR LEBALA: Would I be right to say the minute of Mr Esterhuize captures some of the issues which expressly [indistinct] the views that he had at that meeting?

CHAIRPERSON: Just hold on. I am not going to allow that question. Well, I am not quite sure where that question is taking us to. Mr Esterhuize was not part of the cabinet ministers. [Indistinct]. We are talking about the decision taken by that [indistinct] of cabinet ministers and we know for a fact [indistinct]. Mr Esterhuize was not one of them. So, I am not quite sure where this question is taking us to. Can we move to the next point Advocate Lebala if you do not mind?

MR KASRILS: Chair, I will move to the next point drawing your attention that Mr Esterhuize was present at that meeting as the invitee and he prepared this minute. Remember, Chair, I am not talking about any decision

...[intervenes]

CHAIRPERSON: [Indistinct]. Mr Esterhuize was not part of the [indistinct].

MR LEBALA: Chair, can I... esteemed Commissioners, could I confirm with my colleagues briefly just for a minute? Chair, esteemed Commissioners we will deal with this aspect at the appropriate time at a different forum and stage of the Commission when the Commission reconstitute itself at submission stage. I would like to draw your attention to page 338 now. Let us focus on the minute which was signed by yourself and colleagues. Of significant, let us start with page 337 captures the Chair's consent that this was a Special Ministerial Briefing. We can see who the members are and we can see the invitees. And below of course the members are the Deputy President, the Minister of Trade, the Minister of Defence, the Minister of Public Enterprise and the Deputy Minister of Defence. May I ask you a question just on the members? Why the Minister of Trade and the Minister of Public Enterprise deputies are not part of this Ministerial Briefing?

MR KASRILS: Well, Commissioner, I would suggest it is because of my deputy position in Ministry of Defence being a member of the Council of Defence and you will recall also that I did state right from the very beginning of my submission on Friday that Minister Modise included me in a great deal of matters. He could have suggested that I should not be part of this and I think that... well, Deputy President

Mbeki might have agreed or disagreed. But I think they felt that I had quite a lot of knowledge. So, I was an invitee there in a sense, a member, a deputy minister, but not a full minister.

MR LEBALA: Am I correct to say that your important role that you play within the Department of Defence and particularly the fact that you had a good relationship with the minister placed you better to be part of this meeting?

MR KASRILS: Certainly common purpose by now, Commissioners.

MR LEBALA: Now, let us look at the invitees. I see that Mr Shaik who prepared this minute but all of you signed was an invitee. Can you see?

MR KASRILS: Indeed.

MR LEBALA: And Mr Esterhuize was also the invitee.

MR KASRILS: Yes, quite interesting that his general manager Armscor which slipped my mind which is why it would be absolutely bizarre for him to have brought a minute to me. But yes, Chief of Acquisition, Mr Shaik, member of the Department of Defence by the way and Esterhuize, general manager Armscor. You are right.

MR LEBALA: Now, am I right to say honestly speaking, the minute was supposed to be prepared by the secretary?

MR KASRILS: Secretary for Defence you are talking about? Which secretary?

MR LEBALA: Okay, who… let me ask you a generalised question, because I have got to be careful not to ask you,

but this time I actually [indistinct]. Who is better qualified to prepare minutes of the Ministerial Briefing?

MR KASRILS: There is nothing set down. I would assume, sir, Commissioners that Minister Modise gave the task to Mr Shaik because he had made the presentation to the meeting and certainly there is no indication that Mr Steyn makes any complaint.

MR LEBALA: You are not responding to my question, deputy minister. My question is: If you look at all the members, who is better qualified in your view to prepare the minute?

MR KASRILS: I find it hard to say.

MR LEBALA: If I were to say... if I were to say Mr Steyn as a Secretary for Defence was better qualified to prepare the minute, would you agree with me?

MR KASRILS: It was a choice of the minister I would think and I certainly cannot recall why, but I am trying to speculate on this that he asked Shaik to draw up the minute because he had been the presenter.

MR LEBALA: Thanks for this clarity, but you are not responding to my question, deputy minister. My question is: If I were to say the Secretary for Defence was better qualified ...[intervenes]

CHAIRPERSON: Just hold on Advocate Lebala. If I understand the witness even of Mr Steyn, he was a presenter at that meeting. Mr Shaik made a representation. Then after, after the representation Mr Steyn together with his colleagues left the meeting and the ministers remained

behind. Mr Steyn left the meeting and he came back to [indistinct]. That is the evidence that we have now. [Indistinct] put a question to the witness, tell him exactly what [indistinct] Mr Steyn is concerned. Unless if I am making a mistake, but then according to my notes, at the time when the cabinet… [indistinct] Mr Steyn had left.

MR LEBALA: Chair, thanks for this detail. In fact you are correct, because somewhere I think the minute reflects that, but remember we have two minutes which are not drawn by the Secretary of Defence and I appreciate the context in which you raise your concern, esteemed Commissioners. All that I am saying is that two persons for whatever reason… and I think the witness explains the context in which Mr Shaik ended up preparing the minute and we do not have a problem with that. I think it makes sense, but what amazes and even amazes this witness, short of saying, I will restate what he is saying is that two minutes [indistinct] only minute gets signed and we are gravitating [indistinct]. Short of saying that the witness has explained it, but we cannot leave this hanging and it could be explained away and I would request esteemed Commissioners to still allow us to ask the remaining two questions and we want to part ways with this question. In actual fact nothing turns around it, except to clarify why the… a minute prepared by Mr Shaik would be signed as against the one prepared by Mr Esterhuize and why this witness did not look at the minute prepared by Mr Esterhuize. That is all. And nothing

[indistinct]. Could I close by asking this question? Did you take the minute prepared by Mr Shaik more seriously, because Mr Shaik remind and Mr Esterhuize left?

MR KASRILS: I actually do not recall that, sir. I cannot recall that.

MR LEBALA: Did you take the minute prepared by Mr Shaik seriously, because the minister delegated him to prepare the minute?

MR KASRILS: I would think so, sir and would not see anything wrong in that.

MR LEBALA: That is not what I am saying. I am not even suggesting that there is anything wrong. Are you certain that the minister delegated Mr Shaik to take the minute?

MR KASRILS: For sure. I would be certain of that.

MR LEBALA: I think that clarifies the issues, deputy minister. Let us look at page 338. We are almost done with your testimony except to deal with this minute and one or two remaining questions and clarify one or two aspect on the statement. I do not want you to [indistinct] beyond what questions we are asking, to assure you that just few questions are coming. Page 338, I would like us to read the paragraph headed 'Decisions taken.' May I take the [indistinct] to read it to you, paragraph 9?

MR KASRILS: Yes.

MR LEBALA:

"The recommendations for the preferred bidders as approved by the Armament Acquisition Council, DD 21

August 1998…"

If I may ask, what does DD August (1998) signify? Does it demonstrate?

MR KASRILS: I would think 'dated', sir.

MR LEBALA:

"… was supported and approved by the members present."

I would like us to look at… Is there a minute of the Armament Acquisition Council dated 21st August 1998 that you know of?

MR KASRILS: No, I am not aware.

MR LEBALA: Because the only minute that I could refer you to is ANNEXURE PS… please go to page 316, PS24 and then also …[intervenes]

MR KASRILS: Sorry, sorry, can I backtrack? I am terribly sorry. You are right. I was reading that in a different way. Perhaps my concentration is going with lunchtime [indistinct], but no, of course, that is the recommendations as approved by the AAC. We have dealt with that minute, have not we? We had, had not we? But dated 21st August, yes, you are correct. That was a meeting we have dealt with.

MR LEBALA: Okay…

MR KASRILS: So, I agree. We supported and approved, ja.

MR LEBALA: Just to refresh you, I am referring to the minute that you see on page 316.

MR KASRILS: 3…?

MR LEBALA: Page 316, ANNEXURE PS24.

MR KASRILS: Yes, of course. We had discussed this very minute this morning.

MR LEBALA: But that is where my question comes in, deputy minister, that paragraph 9 and I think I should read it again. Let us be certain as to whether we are talking about the same thing.

"The recommendations for the preferred bidders as approved by the Armament Acquisition Council dated 21st August 1998 was supported and approved by the members present."

MR KASRILS: Yes, just remind me of the page. That is page?

MR LEBALA: Page 316.

MR KASRILS: No, the one you are reading from.

MR LEBALA: I beg your pardon, deputy minister, page 338, paragraph 9.

MR KASRILS: Okay, sure. Thanks, ja. Thank you, I am sorry, sir.

MR LEBALA: Now…

MR KASRILS: That is 6.

MR LEBALA: I will refresh now. I am just trying to refresh your memory so that we should be able to…

MR KASRILS: Okay, I am with you. I am with you.

MR LEBALA: Help me to… in relation to the questions I would like to direct to you. We read paragraph 9. Now, are you saying what is being referred as the Armament Acquisitions Council, dated 21st August 1998 shakes hands

with what we see on page 316, ANNEXURE PS24?

MR KASRILS: Yes, I think so.

MR LEBALA: Thank you, deputy minister. We know that… we dealt with this minute. This minute it is the seventh Council on Defence meeting. Now, are you saying it is the same meeting that is being referred to in paragraph 9?

MR KASRILS: Yes, I am sure.

MR LEBALA: I would like you to look at this meeting and show… this minute and show us where the recommendation for the preferred bidders is being [indistinct]. Let us look at page 316. Quickly glance through it. I see nothing there. Page 317, in as far as the briefing on Government to Government Office is concerned, it is paragraph 7.3.2. In all fairness, let us read what this paragraph says:

"Mr Shaik said the team would like to brief council on six aspects.

7.3.2.1 Lift/alpha programme, strategic issues."

7.3.2.2, 7.3.2.3, 7.3.2.4 and the last saying nothing about the recommendations for the preferred bidders. Now, page 318, nothing about recommendations for the preferred bidders. Page 319, nothing about the recommendations for the preferred bidders, page 320… and in all fairness to you, deputy minister, I was just glossing quickly through it. If you pick it up, please draw attention to it. We have been corrected before, many times before this [indistinct] commission. Page 321, unless there is such a minute and like I say, we have been corrected before and would like to

be corrected. It would be a sad day if we were to mislead this Commissioner and I am sure you have seen that these Commissioners would never allow us to put unfair questions and to mislead any witness. We have been called to order many times, by even our colleagues. We can take time. I could come back… we can come back to it later. All be it, we want to finish with your testimony before we adjourn for lunch.

MR KASRILS: Well, I… perhaps one needs to look this very closely. Certainly the tenure of this is that everything in terms of the packages had been agreed except for the question of the Hawk or the other contenders in the lift programme which is how I understand decisions at 9. You then see that 10, which is a decision from that very meeting is the removal of the tank programme and then there is the question which we are really looking at and which was carried forward from that meeting, that previous meeting, was around the Hawk or the [indistinct], in other words the lift. So, whether we can find that within these minutes, sir, it is certainly a *fait accompli* by the time we are looking at this minute.

MR LEBALA: Fair enough.

MR KASRILS: And…

MS DE VOS: Commissioners, may I interact? May I assist… may I please assist just to make things a bit… if one looks at the minute that we are referring to, the very last paragraph, specifically refers to the fact that… let me just

look at it.

"The AAC was waiting to convene after closure of the council meeting."

So clearly there was another meeting that we just do not have the minutes. So, this will move things around a bit.

MR LEBALA: Well, I have to be indebted to senior colleague De Vos. Now, the next question is… and Mr Minister, in all fairness to you, these incidents happened many years ago. The next question is incremental from what we read and what senior colleague De Vos has drawn our attention to is, do you remember a meeting of the AAC convening after the closure of the council meeting?

MR KASRILS: No.

MR LEBALA: It is okay. Whatever turns around these issues cannot be answered by you, deputy minister. You are doing your best to assist. Now let us proceed, on this [indistinct] page 339. The esteemed Commissioners have taken you through the signatures and you have confirmed that you do recognise them as being those of your colleagues and including that of Mr Shaik that you have seen many times.

MR KASRILS: Yes.

MR LEBALA: Do you want to… do you want to draw the Commission's attention to something? I am taking you to 339. I see there is a page that you are looking at. We could give you time to have a look at that. You want to have time to look at the page, the… there is a page you we are looking at. You probably would like to assist the Commission.

MR KASRILS: Okay, ja, just assist me, 339. Where are you?

MR LEBALA: I am drawing your attention to page 339, but I see that you are looking at another page and I thought that you want to assist the Commission.

MR KASRILS: I was slow. I am catching up, 339, thank you.

MR LEBALA: Thank you, deputy minister. I think we have traversed the signatures and you have confirmed that all of them… you identified them and including Mr Shaik's signature that we have seen many times before this Commission.

MR KASRILS: I can only correctly identify my own. The rest look familiar.

MR LEBALA: Thank you. Now, would you like to explain why you signed and the minister signed? I know that you have explained why you are present, the minister is present, the other ministers are present and the deputies are not present. Short of saying, is it in line with the fact that the minister what were with you, any [indistinct] some responsibilities playing an important role in as far as the department is concerned?

MR KASRILS: You know it well might be that the other ministers did not even have deputies. That is something that can be checked on, but I do not think they had deputies. This has become current in the latest cabinet, but it was not very current during the Mandela period. There were only, I think, twelve deputy ministers at the time. Thirteen under Minister… President Mbeki later. I do not think they had

deputies.

MR LEBALA: Now, we want to deal with four more questions. We are leaving the minute. [Indistinct]. I have done the minute.

MR KASRILS: Are you finished?

MR LEBALA: Yes, unless there is something that you want to draw attention to.

MR KASRILS: Far be it for me to waste time, no thanks.

MR LEBALA: It is because you keep on looking at a certain page. Probably there is some interest that you keep on writing and you are underlining. I thought that you want to assist the Commission with some detail from that page.

MR KASRILS: Nothing of the sort, Chairperson.

MR LEBALA: In your dealings with SOFCOM, if there are any, have you dealt with SOFCOM as the deputy minister?

MR KASRILS: I do not think at all, sir.

MR LEBALA: I would like to go back to the choice of the Hawk. We know up to so far that it is with the lift, the requirement that at one time there were three contenders. Just to refresh you, it was the MB339, the Aermacchi, the Italian aircraft. It was the [indistinct] aircraft and the British Hawk.

MR KASRILS: I am reminded, sir that there were actually four aircraft that when we looked at the minute which had three countries, which was the Italian, British and the Czech. We did not actually have each of the country there, but the Italians, apart from Aermacchi, were also in the

market to promote a Russian trainer called the Yak. There were actually four to be precise.

MR LEBALA: Now, I want us to focus at the stage when we are looking at two: the Hawk and the Aermacchi. How important was the visionary approach in selecting the Hawk as against the other one?

MR KASRILS: For the executive, sir, overridingly it was the priority. You will notice that even the question of the operational capacity of the Hawk which was a key thing for me, was not that great a priority for the minister or the executive. It was all related to the overriding business plan and what that entails.

MR LEBALA: Now, I would like to break down the visionary approach and ask if you could tell us how significant [indistinct] start flow into the visionary approach influenced this decision, industrial participation? How critical was it in the choice of the Hawk above the Aermacchi?

MR KASRILS: Extremely important. Oh sorry, I beg your pardon. Where are we? For the Aermacchi, very minor. Let me… let me correct myself, certainly not of a great standing, certainly not of that importance. Nowhere near that of the Hawk Gripen, that connection: British, Aerospace and so on, the Spanish company.

MR LEBALA: But if the Aermacchi from Italy and the British Hawk from the United Kingdom were similarly situated and a choice had to be made. We have seen the consideration, the funding, the budget, the costs, both European countries.

What influenced the decision in as far as the visionary approach to choose one Italian… one European country, the UK instead of the Italians?

MR KASRILS: The UK deals much better… it linked Sweden and Britain together, because the Hawk linked in to the Gripen and British Aerospace and SAAB, a Swedish manufacturer of the Gripen were partners, very close partners.

MR LEBALA: Are you saying that the fact that the British Hawk had some relation with the Swedish influenced the visionary approach in favour of the Hawk against the Aermacchi?

MR KASRILS: Chairperson, Minister Irvin trade and industry is so much better placed to deal with such matters, but I believe that I think it is the… SAAB might have even had 20% shareholding in British Aerospace or vice versa. They were dealing with a company, two companies that were closely aligned, partnership and of course their country is as well and they were very much placed to offer extremely substantial payoff in relation to the vision, the business plan, the industrial offset.

MR LEBALA: The positioning of the South African Arms Industry, you are dealing with two European countries that are similarly situated. You want to influence the European market I suppose in the world. The Italians are similarly situated as the United Kingdom. And what influenced the visionary approach to favour the Hawk, the United Kingdom

instead of the Italians in as far as the position of the South African Arms Industry is concerned?

MR KASRILS: That is a question. If it is, I agree with [indistinct].

MR LEBALA: Well, it is a question. I am breaking the tributaries that flow into the visionary approach. I would like to know, these are two countries which are similarly situated. The Aermacchi is cost effective from what we heard, capable. The British Hawk, capable, actually seems to be more capable with an infusion of some Swedish component of Gripen. We heard that, but costly. But we choose the Hawk. Now, in the context of position in the South African Arms Industry, because it is one of the main tributaries that flow in the visionary approach, how did we ended up choosing the Hawk?

MR KASRILS: Well, I would expect that Jayendra Naidoo must have spelt all of that out. But of course at the time we were taking the decision, Commissioners, what we found as I recall or try to recall is that the opportunities, the offers, the investment into our own industry here is far from stronger from that combination of British and Swedish compared to the Italian.

MR LEBALA: Now, can you quickly run through your statement? We just want to run through your statement on the last aspect [indistinct] testimony. We are approaching lunchtime. We ended upon paragraph 18 on Friday if you remember when we went to Steyn's bundle and started

taking you through the minutes. Page 6, esteemed Commissioners of the witness's signed statement, page 6, paragraph 18. We dealt with it. Paragraph 19, it is common cause, the Commissioners agreed about it. Paragraph 20, page 17 bring clarity. I will read it for the record. May I take the liberty to read it?

"I also participated in discussions on departmental policy in relation to the operational competencies of the Department of Defence and shared my inputs in policy related discussions that ensued at various forum. I was particularly active in parliamentary debates and interaction in the joint standing committee on defence and in motivating for and explaining the defence reviewed to parliament and the public."

What is becoming more and more clear is the question of the function and the functionary. One says because of the good relationship you will have with the minister and what has become common cause also, that you do some duties that the minister assign to you, all that you would report to him. You played a significant role and assume very critical functions of the department.

MR KASRILS: Always in service to the minister and I think that sums it up. Of course I was active and passionate for my work.

MR LEBALA: Paragraph 21: Common cause that you [indistinct] several meetings. We are not going to spend time on it. Paragraph 22, we have dealt with it. The minute

of the 6 March 1998, we have seen that. On page 15, ANNEXURE PS15, page 206 the minister took leave and you ended up chairing that meeting. Page 8, paragraph 23, we have dealt with it. Paragraph 24, 25, 26, with have dealt with them. Paragraph 27, page 9 brings clarity. Now, I would like you to simply paragraph 28 for us and I am going to read page 9, paragraph 28:

"Departmental policy document such as MODAC which we have attached as ANNEXURE RA2 did not negate or invalidate the overall control function of the Minister of Defence as the executive authority whose decisions were ultimately final. The departmental documents such as those of MODAC could not override constitutional competency that lies with the National Executive to develop and implement national policy. The national policy rationale that underpins the SDPP was drawn from defence review process and given effect through [indistinct]."

The last portion is very clear, but do you want to simplify what you are saying in as far as this MODAC document is concerned in the departmental policy?

MR KASRILS: I think the Commissioners are aware from all the previous presentations that MODAC was three study groups, the setup by the minister, seen after he came to office to work out the modalities for processing acquisition for the Department of Defence and Armscor and the point being made here as again, a person like Mr Esterhuize has pointed out and others in minutes [indistinct] that whatever

the processes in the end, *die minister het gesê*… the decision was for the minister, the decision was for the high authority. But of course all that staff work was instrumental and helping the executive to formulate their views and their understanding.

MR LEBALA: Page 10, paragraph 29, we have heard about it. Paragraph 13, I would like to read it to you. There are some critical aspects in line with our approach on the function and the functionary.

"Consequent on these discussions and the evolving policy framework on defence, I was instructed by the minister [indistinct] to report on my visits to some of the countries involved in the possible acquisition of key defence products. For me there were at various times…"

I beg your pardon,

"For me, these were at various times Britain, the Federal Republic of Germany, Sweden and Spain, although I also undertook visits to other countries such as the USA, Taiwan, Singapore, Slovakia, Italy, India, for other defence related engagements."

Let us pause there. As at that stage when you were touring these countries, was the visionary approach already in place?

MR KASRILS: It would have been evolving. I cannot remember the exact dates of visits to these countries. I know I was in Italy in 1994. To date military veterans to an anniversary event related to South African forces in the

Second World War that stands up. I think that was my first visit abroad. The others visits could have been that year into 95 through to 98 and they were various. They always involved, sir, general duties, public relations aspects, meeting ministers and the defence, family of those countries and in some specific cases, those first four countries, perhaps not dedicated visits or visits only to say a shipyard or to SAAB in Sweden. In fact I remember I visited SAAB in Sweden probably around 97 or 98. Minister wanted me to meet the Minister of Sweden in fact, the Defence Minister, and have discussions about their Armed Forces and it was on that occasion that I also went on a trip to the [indistinct]. So, the question of the vision of the ministers as I have already stated several times, Friday and today, it gestated from early days and we were on the same [indistinct], the minister and I. We were looking for investments into our country and partnerships.

MR LEBALA: When the minister sent you to meet the Minister of Defence in Sweden, were you going there presenting the function of the minister as a deputy minister?

MR KASRILS: No, it would always be representing the Ministry of Defence of South Africa who [indistinct] the minister. Sorry, it might have been that there was an invite for Mr Modise who could not make it. It would usually happen that way and he would say 'Deputy, I would like you to undertake that visit or this particular visit.'

MR LEBALA: You see, your statement [indistinct]... it

educated us about the functions of ministers against cabinet ministers, the relationship between deputy… I beg your pardon, the relationship between deputy ministers and ministers, a relationship to cabinet, what functions they assume, the constitutional dispensation where the fact that the minister is not predispose to be available does not mean that the minister [indistinct] assumes the function of the minister. Now explain to us why, if the minister could not go to Sweden, he did not send someone who could act at this… a sitting minister in cabinet to do that function?

MR KASRILS: Well, I am not a 100% sure, Commissioners, that I went to Sweden because the minister could not undertake a trip. I said it could have been for that reason. But one is representing as a deputy minister, one is representing the country at a political level and one is presenting… representing the minister who wants… I think it is quite clear that this is part of the way governments work and I do not want to waste your time by going on and on about this question, sir, unless you wish me to.

CHAIRPERSON: Thank you, Mr Kasrils, I am not [indistinct], thank you, thank you.

MR LEBALA: I am not even going to deal with this aspect any longer, but I will tell you something, because I have got to finish what vindicates us. You will represent the minister and function as a deputy minister. We will come and address the Commission about it. It is okay. Let us read on paragraph 30. You also… paragraph 30, line number one,

two, three, four, five. We ended where you…

"[Indistinct] Britain, the Federal Republic of Germany, Sweden and Spain, although I also undertook visits to other countries such as the USA, Taiwan, Singapore, Slovakia, Italy, India for other defence related engagements. In Britain I visited the Euro Shipyards [indistinct], a submarine shipyard at Barrow-in-Furness near Blackpool, in the [indistinct] manufacturers in Yeoville, [indistinct] of the Naval Lynx helicopter suitable for [indistinct] and bigger naval [indistinct]."

When you were doing this function of these visits in Britain, were you representing the minister or functioning as a deputy minister?

MR KASRILS: No, I am always representing the minister.

MR LEBALA: Page 11, paragraph 31:

"In Germany I paid the visit to the [indistinct]."

[Indistinct].

"Producing naval ships in Hamburg. In Sweden the Gripen [indistinct] and in Spain the Bathan…"

The Bathan, they call it the Bathan shipyard.

"Such visits would include first and formal discussions with government representatives, military officials and to [indistinct]… the key manufacturers."

I see that when you were having discussions with government representatives, you were doing the function of the minister under the [indistinct] of a deputy minister.

MR KASRILS: To repeat what I have said, always…

MR LEBALA: Let us read further:

"*At the heart of such visits was the need to establish good interstate relations and in essence to reinforce South African Government [indistinct] interest in creating a modern defence force. On those occasions my visits abroad were for reasons relating to courtesy calls on the defence establishments, exchange of defence and security information, involving [indistinct] and conferences, attendance at military exhibitions and strengthening of ties with various states.*"

The function of strengthening of ties [indistinct] is done at a high ministerial level. Am I right?

MR KASRILS: Yes, but one is reinforcing this. One is working for the South African government and obviously the key… the key department in terms of this is Foreign Affairs it was then called, but every department reinforces our international policy and projection, even a humble deputy minister.

MR LEBALA: So once again, you are representing the minister functioning as a deputy minister? Paragraph 32, page 11: You want to say something, deputy minister?

MR KASRILS: No, no.

MR LEBALA:

"*Central to my role was the task of explaining the logic and seriousness of our defence in due process. It was not my task to assist and evaluate the merits and the merits of the defence, equipment that was possibly to be acquired.*"

Paragraph 33, page 11, esteemed Commissioners:

"On a trip to India I was invited to visit their naval based in Goa..."

Is it Goa or Goga? Is it Goa?

MR LEBALA: Choose your own statement, please. I would say Goa.

MR LEBALA:

"... Goa to discuss their training methods and take a look at their facilities. This was very impressive for a country such as ours that needed to develop previously disadvantage section of our populations in military careers."

Paragraph 34:

"I deem it useful to elaborate on the assignment that I was tasked with in respect of my visit [indistinct] and especially that of forming a view on the Hawk 120 Jet Fighter Training aircraft from British Aerospace [indistinct] specification as a lift that were of interest [indistinct]."

Your testimony of this morning, to repeat it. Do you want to add anything to it, deputy minister?

MR KASRILS: Not at all.

MR LEBALA:

"Enjoy purpose functionality of the Hawk, particularly appeal to Mr Modise and me in that it could surface both a trainer and be utilised at the same time for combat operation."

Paragraph 35 you went to Sweden. You investigated the Gripen and you learned something out of that.

"What I learned with respect with the various types and capabilities of this aircraft, the cost, the compatibility and that the ability for use of a defence force, I discussed with the minister."

5 I think that one would have dealt with it. Paragraph 36 we have heard about it. We took you through the minutes. The cost of the trainer aircraft, we spent a lot of time on it. Page 13, paragraph 37, I think I have dealt with i., 'Comparison of the Hawk and the Gripen and the Aermacchi', we took you 10 through the minutes, 38, 39, common cause. Conclusion, page 14, common cause, paragraph 14. Paragraph 41, common cause, paragraph 42, common cause. We could conclude by reading paragraph 43 and 44 for completeness. Page 14, paragraph 43:

15 *"I was a party to discussions and investigation on how to align the best of the new and old order in the national interest. When Mr Modise took ill, Minister JT Radebe was tasked with steering the defence equipment procurement process through cabinet."*

20 Let us pause there. When Minister Radebe took over, what was your relationship with them compared to the relationship you had with Minister Modise?

MR KASRILS: Well, it was a good one. I was not as close to him as I was to Minister Modise, because they went back to 25 1963. But I had met Mr Radebe already from about 1980, Commissioners. He was a member of the underground and of Umkhonto we Sizwe. I know he was in prison. When I got

back to the country, post 94, I had a very fine relationship with him, very close.

MR LEBALA: To be specific, would you be allowed to represent him as the Minister of Defence whilst functioning as the deputy minister?

MR KASRILS: Well, he was representing Minister Modise in cabinet, the executive function. So, it was not a question of him leaving his Department of Public Enterprise at the time and coming into the department… the Ministry of Defence and doing all the tasks of Minister Modise. So, no relationship like that would arise. It was simply that he would take the decisions and the requests and the recommendations, the documentation produced by the department. [Indistinct] then have to sign and present to cabinet with the assistance of the officials.

MR LEBALA: I am going to ask you two remaining questions which relate to what the critics say. I know that we have been sailing smoothly. There were difficulties. I know [indistinct], but you were… you acted more like [indistinct] for clarity.

MR KASRILS: I beg your pardon?

MR LEBALA: I am complementing you actually. That you teamed up with this team, difficult as it was. You acted like a prisoner instead of a rock. You assisted, you brought clarity.

MR KASRILS: Like a? I cannot hear that word. Like a what?

MR LEBALA: A prison, a [indistinct].

MR KASRILS: I thought you were staying prisoner, sorry. I thought that was prisoner.

CHAIRPERSON: Advocate Lebala, you promised me that you are going to finish before one o'clock. Before o'clock, unless you finish [indistinct] after lunch.

MR LEBALA: Two questions, two remaining questions. Thanks for reminding me, esteemed Commissioners. You remember we took you through a minute before the approval of the defence review where there were deliberations where the minister was debating, if I am not mistaken, let me [indistinct] the budget from, is the budget [indistinct] outside the department where the estimate of the capabilities as at that time was 26 billion. The investment, that you also acknowledge that it included offset, was 6 billion where the minister said we need not disclosed, where funding was an issue, costs and the minister's realistic approach. The critics say irrespective of that reality, you are going to read in one of the text book that does not really agree with them, but we will lead evidence before the Commission. That is why there is a competent team standing next to you. If there is someone who presents you, is senior colleague Moerane and Ms [indistinct]. We are just leading evidence. I am reading to you what the critics are saying. They say in a speech you said the following and you will tell us whether you remember that speech.

"There will be substantial offsets agreements so that for instance South African steel and other local components,

their equipment would be used in production. There will be major offset of countertrade agreements so that for every rand spent abroad, the same amount will be invested in South Africa. Such packages will be of enormous benefit to our [indistinct] strategy. It will bring an investment [indistinct]. Therefore defence acquisition will be [indistinct] an industry that far for being the drain of our resources, it will provide tremendous boost or economy and treasure."

Now, when you made... do you remember this speech?

ADV MOERANE: Chair, I do not know if the authors of these books are going to be giving evidence before this Commission. If they are not, I object to that evidence.

CHAIRPERSON: Advocate Moerane, we [indistinct] and I think it is only fair and that Mr Kasrils must respond to what the critics are saying, otherwise we are trying to avoid the situation where he testifies, goes away and from there the court recall him back. We want to give him an opportunity of responding to that. So, I will allow the question.

ADV MOERANE: As the Chair pleases.

ADV LEBALA: Chair, that record reflect also... I know that [indistinct]. We have got to investigate established facts that [indistinct]. Thank you. Do you remember the speech?

MR KASRILS: Yes, I do.

ADV MR LEBALA: Did you make... did you make the speech before the meeting, the first meeting of Council of Defence or after the first meeting of Council of Defence? Remember the first meeting of Council of Defence [indistinct] was on

the 9th of March 1998. Let me confirm.

MR KASRILS: 6th, the 6th.

ADV LEBALA: I beg your pardon, 9 February 199…

MR KASRILS: 90…?

ADV LEBALA: …8, ANNEXURE PS40.

MR KASRILS: I… Chairperson, I would think that I made the speech at the defence review presentation to parliament in April 1998 when the house adopted and approved the defence review. That is where I think this speech is made, sir.

ADV LEBALA: Now, when you meant this speech there were realities that have already been considered by you and your colleagues at the Council of Defence including realities that you dealt with and the vision that was espoused by the minister as early as 9 February 1998. Am I right?

MR KASRILS: Yes.

ADV LEBALA: And amongst the realities was that as at that stage the estimate was R26 billion in expenditure and R6 billion in investments which included offsets.

MR KASRILS: No, sir, R6 billion did not include the offset. R6 billion, I keep saying was an item that Minister Irvin talked about in terms of one item of investment and we were looking for parity, one-to-one, R26 billion to R26 billion and that is what we were confident we would achieve and in fact we went beyond that figure.

ADV LEBALA: I think I will leave it to those who would like to come and cross-examine you if need be on this aspect,

deputy minister. [Indistinct] to remind you that you did concede that included in that R6 billion, it is investment and offsets. I will leave it at that stage. The last question goes to… Chair, we are five minutes to. It appears that in one of your trips to Germany you met… if you remember, please tell us that you remember. If you do not, please say you do not, Mr Deputy Minister. You met a gentleman with the name of Christopher Hoenings, H-o-e-n-i-n-g-s. Does it… the name click on your mind?

MR KASRILS: Yes.

ADV LEBALA: You also met a gentleman with the name of Walter Ernst Ulrich Scheer who is the son of the former president of Germany. Does the name click on your mind?

MR KASRILS: To some degree. I would not have… I would not have been aware that he was a son of the former president, but it is possible that I met that man, sure.

ADV LEBALA: Both of them are employed by Tyson [indistinct] G-m-b-h-t-r-t, a subsidiary of Tyson Group and we know the Tyson Group [indistinct] one of the parties that became the successful… actually it formed part of the successful bidder, German [indistinct]. Now, Christoffer Hoenings and Ulrich Scheer worked together at Tyson Group and Mr Christoffer Hoenings is responsible for acquisitions within the Tyson Group. Now, it has been found that in his diary he made an entry saying that he intended to meet the Deputy Minister of Defence of South Africa, Mr Ronnie Kasrils and he called you his friend. I am going to read a

specific… in relation to what has been said here.

"They say in his diary I found an entry for that day that he is… he also at least intended to me the Deputy Minister of Defence Kasrils whom…"

Remember I am referring to Christoffer Hoenings.

"… called his friend and who on one occasion received from Hoenings two Hermes ties as a gift with about 300 Deutsche Marks."

Now the thing of what we are reading to you is that according to Mr Christoffer Hoenings, he calls you his friend. He intended to meet with you as the Deputy Minister of Defence of South Africa and he at one time gave you two Hermes ties as a gift with 300 Deutsche Marks. Does it click on your mind? Are you refreshed?

MR KASRILS: Yes. Yes, that is possible. It is quite possible. I do not actually remember him giving me the ties quite frankly. I can remember there are other people who gave one ties or little mementoes, whatever. And I think I told in Cape Town that I had received two ties, but that was from somebody else in Britain. But can I just say that you need to tell me the date, because I had already met Mr Hoening in South Africa. So, is he talking about me meeting him in Germany?

ADV LEBALA: It appears to be in Germany and we stand corrected, because we are picking it up from what the critic says. [Indistinct], deputy minister, there is nothing wrong with receiving gifts. There is nothing wrong with receiving

gifts as long as you declare them, but this is in line with what the critics are picking up.

MR KASRILS: Okay.

ADV LEBALA: But you seem to be accepting that... you see Hermes, it is a... before I testify. It is a label. They say you received those ties from Mr Hoenings and as at that stage, is it correct that you were discussing these acquisitions and the role that Tyson Group would play in as far as the SDPP's are concerned?

MR KASRILS: Commissioners, I met Mr Hoening in South Africa. He came here several times very active in his field and for his company and I would have met him through visit to the Ministry of Defence and we would have had discussions about the defence review which was evolving. I had certainly met him probably before 1998 and he projected himself as an obeying and charming man who showed interest in my wife's activities, in the art world. There was a... there was an exhibition of South African art at the South African ambassador's residence in Germany, in [indistinct]. That is my ambassador, Lindiwe Mabusa and my wife was assisting South African artist, the ceramic artists in this respect and this was a man who received an invitation to attend that exhibition, because I had met him here and I had his name and so on. I met him here outside of the ministry. When he invited me he was staying at the Michelangelo hotel to show a video of the German industrial commitments and what could be done for South Africa and actually I met

in his office the then Anglican Archbishop of South Africa who he was also trying to make presentation to show that he could make value... add value to the economy of our country. I would not call him a friend. This is an acquaintance, the kind of people one was meeting all the time and I would think he would like to call me his special friend or just friend to impress his company.

ADV LEBALA: Now, the meeting, I think it has been clarified that it might have been in South Africa. Have you met him when you were in Germany?

MR KASRILS: I cannot recall that. He certainly was not at [indistinct] when I visited [indistinct]. So, I cannot recall that at all.

ADV LEBALA: The ties that he gave you, are you certain that he gave it to you whilst... when you met him in South Africa?

MR KASRILS: It is possible, Chairperson. I declared everything I have received over a certain level for parliament disclosure and I cannot recall what the limit was or the bottom-line that we started off and had to disclose anything that was above R300. In terms of the rand currency exchange at that time we were receiving a present in South Africa very often. A tie was cheaper than that and I think people got a bit fed-up with ministers who kept declaring silly items like cheap pens and ties that possibly one never even use or wore. But one did not throw such things back in the face, such minor things in the face of a person. It is

just... would be in very bad taste. It is a different thing if there was something substantive that was offered which I would never have accepted.

ADV LEBALA: Deputy Minister, you could be rest assured that this team does not question your integrity that you did not declare. We are leading evidence based on what has been said. Now, is it true that these gifts, whether they were 2 cents or 300 Deutsche Mark or 3 000 Deutsche Marks, were given to you in the context of a meeting that was set out by a man who is responsible for the acquisitions of Tyson Group?

MR KASRILS: Quite possibly. I cannot remember the occasion when he gave me ties, but you would have people like him calling on a visit to a ministry and he would give them an hour for this business discussion and at the end on bidding farewell, they would leave you with a book or a souvenir from their country or a tie or two and Mr Hoening could very feasibly have presented me with ties like that. I remember in visiting Hamburg... I have got South African friends in Hamburg and they came and visited our hotel while I was with my wife. I do not want to waste time actually. These friends, as a joke, came and gave me a tie which had aeroplanes on. These were South Africans who I did not see in a long time. I remember something like that, it stood out.

ADV LEBALA: Let me [indistinct] to you. It is the last question, because we are in lunch and will be done with

your testimony. In as far as Ulrich Scheer is concerned, I am reading what is being said, not what this team is saying, but what this team is saying in the context of the Commission.

5 MR KASRILS: Thank you.

ADV LEBALA:

"We found in Ulrich Scheer's computer files a list of code names, the one for Kasrils was Karl, K-a-r-l. Kasrils might be a link to Modise, but I think 3 million US Dollars are too
10 *small in amount to satisfy Shaik and Modise, not Kasrils."*

And it... to read it again:

"Kasrils might be the link to Modise, but I think 3 million US Dollars are too small in amount to satisfy Shaik and Modise. On the other hand, Mrs de Lille during her visit to
15 *Germany stated that Shaik was Modise's man and put into his position as Chief of Acquisition of the Department of Defence by [indistinct]."*

The connection that comes with your name mentions that you are a link to former Minister Modise and it does not mention
20 anything about 3 million US Dollars being a too small amount to satisfy you. I think that is very clear and this is what has been found in the diary of Mr Ulrich Scheer. Now, the question is: Did you discuss the acquisitions of these capabilities with Mr Ulrich Scheer?

25 MR KASRILS: Of course that stands as a possibility, Commissioner. I cannot really recall this gentleman, but it is very possible that he was present when I visited Hamburg

and [indistinct]. I am not sure. I know that heading was not there. It is possible he visited the ministry here and I met him here. But other than explaining what was common and that was that the defence… what the defence review represented. This was as far as I would go and anybody who put a question to me about how they could further their business, I would welcome that and say that there were processes open and encourage them to go ahead in an open way.

ADV LEBALA: Because we work as a team our attention has been drawn to one final aspect and this, I assure you, is the last question that this team will be putting to you. Remember we took you through the minutes of the Special Ministerial Briefing, the ones that was a debate as to whether you did receive a copy from Mr Esterhuize or Mr Shaik, the one that was eventually signed by yourself and other colleagues. Are you aware that cabinet through the secretary of cabinet, one Lubisi disavowed these minutes?

CHAIRPERSON: Advocate Lebala, [indistinct], unless [indistinct] want to present that evidence and I am not quite sure what the answer of this… the answer that Mr Kasrils can give and [indistinct].

MR LEBALA: Chair, I would not like us to come back to Mr Kasrils when we return from lunch, because we still have a lot to traverse with Mr Lekota. We want to finish. Now, this being the Commission …[intervenes]

CHAIRPERSON: Advocate… Advocate Lebala, I am not

going to allow that question. This witness told us about what he knows. What the current advocate general is saying, I am sure you cannot ask this witness about it.

ADV LEBALA: Thank you, Chair.

CHAIRPERSON: Thank you.

ADV LEBALA: We have no further questions, deputy minister and on behalf of our team, I would like to thank you. Difficult as it was, there have been unfortunate comments. [Indistinct], but it was not easy to link your testimony and we gave it our best. Thank you.

CHAIRPERSON: Is there any other person who intends cross-examining Mr Kasrils?

ADV DE VOS: Commissioner, apart from the Department of Defence, [indistinct] an opportunity.

CHAIRPERSON: Thank you. Any...

ADV MOERANE: [Indistinct]

CHAIRPERSON: Two people.

ADV CANE: Yes, on behalf of [indistinct], my instructions are to also cross-examine the witness.

CHAIRPERSON: So, there are three people. More or less how long do you think you might be?

ADV MOERANE: I think about half an hour.

CHAIRPERSON: Half an hour. Advocate Cane?

ADV CANE: I would estimate at this stage 20 minutes.

CHAIRPERSON: 20 minutes.

ADV DE VOS: And that would be my estimation as well, 20 minutes.

CHAIRPERSON: 20, 20. So, it is about an hour? I was just talking to my fellow Commissioner. [Indistinct] Mr Lekota

today. So, we are going to adjourn only until quarter to two and come back quarter to two and hopefully by three o'clock [indistinct] give the evidence of Mr Lekota. We will adjourn until quarter to two.

(COMMISSION ADJOURNS)

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

PHASE 1

DATE : 10 JUNE 2014

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(**COMMISSION RESUMES)**

CHAIRPERSON: Do you confirm that you are still under oath?

R KASRILS: s.u.o.

CROSS-EXAMINATION BY MR BROWNE (CONTINUES): [indistinct]. I will come back to this issue of Mr Modise's speech. In 1999 you were the deputy minister of defence and you have had a long relationship with [indistinct]. You were the deputy minister of defence during 1994 to 1999, and you [indistinct] and that you are not a member of the ministerial committee for the arms deal. Is that correct?

MR KASRILS: Correct.

MR BROWNE: Mr Kasrils, you gave the defence [indistinct] 1996 to 1998, and you will recall that [indistinct] to represent the Anglican Church. You will also recall with regard to the representatives [indistinct] combined in what we call the collision for defence alternatives.

[Indistinct] with irradiation of poverty with South Africa's over riding security priority. This I submit is the emphasis of the constitution as reflected in Section 198 A on a principle's [indistinct] and security. It stipulates that national security must reflect the result for South Africans as individuals and as a nation ... [intervene]

CHAIRPERSON: Mr Browne, your question is too long. Can

you just make [indistinct] a very long statement here and we might end up losing you.

MR BROWNE: Okay. The point I wanted to make was that the defence review was internationally unique, [indistinct] society organisations including myself representing the Anglican Church. Is that correct?

MR KASRILS: Absolutely.

MR BROWNE: As I recall, your role as deputy minister and [indistinct] to keep them in line until they have been neutralised and this was achieved essentially by 1999 with the [indistinct].

MR KASRILS: Not at all Mr Crawford Browne. I reject that. That was not my role or government's role to sweeten up the whole defence force in that way.

ADV LEBALA: Chair, I am told that unfortunately Mr Crawford Browne is not switching off and the responses of the witness will not be captured. If he could just draw his attention to making sure that he switches off his mike. Thank you.

MR BROWNE: As advocate Lebala mentioned on Friday, the defence [indistinct] review were ambushed I would suggest. That European politicians flocked to South Africa after 1994 to pay tribute to our democracy with one hand and [indistinct] with the other. The European arms industry was facing bankruptcy ... [intervene].

CHAIRPERSON: Mr Crawford Browne, what is the question, and please if you are going to put any proposition to this witness, you must have evidence to back up that proposition. Without any evidence about a particular proposition, you will not be allowed to put it to the witness.

ADV BROWNE: So, as I have submitted for your interest a photograph of prince Charles, taken in February this year, dancing for [indistinct]. The point is the role of the British royalty and government [indistinct] highest levels in promoting [indistinct] and similarly the second item that I sent you, is that in January 1995 deputy president Thabo Mbeki was in Germany where we met both the German foreign minister, Clause Temple, and Mr [indistinct] whose name has already been mentioned.

CHAIRPERSON: Mr Crawford Browne, I want you to bring the evidence before this commission.

ADV BROWNE: [indistinct]

ADV CANE: Chair, if I may just interject at this point. The article which appears on the third page of the bundle which is now being presented, deals with the issue in relation to which admiral [indistinct] gave detailed evidence. It pertains in summary as far as I can ascertain to the allegation that Germany was committed to re-enter the bidding for the Corvettes having being eliminated and being around.

This evidence was dealt with in detail by Mr [indistinct] and I refer in particular to the sections of his statement, which explained that there had been a stage in relation to [indistinct] where there were two contenders. That was during 1994. What then occurred was the 1995 [indistinct] to put up temporary halt on the project.

Thereafter when the project was recommenced in 1997, there were numerous countries [indistinct] to respond to an RFI including Denmark, France, Canada, Italy and Germany. In so far as the allegation is that there were some misconduct in committing [indistinct] back into the bid, and that it was a late bid, and I quote late from the article.

These are matters which should and could have been put to Mr [indistinct] alternatively should be put to him in due course.

CHAIRPERSON: That is why I am not going to allow Mr Crawford Browne to ask that question, but besides that [indistinct] the picture. If I recall his evidence, his evidence was that they contacted Germany and Germany refused to give the South African Navy [indistinct] and then at a later stage, you know after 1994, after democratic elections, they then went back to Germany.

Germany said to them if I recall the evidence of [indistinct] we are unable to be in South Africa because our government will not allow us to deal with the South African

Government because of the United Nations [indistinct] against South Africa. That is why Germany was not in the picture.

So I am not quite sure what the question has got to do with this particular witness.

MR BROWNE: The point I wanted to make, was in this report of January 1995, Mr Holling said the consortium was putting together proposals which would be of great benefit to South Africa and this is the point I am leading to an issue of [indistinct] which up until that point had been referred to as counter trade and [indistinct].

CHAIRPERSON: [indistinct]

MR BROWNE: [indistinct], advocate Lebala continued on the basis of Mr Modise's address to parliament the expectation raised was that the economy would benefit by 110 million rand of the investment in industrial participation programs, and 65 000 jobs would be created. What actually was delivered by the strategic defence procurement package in terms of offsets and jobs, has therefore to be tested against this bench mark.

And Mr Kasrils, I repeat that final sentence. That the arms deal quote in terms of [indistinct] is therefore to be tested against this bench mark of the commission's [indistinct], the off sets are therefore the crucial, befital ... [intervene]

CHAIRPERSON: Mr Crawford Browne, get to the point. You cannot read the entire statement. Ask him a question, one short question, let him answer and from there you can put the next question.

MR BROWNE: May I ask [indistinct], do you have any business in the world that gives back R110.00 change in return for a R30.00 purchase? In short if it sounds too good, it is too good, is that not so?

MR KASRILS: Well, I do not know whether we could take that analogy. The benefits from the off set, the counter trade, whether it is the national industrial benefit or the defence benefit, has not completed its underway. We are benefitting on a daily, monthly, yearly basis. It has not reached its finality with all due respect.

What is needed for the commission, is to have real, solid facts before it and in this respect I want to recommend that a very serious study, not something journalistic, but very serious has been undertaken by a Mr Johan van Dyk, formally of Armscor who dealt with the DIP at the time.

He is no longer with Armscor, but he has almost completed a doctorate on the very subject, and I have checked with him and Mr Crawford Browne and others might laugh or fall off their seats, but this can be tested with Mr van Dyk, and he has been researching all the facts at Armscor and elsewhere, and in this paper of his he works

out a figure of 110 billion for our country just on the basis of the defence industrial participation, and it is improving all the time as we speak. I know that General Admiral Kamerman has made reference to the [indistinct] which is getting orders all the time from abroad, and benefitting our economy on the defence industry which has been saved by this whole process, including the jobs there.

MR BROWNE: [indistinct]. Now advocate Lebala earlier referred to [indistinct] in parliament in August 1997, not from 1998, regarding the benefits of the offsets, and you will find a line of course being [indistinct] ministry of finance. [Indistinct] the minister of finance is actually opposed to the opposed arms deal, because democratic South Africa ... [intervene]

CHAIRPERSON: Mr Crawford Browne, again what is the question? Put the brief questions to the witness so that we can all understand what you are trying to find out from him.

MR BROWNE: Section 217 of the constitution establishes that [indistinct] must be in accordance with the system which is [indistinct]. In other words, arms deal off sets were unconstitutional and illegal right from inception, and the reality is that the department of [indistinct] has now just recently conceded that the off sets were fraudulent.

CHAIRPERSON: Mr Crawford Browne, otherwise I am going to stop you. If you want to put a question to this witness,

put a question to the witness without making a speech. We know what his evidence was. Your questions must relate to his evidence and you do not make any speeches.

Otherwise I am going to stop you from cross-examining him, if you continue doing that.

MR BROWNE: Sir, is it correct that Section 217 would rule out off sets as a possibility that these requirements of the constitution were ignored.

MR KASRILS: No, I disagree with that.

MR BROWNE: Well, the reality of the constitution is the supreme law of the country, an opinion I have submitted to the commission is a legal opinion, that is why [indistinct] and therefore the answer was unconstitutional, illegal and fraudulent.

MR KASRILS: Commissioner, where has that been proven?

CHAIRPERSON: Mr Kasrils, do you agree with his proposition or you do not agree?

MR KASRILS: Sorry commissioner, I do not agree with anything here.

MR BROWNE: I will leave it at that. I will refer later to the issue of Section 217. Thank you.

CHAIRPERSON: When you say later, you do not mean before we have excused this witness?

MR BROWNE: No, at a later stage I will refer to Section 217. Not before this witness.

CHAIRPERSON: Thank you. I am not sure who [indistinct]. Last time I was told that [indistinct] plays a role. I am not sure between [indistinct].

ADV CANE: Thank you for the opportunity. My learned friend and I had a discussion, and she is happy for me to go first.

CHAIRPERSON: Okay, thank you.

ADV CANE: Mr Kasrils, during the course of your evidence in chief, you were asked about whether there were any bodies underneath or below the arms acquisition steering board, and you said that there certainly was, there was a body that reported to the AASB, but you were unclear as to the body's name.

Does the name ... [intervene]

CHAIRPERSON: Advocate Cane?

CROSS-EXAMINATY BY ADV CANE: Does the name AASB ring a bell with you?

MR KASRILS: Yes, indeed.

ADV CANE: I would like you now to please have a look at the department of defence bundle which I think you should have in front of you. Many of the documents are [indistinct]

but we have collated them to [indistinct] this questioning. Please would you open it at page 1 and you will recognise a document there. It is a letter from Mr Shake to the minister, and the heading is special ministerial briefing on the strategic defence package program, confirmation of minutes. Do you have the document?

MR KASRILS: I do.

ADV CANE: You do not need to read the entire letter, but it encloses a copy of the minutes. If you turn the page, you will see that page 2 of the letter contains a number or a list of the copies distributed and under the heading for action, you will notice that the deputy minister of defence is to receive copy 4. Do you confirm that?

MR KASRILS: Yes, indeed.

ADV CANE: We are dealing with the minutes for 31 August 1998, ministerial briefing, just to refresh you on that score. On page 3 of the bundle, you will notice a document which is at its left hand foot, dated 1 October 1998 and then to the right of that is a signature. Can you identify the signature please?

MR KASRILS: Is this the document which says receipt for, from Milsech to chief of acquisition and the signature at the bottom is my signature.

ADV CANE: Yes thank you. We are now dealing with the same page. Would that confirm then, if you look at the

handwritten portion on the line beneath 3, that you receive copy 4 of 7.

MR KASRILS: Yes, that is right.

ADV CANE: I would like you to please now turn to page 4 of this bundle, and you should there see a handwritten note with the date in the right hand top corner of 1 October 1998. Do you have it?

MR KASRILS: Yes, indeed.

ADV CANE: Are you able to identify this document and describe what it was?

MR KASRILS: Yes indeed commissioners, it is a document, a short letter or note, dated 1 October 1998 to Mr Shake, confirmation of minutes from myself and it is signed by me, and within that there is one paragraph where I make a comment that there should be a change to the minutes.

ADV CANE: I am going to repeat that. These confirmation of minutes, suggest we add to paragraph 11, discussion points relating to the advantage of the due role of the hawk. Although this is not [indistinct] in the value system applied, in making the military performance representation. The final decision is for the executive level, and I understand that is your signature. I would like you to explain to the commission what you mean by the advantage of the dual role of the court.

MR KASRILS: I am referring here to the fact that the hawk can be utilised as both a trainer air craft as well as an operation or combat aircraft.

ADV CANE: Mr Kasrils, why was that important to you as at this time?

MR KASRILS: There were a number of reasons, some of which I have mentioned and are in my submission commissioners. Just to restate, the hawk had a cockpit instrument panel that was similar to that utilised in the light advanced fighter aircraft. It was compatible because it was manufactured by the same group or companies involved in the manufacture of Hawk and Gripen.

So this was a great advantage for a trainee fighter pilots. Those who had advanced from the first level. This very simple propellant driven aircraft called the Pilatus and to go through to the advanced fighter, the Gripen, we needed the intermediary, the lift and the lift in other words the Hawk utilised at that lift level being compatible to the Gripen, would be of great advantage.

There is also safety factors related to that as well, but there is an additional aspect which I did not write about, and that relates to transformation of our air force, of our defence force. I did allude to it sir in my statement about the transformation and the safety, the training to higher level, but we need always to place things in context and in

the transformation of the defence force and the air force, minister Modise particularly myself in support and cabinet I would say as a whole, were very concerned that we should upgrade the recruits from the majority portion of our country, sometimes referred to as our black citizens, who did not have the skills and the ability of long term training.

That their counter parts from the more privileged section of our communities and the defence force had, and in order to advance such recruits, to be able one day as some already are to fly the Gripen, the hawk would be very instrumental in that sense.

ADV CANE: Mr Kasrils, still dealing with the draft version of the minutes and then the signed minute of a special ministerial [indistinct] 31 August of 1998, Mr Steyn alleged that the signed minute which you will find in this bundle page 5 to 7, was not a valid minute, and he based this contention on the following.

He firstly said that the different version of the draft minutes in themselves constituted cases for suspicion. Would you like to comment on that?

MR KASRILS: I quite frankly cannot see how he could come to that conclusion. When we had a situation where the director of acquisition, Mr Shake, had been I would say asked by the Minister Modise to draw up the minutes. Mr Shaik as we have seen, sent copies of this minute. He

started off with a particular draft which we have seen this morning, and this is the draft I am referring to, where I say to him in as much words, this is fine but you should at least add the point about the hawk having this dual function.

Then we later receive other ministers as well, receive that second minute, signed by Mr Shaik and we all sign it. I in fact find sir, it very strange if not bizarre that there should be two other copies of a minute purporting to be from that meeting which is incorrect, signed by Mr Esterhuize for Mr Steyn.

That is what I find strange sir.

ADV CANE: Thank you. The other basis upon which Mr Steyn alleged that this signed minute that you find at pages 5 to 7 of [indistinct] is not a valid minute. He says that the sub cabinet meeting did not actually take place. Do you have any comment on that contention?

MR KASRILS: The sub cabinet meeting of 31 August in Durban I understand, I was present as a deputy minister. It took place which is why the Ministers and myself sign the minute and actually sir one of the officials, the invitees,, who was present in Durban, Mr Elle Swan, the CEO of Armscor, at a meeting of the counsel of defence in Pretoria a couple of weeks later, September I think 16 September, I have got it written somewhere, he refers to the meeting in Durban, and he says to counsel of defence it is minuted sir.

He says the discussion took place and the decision was taken. That is perfect proof from another source that the meeting took place in Durban with that particular decision. You might help me with the date, and it is in the main documentation. I think it could be September, the 16th. Counsel of defence.

ADV CANE: Thank you Mr Kasrils. We will locate that minute. I am currently instructed that it was on 16 October.

MR KASRILS: October or September?

ADV CANE: Sorry, 18 September 1998. So we will certainly locate that. Now the third reason that Mr Steyn alleged that this was not a valid minute and not a valid decision, was he said the choice of the hawk was predicated on fraudulent manipulation of information. What were your reasons for the choice of hawk and do you dispute that statement?

MR KASRILS: I firmly dispute the statement commissioners. I hold to it, looking at the minutes and the documentation from the time, there certainly are in his statement of Mr Steyn such allegations in the minutes, various minutes. He does raise concerns from time to time. He does not make that allegation anywhere.

I was on good terms with the defence secretary, Mr Steyn in that whole period up to the time of his resignation and he never once said to me that he suspected fraud at all and even at the time at the end of that year when he

submitted his resignation and left and I had discussion with him as to the reason why, he gave to me personal reasons relating to family.

So as I have indicated here last Friday I found it quite surprising in the invective which he used to make such allegations. As for the other reasons, the motivation for minister Modise and myself for his ministerial colleagues and for the counsel of offence and indeed the AAC, at all stages we set out quite clearly why we were going for the hawk.

We have dealt with this at length this morning and if you wish I will go through the five reasons or so why we went for the hawk and minister Modise I think in a very clear cut way who kept ramming home the point that the key reason why at executive level, ministerial and later endorsed by cabinet, why we went for the hawk as the intermediary trainer was to do with business plan, the advantage to the economy and the industry and so forth.

Very clearly and adequately pointed out, the other secondary reasons which I have championed, the dual function of the hawk and I referred this morning to part now from mentioning Mr Swan, I refer to the new chief of the air force, Beukes, who in the minutes later that year makes the profound point against what Mr Steyn was claiming.

His point was he concedes that the hawk is a better

aircraft because of its dual function, the Italian [indistinct] does not have that combat function. I think it is very clear and this is why to this day in retrospect having to refresh my mind with the minutes, it comes back to me extremely clearly commissioners.

I am firm on this point as I was those sixteen years ago.

ADV CANE: Thank you. If you return to page 6 of the bundle, the DOD bundle, you will see in the middle of the page decisions taken and we are now in the actual minute of that ministerial briefing of 31 August 1998, and underneath the heading decisions taken, you will see there is paragraph 9. Are you with me?

MR KASRILS: I am indeed.

ADV CANE: You were referred to this paragraph by the evidence leader and it was put to you that the recommendations of the preferred bidders did not clearly appear from the minute referred to therein, than in the minute of 21 August 1998, and you gave an answer having looked at the documents, that the [indistinct] was that everything in terms of the packages had been agreed to, except in relation to the hawk and the tanks, and you proceeded to show that those were then the outstanding issues dealt with.

Now what I would want you to do please, is turn back

to the context, to the minute of 16 July. Just give me one moment. Sorry, the minute of 13 July that you will locate at page 260 and that is in Mr Steyn's bundle. Please go to that and also the page 6 open in front of you.

MR KASRILS: Sorry, just repeat the two pages. The one you want me to keep open.

ADV CANE: Certainly. If you would turn in Mr Steyn's bundle to page 260.

MR KASRILS: Thank you. 13 July 1998.

ADV CANE: It is a maintain of a special AAC, and they asked you to keep open also DOD bundle page 6 with the decisions taken. Are you with me?

MR KASRILS: Yes, thank you. I am with you.

ADV CANE: In relation to the AAC meeting minute to be located at page 260, it was put to you by the evidence leader that he was not aware of any minutes held or minutes on record of the AAC in its own right. This document on page 260, is that such a minute of the AAC?

MR KASRILS: Yes, it is.

ADV CANE: If you could then turn to page 261 you will notice under introduction is paragraph 2 and it reads as follows:

"Due to time constrains, the meeting proceeded

directly to the overall summary of consolidated results, co presented by the co chairpersons of the [indistinct]."

In the next paragraph 3 you will also notice that the results put forward by the [indistinct], and I want to draw your attention to the fact that each equipment type is then listed from paragraph 4 onwards. We start with the [indistinct] and then [indistinct] was involved. You will then see that the evaluation results are set out for each equipment type, and if you page on you will see it is for the submarines, for the corvettes, the helicopters, the advanced light fighter air craft, the [indistinct] and the helicopters, are similarly dealt with.

Then if you turn to the last page of the minute, you will see on page 266 at the foot of the page under a heading note, the last sentence reads:

"The evaluation results of the equipment elements are contained in the [indistinct] record dated 12 July 1998."

What I want you to do ... [intervene]

MR KASRILS: Sorry, just help me with that last reference, 266. Ja.

ADV CANE: Please cast your eye down the page and underneath minister Modise's signature, you will see ... [intervene]

MR KASRILS: Okay, I have located it thank you.

ADV CANE: And in the last sentence there we are referred to the [indistinct] record. What I want you to do is turn to pages 268, 276 cast your eye on that and inform the commissioners to whether this was the record being presented to the AAC.

MR KASRILS: Well, it appears to me as though these would have been genuine. These would have been the record and I accept that in terms of the contents of the document.

ADV CANE: Are you then able to confirm that in relation to each equipment type, the AAC was presented with the preferred bidder, the winner of the evaluation round, safe if I may refer you to page 262 at the foot of the page, you see the results and there we see there are two options.

Do you confirm that?

MR KASRILS: You say at the foot of 262?

ADV CANE: Yes.

MR KASRILS: Yes, I have located it sorry, no cost option ranking. Is that it? British hawk, Italian MB, the [indistinct] and the Jack?

ADV CANE: Correct. You see that there is also a cost option ranking and the Italians are at the top of the cost option ranking.

MR KASRILS: Yes, right, I am very clear, thank you.

ADV CANE: And the question I put to you was save in relation to the bid that this minute reflect that in relation to each equipment type, the winner of the evaluation was put before the AAC.

MR KASRILS: Yes, indeed.

ADV CANE: You will notice in 6.1.1 that you are recorded as having attended this cabinet meeting and I presume a special recall of your attendance was required because you have explained to the commission that you were not ordinarily a member of a cabinet.

MR KASRILS: Precisely and that goes for the other three deputy ministers present with me.

ADV CANE: In the next paragraph, the cabinet notes a presentation headed Department of Defence presentation, 18 November 1998. If you turn the page, you will see at page 10 to 11 of this bundle, is a document. Are you able to confirm that this was the presentation given to the cabinet?

MR KASRILS: Yes, I would agree. Certainly.

ADV CANE: Then to save time let me move to the last paragraph recorded as part of the decision. The cabinet discussed the matter and resolved that the recommendations on [indistinct] headed strategic defence equipment be accepted as recommended as an interim stake and that the Department of Defence, Finance, Public Enterprises and [indistinct], seek further detail negotiations with the

preferred bidders with the view to achieve affordable [indistinct].

Mr Kasrils, can you confirm that this was indeed the discussion and decision of the cabinet?

MR KASRILS: Yes, indeed so.

ADV CANE: Now with regard to this decision, and this is my last question. With the benefit of hind sight and bearing in mind your role in the decisions pertaining to the SDPP, as deputy minister at the time, have you any reason to regret your role in that regard?

MR KASRILS: No, not at all. I am proud of my role. We were engaged in extremely historic import in relation to the security of our country. Taking into account the constitution and indeed the first precepts of that constitution, being the security of our people, the need to attend to the socio economic needs and upliftment. This was the big change commissioners.

As we well know it is common knowledge, but I make that point in addition, unmistakably in that constitution, is the requirement for a modern, capable, affordable defence force, well equipped to do its duties. Duties being to defend that constitution, the sovereignty of our country, its territorial integrity in its boarders for the wealthier of our people and for that sustainability.

Further, in terms of that constitution, the defence

force needed to be staffed, representative of our people, and adequately equipped, and given the obsolescence of the equipment which I have dealt with at length on Friday, thus came the need to look into how best to equip this defence force for its modern constitutional needs.

So we proceeded in a very transparent and open way through the white paper, through the defence review and from there along the lines that we have been dealing with here, the process of integrity to arrive at the decision to equip the defence force and benefit the country economically, industrially through the arms procurement package, which was a very unique process.

I have mentioned Commissioner, that actually in the grand scheme of things internationally, whatever country you look at, what we actually were requiring and it is a lot of money, it started at 30 billion, and of course in terms of currency and so on, it increased. But in the grand scheme of things, for countries equipping the defence force to do the job of their constitution, it actually is not the major equipping that so many detractors make out, and one could look at the number from planes, to helicopters, to ships and submarines. It is actually quite small.

I say it in terms of the full acceptance that there had to be trade-offs in terms of the budget. That if you put some money into budget A, you are going to deprive some of that from budget B, but government's the world over

democratic governments, need to have a balance between the socio economic upkeep and security of the country and people and the means to defend.

From that point of view, I believe what we did was extremely significant, and it has had its results, despite a very small number of books written but I do not believe and I have looked at them and perhaps the authors have in their minds a serious approach, but there is nothing in these books that can really be tested. They have huge generalisations.

Of course they play on the fact that there could have and indeed we have seen some aspects of corruption which arise out of any major business transaction be it from books for education to the building of dams to defence, and that had happened. But to try and make out, it is the government of this country is off the mark, and when we see the result I have mentioned here today, the reference to and we must give this time.

We must look at it not as an author of a book, one or two writers, but in a very clear cut way at the facts and do the type of audit necessary, to actually understand and this country should understand what has been achieved in that industrial package, that business plan that minister Joe Modise had in mind.

We could give examples. Would the Germans go on

having their BMW cars manufactured in East London if we were a country without a navy, without a defence force. I give that as one example. You need to create confidence in your trading partners that you can look after the sovereignty at the coast, the sky or the land.

From that point of view in doing business, it is vitally important we have something of this nature. Our region, our closest neighbours, I can recall if I can give you a quick anecdote, the then president Chicano of Mozambique meeting with Mr Modise and myself in Cape Town.

The first thing he said to us, was you have got to get those corvettes. We cannot afford a navy in Mozambique. We need to protect our fishing in the Mozambican channel and this was many years before the plague of piracy began to move down from the horn of Africa and with it the sped of terrorism that we see coming closer through the advent in Kenya for example.

I recall how in terms of deciding that we needed to replace the obsolescence of the three Daphne submarines for our submarine fleet. If we had not done that, we would not have the submarine capacity. Now there are people who say we do not need it. What does South Africa need submarines for?

Sir, you do not go into the sea if you have heard that there is one shark out in that ocean. The fact that there is

a submarine in your fleet, gives any would be aggressor or anybody who feels they could move in on our territorial waters, a lot to think about.

We have seen a naval exercise off the Cape in which a fleet of five or six naval craft in an exercise with the South African Navy came into our waters. We had a single submarine. This class that we are talking about which sank the entire, this is an exercise which sank that naval fleet to the consternation of the admiral in charge of that fleet.

This is the power that South Africa has, not to frighten people, but to look after our territory and our [indistinct]. This is the reach we have in terms of our naval craft and in terms of our air force and army to cooperate as an African country with our region and with the continent, where we have peace keeping forces everywhere

CHAIRPERSON: [indistinct]

ADV CANE: Chair ... [intervene]

CHAIRPERSON: [indistinct]

ADV CANE: Chair, there is only one thing. If we could give Mr Kasrils the document to which he himself referred. It is the minute of 18 September 1998, page 342 off Mr Steyn's bundle and the passage to which Mr Kasrils referred, is at the foot of page 343, paragraph 4.7.1. Mr Kasrils, am I correct in assuming that this note that Mr Swan reported that the deputy president and ministers had been briefed in

Durban and basic approval had been given to the recommendations made by the [indistinct], is the note to which you were referring?

MR KASRILS: Please help me again. Which paragraph is this?

ADV CANE: Turn to page 343.

MR KASRILS: Yes indeed, that is the very one.

ADV CANE: Thank you Mr Kasrils. Then that is the end of my questions, thank you chair.

CHAIRPERSON: Advocate De Vos?

CROSS-EXAMINATION BY ADV DE VOS: Thank you commissioners. Mr Kasrils, you are clearly passionate about the arms deal and what you perceive the advantages that it brought to South Africa. I just want to take you back to the 1997 defence review, and you will remember that in that particular review it was indicated and I think Mr Crawford Brown also referred to that.

That South Africa's greatest security threats were poverty, inequality and unemployment. Do you remember that?

MR KASRILS: Yes, and I agree very much with that.

ADV DE VOS: And, just a moment. Commissioners, I have just received a request from my colleague Mr Lebala, he

asks for a five minute adjournment. He wants to have a discussion with me before I proceed with my cross-examination and I would like to accommodate him if possible.

CHAIRPERSON: Okay. Let us have an adjournment for five minutes.

COMMISSION ADJOURNS

COMMISSION RESUMES

CHAIRPERSON: Thank you. Mr Kasrils, do you confirm that you are still under oath?

R KASRILS: s.u.o.

CHAIRPERSON: Thank you.

ADV DE VOS: Thank you. Mr Kasrils, I will repeat my question. I referred you to the 1997 defence review, which indicated as I have already said, that South Africa's greatest security threats were poverty, inequality and unemployment and you agreed with that.

As you have already testified at length, a report of the arms deal, as you call it the missionary approach, was the idea that there would be an enormous amount of money flowing into the country. Is that correct?

MR KASRILS: It certainly is.

ADV DE VOS: And that would, or would that in your view

have assisted the problems as deprived in the defence review?

MR KASRILS: That was certainly our belief that injection of that investment into the economy, the job creation, all the gains in that sense, business gains, industrial gains, would obviously help the economy to grow.

ADV DE VOS: Am I then correct to say that it was of the utmost importance that the offset program be a success?

MR KASRILS: Yes, of course. We were expecting that and we were hoping for that.

ADV DE VOS: So it then would be correct to say that if the arms deal, if the off sets were not a success, the arms deal would have had and could have had a negative impact on precisely those factors as identified in the defence review?

MR KASRILS: Well, I would not agree exactly with that, because you also have to take into account commissioners, the fact that it was our duty and responsibility to ensure that we had an adequate military capacity. In addition to the military capacity of course we were hoping precisely for that add on to the economy, but it would not have fallen flat if nothing had emerged in terms of that economic or industrial gain, because we would have had a military that would have just peeted out.

It would have had no capacity. So it is a question of trade offs in relation to that.

ADV DE VOS: But Mr Kasrils, I understood your evidence to be precisely that the choices that were made, and I am not talking about the fact that we needed certain equipment, but the particular choices that were made for instance the hawk, were made with the idea that in spite of the fact that it may be double the costs as opposed to the Italian plane, that because of the inputs that would make it worth your while.

MR KASRILS: Yes, sure.

ADV DE VOS: So to get back to my point, the question of the inputs was of the utmost importance and the success thereof to make the deals that was put together eventually a correct decision or a correct choice.

MR KASRILS: Yes, let me accept that.

ADV DE VOS: Now you were not here during the evidence periods when the inputs were discussed and you do not have detailed knowledge of that. I just have to set the record straight as far as what you call the critics and the writers of books are concerned. My clients are Mr Hold and Mr van Vuuren and Mr Feinstein, and they all three in a submission to this commission, stated that as far as the evidence that they could gather is concerned, that the off sets were a disaster.

CHAIRPERSON: Advocate de Vos, I am not going to allow that question and I will tell you why. There are witnesses from [indistinct], witnesses from Armscor who came and

testified about off sets and about the benefits. That evidence is on record, whatever view that Mr Ronny Kasrils has, is totally irrelevant.

We now know [indistinct]. In fact I think one of the Armscor officials said to us that some of the off sets, they exceeded our expectations. They exceeded expectations. So I do not think that is a fair question put to Mr Kasrils in the light of the evidence that we have now.

ADV DE VOS: May I address the commission on this point?

CHAIRPERSON: That is right.

ADV DE VOS: The idea as I understand it, for people to give evidence before this commission, is to get different viewpoints before the commission, and it may very well be that there were witnesses explaining that some of the off sets were a success, but it may also very well be that the viewpoints of my clients in the end are the correct ones.

It is not to say that the evidence that is already presented is the end of the road, and clearly this commission has not made up its mind yet, as to what the real position is. So all I am putting to this witness which I submit I am entitled to do, is a view point of my clients who are taking part in this commission.

If I am not allowed to do it, then it does not make real sense for me to cross-examine the witness. If we were in a normal trial situation, my witness has not given evidence

yet. I am in a position and I should be allowed to give my witness's version, whether it is acceptable or not to the court, to the other witness to comment on that.

I think it is just fair in view of this witness's evidence, that the off sets were such an important part of the decision making process that he must consider the possibility that this commission may find, because obviously this commission has not found it yet, that the off sets were not a success and I would like his comment on that.

CHAIRPERSON: Ja, if you want to put any version to this witness in all fairness put all available versions. There is evidence which seems to not to agree with what your clients are saying. Put both of them to the witness and he can respond.

ADV DE VOS: I submit it is not my duty to put the other version to this witness. That is why we have evidence leaders and they can always in re-examination put that to the witness.

CHAIRPERSON: I am not sure whether I agree with you. In that case, I am going to put to the witness what is on record already. When you say to the witness that DTI officials came and testified and told us about their ID's, the people from arms procurement told about the [indistinct].

Their view is that both [indistinct] they have exceeded the expectations, and the thing that they have [indistinct] in

creating jobs and attracting investments. That is part of the evidence which has already been led before us.

Now you can answer the question, bearing that in mind what the evidence is before this court up to now.

5 MR KASRILS: Thank you. Well, I certainly agree. I have not been present at the presentations made which you referred to. That would accord with my understanding of the achievements and the benefits, and I have had [indistinct] to made reference to a person I think is possibly one of the 10 most leading experts in our country, Johan van Dyk, and his material which I have perused and it gladdened my heart.

I have looked at the books from certain authors and commissioner, they just do not impress me in the least, and therefore I totally disagree with learned counsel here in your 15 assertion that this has been a complete failure. I disagree.

ADV DE VOS: I am not going to take the point further, but that was not my assertion. I simply asked you whether if it were to be found that the off sets were not a success, one could then assume that the decision to go the more 20 expensive route, may not have been a wise one. That is all I am asking.

MR KASRILS: Okay, well you see with 20/20 hindsight, supposing we do discover that the whole thing has been a flop, what we have to ask ourselves is back in 1995, 1998 25 where we were taking a crazy risk with the thumbs of this

country or were we serious, were we committed to what we felt was the best needs of our country.

That is what I believe has to be asked. There could be all sorts of developments taking place, post that 1999 period relating to ministers who come or administrations who come and do not follow through on the commitment to the nip and the dip.

That requires a lot of work by departments to keep up that momentum. The aspects of the international economy and so on, which might in fact totally undermine the vision which we referred to as Mr Modise's at that time.

So if that does happen, does that then cast Mr Modise and his colleagues into a position of having taken an absolutely wrong decision? The point I would argue, is what was uppermost in their minds? Did they apply their minds?

Was it in good faith and from that point of view I must say madam, absolutely 100 percent for all of us.

ADV DE VOS: Talking about whether it was a good idea to take a risk and whether it was a risk, at any of these meetings that you were present and there were many of them, was the question of opportunity costs ever discussed?

In other words what else can we buy with this money?

MR KASRILS: You are referring to how many schools and clinics. Well, we were looking at our portion of the budget,

as every department would. There were shortfalls there. We did not blame the minister of finance.

We looked then at other elements which we are aware of. That business plan. So in our minds very much was the question. Minister Modise was not a hardnosed person. he had a heart for the people that he came from, and from that point of view, of course we were aware of what the country needed, which is why we downsized the defence force considerably [indistinct] the defence force, so that we could come in on the budget which was reduced to a tremendous degree.

From that point of view we were saving funds for the treasury to go into housing and clinics and hospitals and the like. Of course we were people of [indistinct] in that respect.

ADV DE VOS: Mr Kasrils, if you refer to saving of money, I assume you are referring to the money that was to come into the country on the basis of the off sets?

MR KASRILS: Actually, I am referring as well to the savings by downsizing the defence force. By creating a core force of only 30 000 full time military people, from what we had had in the past and relying on the reserve force.

This was a country as we well know that was highly militarised. We demilitarised this country and credit to minister Joe Modise for having led us in that.

ADV DE VOS: Can we return to the minutes of the ministerial briefing please, it is the date is 31 August 1998 and you will find it in Steyn's bundle. Or the bundle that was handed up by the defence counsel.

MR KASRIL: What page?

ADV DE VOS: Now you already know that both Mr Steyn and Mr Esterhuize were adamant in their evidence that the decision to prefer the hawk about the Italian aeroplane was not taken in their presence. Do you have any recollection of that meeting and who left and what happened there?

Can you remember actually that some people left and some people stayed on, or what was the position?

MR KASRILS: Thank you for that. I have really tried to trail through my memory in relation to this very question, and I am afraid I just have no recollection of that. Whether they left the meeting, whether they stayed. I am afraid I cannot help you with this. It would be a little bit of reconstruction and guess work.

ADV DE VOS: In this minute, there is an item and you have already discussed it. Item 9. Decisions taken. Recommendations for the preferred bidders as [indistinct] was supported and approved by the members present.

Now what was the normal process after the armament acquisitions counsel has recommended certain bidders, where would that decision normally go to? To the

subcommittee of ministers dealing with the procurement or to the cabinet or what?

MR KASRILS: I would say given a date on this occasion, it was to go through to that inter-ministerial committee of ministers.

ADV DE VOS: But I note that the minutes does not say it is minutes of an interim ministerial committee meeting, it specifies that it is minutes of the special ministerial brief on 31 August 1998 to the deputy president, Mr T Mbeki, on the progress of the strategic defence program for the SANDF and [indistinct].

So it does not report to be minutes of the inter-ministerial meeting dealing with the proposals.

MR KASRILS: Sorry, just to clarify that this would have been a decision at the AAC, and I think you asked where that would then be submitted, and that would have then gone through to that inter-ministerial meeting ten days later. That is my judgment of this.

ADV DE VOS: Are you talking about the decision that was taken during this particular meeting on 31 August or are you talking about the decisions that was referred to, that is referred to in paragraph 9 of 31 August by the ACC?

MR KASRILS: No, sorry, I am talking about the decision. Sorry, I think I was a bit mixed up. This is the meeting of the 31st in Durban and that meeting receives the report, and

that report is of that AAC dated 21 August and that is what they then approve.

Is that clear?

ADV DE VOS: Thank you. I understand that sir. According to you this particular meeting of which we have the minutes here, 31 August, was a meeting of the inter-ministerial committee.

MR KASRILS: Yes, indeed so.

CHAIRPERSON: [indistinct]

MR KASRILS: I think that the very facts sir, that the ministers present took the decision, shows that they were happy with the form in which it was presented to them. Whether there had been a minute referred to or not, the presentation is made.

They take a decision. It is a cabinet subcommittee and this then goes through to cabinet where it is approved. I really cannot help in any other way than that I am afraid.

ADV DE VOS: But you gave evidence after your, or during the cross-examination by Ms Cane, that as far as you are concerned, the minutes referred to or the document referred to, she called it minutes but now that I have been, now it has been pointed out that it says the recommendations.

She referred to a meeting of the ACC. No, let me rephrase this. Do you agree with me that if the ACC made

recommendations at a meeting dated 21 August, there would have been a minute in that?

CHAIRPERSON: Sorry, you are talking about the ACC.

ADV DE VOS: AAC, sorry. Mr Kasrils, if the AAC met on 21 August and made recommendations which seems to be what paragraph 9 implies, there must have been a minute, not so?

MR KASRILS: I would think so. I need to go back to the document which you referred to that Ms Cane presented. Maybe we could look at that to be more precise.

ADV DE VOS: I am trying to establish a simple fact, and that is it is impossible that the AAC would need to make recommendations, especially as important as these ones, without it being properly minuted. That is all I am asking you, and you will remember that you were part of the AAC.

MR KASRILS: That would concede that I would expect a minute, and you make reference to what I said earlier which is why I am asking that we could refer to the document that was presented.

ADV DE VOS: During your evidence when you were cross-examined, you were referred to page 260 which is a minute of a special AAC meeting. Do you have it in front of you?

MR KASRILS: Yes.

ADV DE VOS: And during your cross-examination, you were then led into saying that this must have been the meeting in

which the recommendations were made that is referred to in paragraph 5.

MS CANE: Not the proposition that was put? There was a subsequent meeting of the COD on 21 August page 316 to which I took the witness as part of a series.

ADV DE VOS: I must have misunderstood the cross-examination, but that does not really take us much further. We are dealing with a situation where a document that makes or where there is recommendations made by the acquisition counsel on 21 August, those recommendations are referred to by the minutes of the meeting of the ministers that made a very important decision, correct?

MR KASRILS: Is that to me? I am looking at the minutes of 21 August commissioner, and that is where this is minuted. This presumably would have been put before the meeting in Durban of the 31st but I cannot recall that since it is not referred to in the subsequent meeting.

That would have been minuted at 73.24 where the minister says, Modise, he said we must not prejudge, let the politicians decide and we go onto the 31st where the politicians is taking a decision to refer that to cabinet.

So presumably this minute is presented at that meeting, presumably I am not swearing to it. I cannot recall.

ADV DE VOS: It is interesting to note that paragraph 7.3.26

specifically states that the AAC was waiting to convene after closure of the council meeting.

MR KASRILS: And we do not have a copy of that, so what is there left for this witness to say?

ADV DE VOS: All that I am arguing with you is that the reference to recommendations of the AAC, is probably minuted in a minute that we cannot find. Is that not the more probable of the scenarios here? Instead of forcing this minute of the seventh council of defence, as the document that was relied on for the decision making process for the ministers?

MR KASRILS: Ja, I think that is correct. Just to add if I may, at that meeting neither General Steyn or the others make any statement, any objection. They do not make an objection.

ADV DE VOS: Mr Kasrils, I am not sure. You are talking about objections to what?

MR KASRILS: Well, you are raising the point about a minute and why the minute is not referred to in that meeting in Durban. The meeting takes place. If there is a minute and it is not referred to, I think that these members present would help the meeting and make a point about that.

A meeting has taken place, you have made that point.

ADV DE VOS: Precisely. That is why we argue that there

must be a minute dated 21 August, from the AAC and that minute seems to be missing, and the minutes that you were referred to were not the minutes that you used to make the decision.

Otherwise everybody would have noted the mistake.

MR KASRILS: Well, I have conceded that the minute would have been from that AAC meeting.

ADV DE VOS: Mr Kasrils, I do not want to enter into any technical debate with you, but I have been asked or requested by my clients, just to put the one issue of the hawk's capabilities to you. If you will give me the opportunity, or just forgive me if I am not very technical in my description.

But you have said that as far as you were concerned, the hawk's operational capabilities, in other words the dual purpose of the hawk was very [indistinct]. Is that correct?

MR KASRILS: Yes. You have made yourself very clear.

ADV DE VOS: Now according to my instructions, the hawk 120 acquired via this STV process, is not considered to have the capacity to conduct operations and can only be used for support functions in a low threat environment.

I will tell you where this information comes from. The official magazine of the South African Air Force, volume 30 (3) 2010 at page 20. There is an article and you will also

find it on the website where Brigadier General John Bayne, who also testified before this commission, makes this comment.

Do you know of this problem?

MR KASRILS: No, it is news to me. I do not know of that and I am not such an expert. Maybe more or less in your area of expertise. What I am aware of, if it helps the commission, that this hawk unlike [indistinct] which we might have bought, hardly exists, and the hawk has been bought, something like 400 sold, recently 80 to the Indian defence force.

So it is a very popular plain over the years. Sustainable, durable and desirable.

ADV DE VOS: And just one last point. I think you have made that point that the hawk is chosen, because according to you it had superior capabilities but it was chosen irrespective of the costs.

MR KASRILS: I think in the evidence in reading the minutes, minister Modise made himself very clear about this. That is was more expensive, but there was so much to gain, and that is how one buys a motor car or a house, and in this case, the equipment.

You know, the principles are fairly universal.

ADV DE VOS: Thank you. I just want to correct two things.

The one is you said you made your statement that was read to you by Mr Crawford Browne, in 1998 in fact you made that statement on 20 August 1997 and you will find that on the cabinet website.

MR KASRILS: Thank you for helping me. I did already concede that, I think Mr Browne made that point when he made his submission, and it just goes to show that memory is not something that we can totally rely on, which is why we try to understand this through the minutes of these meetings.

I have made many speeches such as that. Many. In parliament and outside parliament.

ADV DE VOS: Lastly just to clarify my client's position on an interpretation of a minutes of a meeting. You gave evidence that your interpretation of the minutes that you will find on page 187 PS 13 and more specifically 189. Your interpretation of what Mr Irvin meant when he said that, in his terminology he said:

"If six billion came into the country in the form of stable and ongoing investment, we stood a good chance of succeeding."

He was not referring to the full set off amount. That is your interpretation?

MR KASRILS: Yes, sure. He would be in a better position to explain obviously.

ADV DE VOS: Yes, we hope to get the opportunity to do so. I just want to put it to you that that is not our interpretation and I will discuss it with Mr Irvin if I get the opportunity. Thank you.

MR KASRILS: Well, from that point of view one needs to go to the horse's mouth and see whether he can remember. I made it very clear how I was seeking to interpret this. Thank you.

CHAIRPERSON: Any re-examination?

ADV LEBALA: Chair, I just have two questions.

CHAIRPERSON: Just hang on. [Indistinct] first re-exam. I am not sure whether there is any questions or not?

RE-EXAMINATION BY MR LEBALE: Just one issue. Possibly three questions arising out of that issue. Mr Kasrils, you have been referred to the counsel of defence meeting of 21 August 1998 which appears at page 316 of General Steyn's bundle up to page 321.

Have you found the page?

MR KASRILS: Yes. You will just have to bear with me. After all these sessions, my file is virtually coming apart. So it is difficult to get through these pages, but I am struggling with you.

ADV LEBALA: Now amongst the people who attended that meeting, was the late Minister Joe Modise, yourself and

General Steyn. You confirm that?

MR KASRILS: Yes, with General Simphiwe and Yanda who had become the chief of the SANDF. That is a key name there as well.

ADV LEBALA: Yes, I just wanted to confine myself to those three. That is minister Modise, yourself and Mr Steyn. Now at the end of the meeting on page 321 there is this note to which you have been referred.

That the AAC was waiting to convene after closure of the council meeting.

MR KASRILS: Yes.

ADV LEBALA: Now what was the procedure relating to the times and venues of meetings of the COD and the AAC?

MR KASRILS: The COD aimed to meet at least once every month. Possibly might have missed one or two months in any year. So there seem to be at least nine or ten meetings in a year, chaired by the minister.

The venue was the ministerial office or we might have gone down to the department of defence, which had better facilities. But anyway, in the department of defence building. The AAC met at specific times in terms of need to report or receive reports and take decisions.

Very often a meeting of COD would take place in complete. We were all present. The same people at

executive level serving on COD and AAC, so the one meeting would close and the next would open and we would have presentation made and its own minutes.

I think we have got one example of a meeting of the COD stopping at a certain point to allow a presentation from an AAC, it became AAC to allow a presentation from one of the work groups, and that would be in the same venue with the same people.

ADV LEBALA: Yes. I think you told the commission that you do not recall, you do not have an independent recollection of whether or not that AAC meeting did take place after the COD meeting, on 21 August.

MR KASRILS: Yes, I am afraid I do not, but if for some reason a report was made, or the presentation for the AAC was not available, then I think that would have been referred to here, or we would not have had the secretary Brigadier Snowball making that point.

ADV LEBALA: Yes. Now ten days later you meet in Durban, and amongst the people who were present, were Minister Modise, yourself and Mr Steyn among others.

MR KASRILS: Yes sir.

ADV LEBALA: Now if a meeting of the AAC had happened ten days before that and a decision had been taken, would that have been fresh in your mind then?

MR KASRILS: Yes, of course. At that time I would have been very clear.

ADV LEBALA: The decision that is recorded as having been taken at that meeting as appears on page 338 in particular, where would that decision have been referred to after that meeting?

MR KASRILS: I am a little unclear. Are you talking about the meeting ten days prior? The 31st meeting, that decision would have gone through to cabinet.

ADV LEBALA: And did it go through to cabinet?

MR KASRILS: Yes, and that presentation was mad to cabinet.

ADV LEBALA: Who finally took a decision on 18 November that year?

MR KASRILS: Yes, indeed.

ADV LEBALA: Thank you chair, no further questions.

CHAIRPERSON: Thank you. Advocate Lebala?

ADV LEBALA: I once again want to [indistinct] I did not recognise him because I was looking at you chair. Procedurally he opt to have gone before me. I just have two questions. I want to take you back to page 321.

Paragraph 7.3.26. The AAC was waiting to convene after closure of the council meeting. This does not at all

refer a meeting of 13 July 1998 that we see on PS21 page 260 to 267. Am I right?

MR KASRILS: 226 did you say.

ADV LEBALA: 260 to 267.

MR KASRILS: 260.

ADV LEBALA: Okay. Just to refresh you. Page 321 paragraph 7.3.26 states that the AAC and this is an obvious question. We just want to complete this for the record. We are referring to the minutes of the council of defence meeting of 21 August 1998.

To satisfy you, you could look at page 316.

MR KASRILS: 316?

ADV LEBALA: It refers to the minutes of the seventh council on defence meeting held on 21 August 1998.

MR KASRILS: It has come out, sorry. It is here. Okay.

ADV LEBALA: Yes, you [indistinct] that we are taking you through Annexure PS24 which starts on page 316 the subject of that annexure refers to the minutes of the seventh counsel on defence meeting held on 21 August 1998.

I would like to direct your attention to page 321 and ask you an obvious question, because we have to close this without confusing each other. Look at paragraph 7.3.26 on page 321 of the same minute of 21 August 1998.

There is a sentence there in that paragraph saying the AAC was waiting to convene after closure of the council meeting. Can you see it? Page 321 paragraph 7.3.26.

MR KASRILS: Yes.

ADV LEBALA: The AAC was waiting to convene after closure of the council meeting.

MR KASRILS: Ja.

ADV LEBALA: Now look at page 260. Page 260 refers to the minutes of a special AAC international office held at 16:00 on 13 July 1998. Now go back to page 321. The AAC was waiting to convene after closure of the council meeting.

Do you agree that this does not refer to the minutes of this meeting on page 260?

ADV CANE: May in intervene at this point. I think that there may be an unfairness about to happen, especially since I will not have a chance to respond after this. The point is to clarify anything that arises during cross-examination and [indistinct] refer to propositions I put to the witness.

I put the proposition that there was a chain of events in chronological order starting from 13 July 1998 with the minutes at page 260 and progressing through to the meeting of 21 August, 31 August and then finally to the cabinet meeting contained on [indistinct].

So to now require the witness to undergo reading to [indistinct] the later minutes, is not a question that fairly arises out of the cross-examination. Quite the contrary. Cross-examination opposed the order and the process is [indistinct] from page 263 of the minutes to which Mr Lebala is now referring, as been [indistinct] of presented preference and that is at the foot of the page.

So the sequence I put was the chronological one and it did not entail any suggestion that the later minutes referred back specifically to this particular minute of 13 July 1998.

CHAIRPERSON: Yes.

ADV LEBALA: I am left cold by this objection.

CHAIRPERSON: Just hold on. It is clear that you will not be allowed to start examining on new issues. Except those issues which have been raised during cross-examination and which are not clear. I do not think you can start raising that point all over again.

[indistinct] on the issues which are not clear, after the cross-examination. I will allow you to raise those issues with the witness. [indistinct]. We have been very lenient in allowing evidence leaders to do that, but if you are going to do that, make sure that you raise issues which are not that clear.

ADV LEBALA: Chair, not at all. That is the only question

we were asking. The basis of this question has been traversed. My learned friend has just confirmed that this question is before the commission, and what if it is not clear to us?

It is not clear. We want clarity on that. Hence we say it only refers and does not refer and that is the only question we ask. We are not taking this witness through these minutes again. All that we seek clarity about, whether my colleague Cane wants to refer to a sequence, it is just for this witness to confirm on two things that he has dealt with, when being cross-examined by senior colleague Cane.

The issue of what we see on paragraph 7.3.26 on page 321 was related to the minute on page 260 and we are asking this witness that referral to the AAC that was waiting to convene after closure, that is not referring to what we see on page 260. That is all. Yes or no. So there is a basis for this question.

CHAIRPERSON: Okay, you can continue.

ADV LEBALA: That is the only question I was asking the witness. Do you understand the question?

MR KASRILS: Yes, I am trying to. Sure. It is obviously there is a lot of confusion here. The dates, there is 19 August, there is then the meeting of the 21st sir. 19 August is headed minutes of a special AAC international office held at.

That might help us, because that tends to show that the subject matter of this meeting was precisely what we were going to discuss in Durban sir. The fact rather of that meeting two days later, 21 August, where the meeting of council of defence ends and the AAC are waiting to convene, it might have been some other item that they were wanting to present that day.

I would not know. So I certainly hold to the presentation that learned counsel Cane made to us in relation to this presentation of 19 August. I am advised, I am wondering.

ADV LEBALA: Perhaps I should say the following.

MR KASRILS: I beg your pardon, I am reading the wrong date. That was 13 July. Sorry, let me try and focus.

ADV LEBALA: Okay, up to so far and I just want to ask you two questions. This one, I do not know why it is twisting and turning. Up to so far we have seen only two minutes that I would qualify as minutes of the AAC.

The minute that we see on PS21 and the joint minute of the AAC and the AASB meeting. Are you refreshed? The AAC only appears twice in as far as these minutes are concerned. It is what we see on page 260 you can look at it.

Page 261, and that minute where there is a joint minute are you refreshed?

MR KASRILS: Ja.

ADV LEBALA: Now I just want clarity as to whether what we see on page 321 and it is an obvious answer to avoid the confusion. Paragraph 7.3.26 says the AAC was waiting to convene after closure of the council meeting.

Now this does not refer to the council meeting that is being referred in the minutes on page 260, am I right?

MR KASRILS: Yes.

ADV LEBALA: Thank you. Now the last question is look at the department of defence's bundle that was given to you. Page, I see the commissioners are conferring and I hope they will pick up what we are saying.

Paragraph 6.1, page 9 of the DOD defence. I would like you to look at paragraph 6.1.1. You were referred to that. The discussion was attended by deputy ministers [indistinct], JM Hlanga, BS Mabandla and G Makash.

Do you remember that you mentioned that there might not have been other deputy ministers?

MR KASRILS: I said there were thirteen other deputy ministers.

ADV LEBALA: Let us leave it, that is okay. Thank you. No further questions.

COMMISSIONER MUSI: I want to ask one or two questions.

This rule that the counsel on defence deals with certain matters and then does not deal with acquisitions, and it is the AAC that deals with acquisitions, is it a hard and fast rule?

MR KASRILS: I do not think so, because one does see the counsel of defence discussing in some meetings issues relating to acquisition.

COMMISSIONER MUSI: Thank you. I am asking that in view of what appears in this minutes of 21 August. There is a discussion of acquisition there. Even before that meeting adjourns and it is stated that the AAC was to reconvene thereafter.

[Indistinct]

MR KASRILS: Yes.

COMMISSIONER MUSI: General Steyn said that the defence review was approved by parliament and we know that, but he says that that did not give licence to the actual acquisition of [indistinct]. In other words he is implying that there should have been parliamentary approval before you got into the actual acquisition.

Any comment on that?

MR KASRILS: The nature of the process sir, was that running concurrently with the parliamentary process, paper right through to the defence review of two years or so, that

there was assessment, there was discussion with companies and particularly foreign parties relating to what was being anticipated in terms of the end result flowing from the defence review.

This was public. Not a hidden thing. So and it was accepted that whilst we went through that policy process, that investigations were being made. Equipment was being discussed. Was being looked at. Ship builders were being visited and the like.

We had many parties coming to the ministerial door to trade and industry I am sure as well it would have happened, but certainly to the ministry of defence and to Armscor, discussing what the opportunities would be.

Arms industries and countries who we interacted with, were abuzz with the publicity arising out of the defence. The white paper defence review process. So these were taking place concurrent with each other, but the final decision would have to wait as we see through the whole process and time line, post the defence review.

But RFI's and RFO's are occurring. The RFO's in that timeline as well, we have certain RFO's already on screen.

COMMISSIONER MUSI: You want to switch off? I am trying to ascertain did you then obtain parliamentary approval once a decision was made to go for the acquisitions?

MR KASRILS: No, not necessary in terms of that to carry

out business discussions. A whistle would have been blown if the department and Armscor were out of order in relation to those discussions under way. P Steyn himself did not object.

He makes the statement [indistinct] the event. You will see from the minutes he never said there [indistinct] should not be going out. We have got to wait for the defence review to complete and be accepted. You see sir, the discussions in relation to business, it is taking place within the context, the ambit of the defence review as it develops from that white paper.

So we knew quite early that basically what the army were looking for, were these particular items. So one was window shopping for most of that time and getting into discussions with parties who felt that they would be able to deliver what we wished for at the end.

COMMISSIONER MUSI: There is just one thing that maybe needs clarification, maybe from me, I do not know. There was this discussion about the minutes of 31 August which is signed by yourself and the other ministers, and advocate Lebala [indistinct] who compiled those minutes.

Maybe there was a misunderstanding about the role of the secretary for defence. He is not your secretary who takes minutes. The Secretary of defence in the context of the director general of the defence.

Maybe that is the clarification I needed to be made. Not for you to comment, thank you.

MR KASRILS: I agree with that, which is why there was not any puzzle over why Mr Shake drew up the minutes.

CHAIRPERSON: [indistinct]. Thank you for giving your evidence, you are excused. Thank you.

NO FURTHER QUESTIONS

CHAIRPERSON: Now the next question is whether we deal with Mr Lekota. We have two options. Either we hear his evidence tomorrow morning at nine o clock or we take a ten minute break now and continue with his evidence until we are finished.

I will prefer the latter, unless there is strong opposition to that?

ADV LEBALA: Commissioners, my colleague would be leading the evidence of Mr Lekota and he has a few questions. I do not know whether there are parties who would like to cross-examine him. The delay might be there.

He just has a few questions. He could address the commission on this aspect.

CHAIRPERSON: [indistinct] that we take an adjournment and from there we come back, we continue the evidence of Mr Lekota until there is any cross-examination. He gets cross-examined so that at the time [indistinct] when we are

done with his evidence, he does not have to come back tomorrow.

That is the option that I prefer. I have spoken to my fellow commissioners, they also prefers that, unless if there

is any strong opposition to that.

ADV DE VOS: I have no problem with that, as long as I receive, [indistinct] but we would like to hear what the witness has to say before we decide whether we can proceed with cross-examination this afternoon or tomorrow morning.

We only received his statement during the course of the day and it was not possible for me to look at it, but it may be that we do not need an adjournment before tomorrow, so I suggest we continue with his evidence and see if I request an adjournment.

CHAIRPERSON: [indistinct]

ADV DE VOS: That is correct.

CHAIRPERSON: In that case, can we take an adjournment for five minutes and when we come back we will start with Mr Lekota.

COMMISSION ADJOURNS

COMMISSION RESUMES

CHAIRPERSON: Has the witness arrived? Can the witness take the oath?

WITNESS: MOSIUOA GERARD PATRICK LEKOTA GIVES EVIDENCE UNDER OATH

EXAMINATION:

ADV NGOBESE: Esteemed Commissioners, before I proceed may I enquire as to whether are you in possession of the

Minister's statement, including the annexures?

CHAIRPERSON: I have got it.

ADV NGOBESE: Esteemed Commissioners, the statement consists of four pages and the annexures are three annexures. The first annexure starts from page 5 to 7 it is "ML1" and annexure "ML2" starts from page 8 to 9 and annexure "ML3" starts from page 10 to 11.

Note: **Caucus**.

ADV NGOBESE: Thank you esteemed Commissioners. Mr Lekota, just forgive me for the purpose of this Commission just to address you as the Minister of Defence. Minister is it correct that you deposed to the statement in relation to the testimony that you are about to give, in June, is that correct?

MR LEKOTA: That is correct.

ADV NGOBESE: Your statement consists of four pages, is that correct?

MR LEKOTA: That is correct.

ADV NGOBESE: If you turn to page 4 of your statement, the signature appearing thereon, is it your signature?

MR LEKOTA: That is correct. That is my signature.

ADV NGOBESE: Permit me just to read paragraph 1 of your statement. It says:

"I am the President of the Congress of the People and a former Minister of Defence in the National Executive headed by President Thabo Mbeki. I succeeded Minister Joe Modise (and later during Minister Modise's indisposition, Acting

Minister Jeff Radebe) as Minister of Defence and served in that portfolio from 17 June 1999 to 25 September 2008."

Under which President did you serve as Minister of Defence from 17 June 1999 to 25 September 2008?

5 MR LEKOTA: Under former President Thabo Mbeki.

ADV NGOBESE: Now paragraph 2 of your statement you are just mentioning that you were the Premier of the Free State from 1994 to 1996 and the Chairman of the National Council of Provinces from 1997 to 1999. Is it correct?

10 MR LEKOTA: That is correct.

ADV NGOBESE: Let us proceed to paragraph 3 of your statement, which reads as follows :

"The primary work undertaken by Cabinet on the Strategic Defence Procurement Packages ("SDPP") had been
15 *completed by the time that I was appointed as the Minister of Defence."*

There is nothing contentious about this, is that correct?

MR LEKOTA: It is correct, sir.

ADV NGOBESE: Now let us proceed to paragraph 4 of your
20 statement, which states that:

"I have been requested to appear before this Commission in order to assist it enquiry and make and findings, as well as report on and make recommendation on matters pertinent to its terms of reference, which prescribe the Commission's
25 *mandate."*

MR LEKOTA: That is so.

ADV NGOBESE: Again Mr Minister, paragraph 4 just merely

states that you were just requested to come and assist the Commission. There is nothing contentious about paragraph 4, is it correct?

MR LEKOTA: That is correct, sir.

ADV NGOBESE: Paragraph 5, you are just also mentioning the fact that you are...you have read and also listened to the testimony given by your colleagues and you concur what has been placed on record by them and accept that decision ...that the decision taken were sound, is it correct?

MR LEKOTA: That is correct.

ADV NGOBESE: Now if you proceed to paragraph 6 of your statement, again let me take the liberty to read it to you, which says that:

"I am also aware that the Department of Defence has made detailed submissions to this Commission in an effort to, inter alia, clarify the rationale for the SDPP, the utilisation of the equipment purchased, what job opportunities materialised, if any, and matters relating to whether the offsets that were envisaged materialised, and so forth and do not intend to traverse these matters in this submission."

Mr Minister, we have heard lots in regard to this paragraph and is it correct that you also do not intend to traverse those issues mentioned in paragraph 6?

MR LEKOTA: That is correct, Commissioners.

ADV NGOBESE: Commissioners, we proceed to read paragraph 7 of the statement. It now says that :

"It is common cause that when Cabinet took the decision

to procure armaments under the SDPP, I was not a member of the IMC."

Can you please explain what is "IMC"?

MR LEKOTA: IMC is Inter Ministerial Committee.

5 ADV NGOBESE: Now let us proceed to the next paragraph...I mean the next line. It says:

"On my appointment as the Minister of Defence in June 1999, I took on the responsibilities assigned to that portfolio and joined the IMC. My functions included giving effect to
10 *the 1998 decision of Cabinet to pursue the objectives of the Defence Review by, inter alia, equipping the South African National Defence Force in order that it might play the role envisaged for it in Chapter 10 of the Constitution, and in particular, section 200 to 204 thereof."*

15 Now my question is, you mention your function that...one of your functions included that you have to pursue the objectives of the defence. Would I be correct that one of your functions also included to sign...included signing of the contract on 3 December 1999? The contract in relation to
20 the procurement arising out of Strategic Defence, the SDPP. The Strategic Defence Procurement Packages.

MR LEKOTA: That is correct. I had to carry out all of the functions that the Minister of Defence would have to carry in acquiring equipment for the Department of Defence. That is
25 correct, sir.

ADV NGOBESE: When you were signing the agreement, Mr Minister, were you satisfied that the objectives of the

Defence Review were also met by the contract that you signed on 3 December 1999?

MR LEKOTA: This is correct, Commissioners.

ADV NGOBESE: Commissioners, let us proceed to read paragraph 9.

"As I understood matters, Cabinet's decision was to enable the South African, SANDF (which is South African National Defence Force) to protect the people of South Africa from any external threat, fulfil its international peace-keeping obligation and be in a position to support the other components of the security cluster in securing a peaceful and stable domestic environment."

Mr Minister, is it correct if I say that what is mentioned here in paragraph 9, was also one of the objectives which was in line with the Defence Review?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE: Let us proceed to reading paragraph 10.

"I can assure this Commission that in the period that I was Minister of Defence, discussions and decisions within the DOD..."

Am I correct that DOD is Department of Defence?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE:

"On DIP..."

Am I correct to say that also DIP represents Defence Industrial Participation?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE:

"DIP packages were inclusive, well thought through and above board in every respect. Policy laden recommendations both from within the DOD..."

Page 4 Commissioners.

"And those made at IMC, were framed within the context and guidelines of the Defence Review process."

Is it correct?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE: Paragraph 11 of your statement on page 4 it states that:

"A particular matter was brought to my attention. It relates to the decision to continue with tranches 2 and 3 regarding further Hawk and Gripen procurement. I confirm that I applied my mind to the matter and recommended that tranches 2 and 3 be proceeded with."

Now the question is, when was the first time this matter was brought to your attention?

MR LEKOTA: Commissioners, this matter served before the IMC when we were briefed about the proposal for these tranches.

ADV NGOBESE: Now Minister, if you will take a look also at page, which is an annexure, page 6 which is attached to your statement which is annexure "ML1". Are you familiar with this document, Mr Minister?

MR LEKOTA: That is correct, Commissioners.

ADV NGOBESE: This document, is it correct that it was the

minutes of the 31st of August 1998?

MR LEKOTA: 1999.

ADV NGOBESE: Sorry, 1999.

MR LEKOTA: That is correct, Commissioners.

ADV NGOBESE: I beg your pardon. I am just looking for one...Minister, now if you look at page 5 of this document, we can see that the people who were present was Mr T Mbeki. I assume at that time he was the President of South Africa? Is it correct?

MR LEKOTA: That is correct, Commissioners.

ADV NGOBESE: Now also there is also Minister, Mr MGP Lekota, Minister of Defence. I assume it is yourself?

MR LEKOTA: That is correct, Commissioners.

ADV NGOBESE: Mr A Erwin, I assume that is Mr Alec Erwin, he was also holding the position of Trade and Industry, is that correct?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE: Mr T Manuel, Minister of Finance?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE: Mr TJ Radebe, Minister of Public Enterprise?

MR LEKOTA: That is correct, Commissioners.

ADV NGOBESE: Now there is...underneath there are also invitees. Reverend F Chikane, DG President's Office, do you see that?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE: Now there is also Mr M, if I am not

mistaken, it is pronounced Ngoasheng, Economic Advisor President's Office, is that correct?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE: Now there is also Mr J Naidoo. If I am not mistaken, is that Jayendra Naidoo who also gave evidence yesterday?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE: Now there is also Mr S Shaikh, Chief of Acquisition DOD?

MR LEKOTA: Correct, Commissioners.

ADV NGOBESE: Now if I may just take you to item 2 and with a view to verify as to whether this issue was also dealt with. I know that Mr Naidoo yesterday mentioned that, but the reason why I am mentioning this is because you were also present and Mr Naidoo states the following...the minutes or item 2 states the following:

"Mr Naidoo referred the members to the report handed to each member's office prior to the meeting (Blue File). Mr Naidoo took the members through the structure and contents of the report and highlighted key issues for further consideration by the Ministers. The re-introduction of of the Grippen aircrafts as training option was discussed."

MR LEKOTA: Tranching.

ADV NGOBESE:

"Tranching option was discussed and its implications to the SA Airforce fighter capability was noted. The team proposed three tranches of both Hawks and Gripens. The

decision to separate tranche 2 and tranche 3 from the initial approval of the "core" requirement is largely due to the unpredictability of the exchange rate and growth rate over a 10 to 15 year scenario. This approach allows Government to re-address the issue of affordability of the total fighter aircraft requirement at a later stage, if economic conditions decline. Three cost scenarios were used to do the affordability modelling with each scenario having its own risk factors and multipliers. Mr Naidoo addressed the issue of possible risk associated with poor communication of the Government's intent to acquire military equipment above the R16,5 billion expenditure level and timing of such an announcement."

Now my question is, this issue was it ever also formed part of the contract that you signed on 3 December 1999?

MR LEKOTA: That is correct, Commissioners.

ADV NGOBESE: If I may ask, what was the purpose of this tranche 2 and 3, what was the purpose of the discussion?

MR LEKOTA: Commissioners, as I recall the amount of money required for acquiring the tranches, the tranches were...the entire SDP was quite a substantial amount and the strategy here was to package the acquisition into these tranches so as to take a certain amount at a time in order to enable the Executive not to bite too big a chunk and where necessary to revise the situation guided by the ebbs and flows of economic growth. So this whole thing was a strategy to ensure that we stay within the national budget,

the defence budget to achieve this objective.

ADV NGOBESE: Minister, this issue of tranches, was it the only time on the 31st of August 1999 that was raised before you, or was there also another date where this issue was also raised before you?

MR LEKOTA: Well, sorry, Commissioners at a later stage we revisited this, it was at the time when we were considering whether we should go for the second tranche or not. At that point we then again looked at our situation and...to take a decision which way to go, that was the second time it served before us.

ADV NGOBESE: If I may ask you, do you still remember the date on which this issue was considered for the second time? If you can.

MR LEKOTA: I cannot recall the date offhand, but it was some time after.

ADV NGOBESE: Perhaps may I also ask you as to whether these issues was ever also discussed before the Cabinet or [indistinct] this what was discussed on the 31st of August 1999, can you tell this Commission whether was it ever also discussed before the Cabinet?

MR LEKOTA: The reason we considered the matter the second time, was for purposes of tabling it before Cabinet, with a recommendation having reviewed the situation, so that the decision, the final decision to take on the second tranche or not, should be the decision of the Cabinet itself, because we were a sub-committee of Cabinet.

ADV NGOBESE: In your own view do you perhaps ever come across the situation where the Cabinet was supposed to apply what was provided in tranches 2 or 3, as to whether the decision should be made in regard to whether termination of the contract should be applied or not? Whether there was a risk which could have made it to decide to terminate the contract, or not?

MR LEKOTA: Commissioners, on the occasion when we took the matter of tranche 2 to the Cabinet, it was for Cabinet to consider what information we tabled before it and therefore then on the basis of that and other considerations, to adopt the recommendation or otherwise. So on that occasion we had to carry out this exercise.

ADV NGOBESE: Thank you Minister. May I also just bring to your attention, I know it is an issue which was not...which was not mentioned in your statement, but however I think it is important that it should be also dealt with or responded to by you yourself. It is an issue relating to Admiral Kamerman. During his evidence or testimony Admiral Kamerman or...relating to [indistinct] employment in regard to the fact that he was not employed...he was not supposed to take employment with a company called Thyssen Krupp. This issue was also testified to by Admiral Kamerman. I just want to find out from you as to whether was this issue ever brought to your attention and if so, do you still remember when?

MR LEKOTA: Commissioners, the matter of Kamerman

came before me in a manner of a question that was raised by the opposition which drew attention to the fact that he had taken employment with one of the German companies and that in terms of the agreement that had been entered into by ourselves, that should not have been allowed within a specified period, and I had to answer that question in Parliament. That was when this matter came to my attention.

ADV NGOBESE: Now if, sorry, now if you say that this issue was raised in a form of a question before Parliament, permit me just to refer you to "ML2" starting from page 8.

MR LEKOTA: I see that. Commissioners, this is the question that was raised in Parliament and it canvasses the response that I tendered before Parliament.

ADV NGOBESE: Now if you look at this page, page 8, underneath there is a heading "Reply", is that the reply that you provided to the members of Parliament?

MR LEKOTA: That is correct, Commissioners.

ADV NGOBESE: Now if...permit me just to read it into the record, it says that, yes, in fact for the purpose of clarity, let me start reading the questions that were posed to you, starting from the...I think there are four questions Mr Minister. The first one was:

"Whether was a National Defence Force staff that were involved in arms deal contracts may not be employed within the period of eight years by the seller of the arms without written consent of the Chief of the SANDF, if so..."

The second question is:

"Whether a certain person (details furnished) worked for a certain period (name furnished) within the eight year ban period, if so..."

Third question:

"Whether he received written consent from the SANDF Chief to do so, if not, why not, if so what are the relevant details.."

And the fourth:

"Whether any action has been taken against any party including the said person, in relation to this alleged breach of supply contracts; if not, why not; if so what are the relevant details.."

And the reply thereto which was the reply provided by yourself:

"Yes, in accordance with the Corvette Supply Umbrella Agreement Contract No 112/1, page 52, paragraph 19.2(a); SANDF staff that were involved in the acquisition of the Corvettes may not be employed by the seller (German Frigate Consortium) without the consent of the Chief of the National Defence Force or his deputy within a period of 8 years after the effective date of contract."

The second line says:

"Yes, Rear Admiral (Junior Grade) Kamerman began working for the Thyssen Krupp Marine Systems (TKMS) within the 8 year ban period."

The reason why I am reading this is that during the

testimony Mr Kamerman mentioned the fact that he had permission from Vice Admiral Mudimu. Were you aware of that permission?

MR LEKOTA: Commissioners, this is the reply I tendered to the National Assembly. It is a reply that had been forwarded to my office by the Department, because the question had been referred to them and it was out of the Department that this reply was supplied to me and I submitted it to the National Assembly.

ADV NGOBESE: So in other words is that at the time when you were making a reply, were you unaware of the permission that was granted to Admiral Kamerman by Vice Admiral Mudimu?

MR LEKOTA: That is correct, Commissioners. I was quite convinced that this was the state of affairs, because the department [indistinct] questions and they send accurate, or they are supposed to send very accurate responses and then it is for me to then submit it to the National Assembly.

ADV NGOBESE: Now also Mr Minister, may I also just raise an issue which obviously was also not mentioned before you, but however it relates to the fact that one of the terms of reference that needed to be dealt with by this Commission, is in relation to the allegation of fraud, corruption arising out of SDPP. Now the question is, do you still remember when and where the allegations of corruption and allegation were the first time brought to your attention?

MR LEKOTA: Commissioners, initially I had read in the newspapers that there were allegations of corruption having been committed during the arms deal. More specifically on an occasion there were...there were papers or pamphlets put in the pigeon holes of the members of Parliament one morning when we got there, they were all over the place and everyone of the members of Parliament had a copy, alleging corruption but not indicating anybody by name or otherwise and that is when I had the first concrete evidence that these were very serious allegations, and I became quite concerned about it. Not just myself, but I think lots of members of Parliament were relatively also concerned.

ADV NGOBESE: Now Mr Minister, when you received or you became aware of those allegations, did you ever or any [indistinct]

CHAIRPERSON: With respect to Counsel, I am not sure where those questions are leading us to, unless of course there is a specific issue that you want to raise [indistinct] Minister do so. Allegations about allegations, copies were found under the door, I am not quite sure how that is going to help us.

ADV NGOBESE: Well, in that respect Commissioners, maybe let me just withdraw that aspect, that question Commissioners. Mr Minister, now lastly in your statement paragraph 12, we are dealing also with the conclusion, which says that:

"The Constitution reserves to the National Executive the

competency of developing and implementing national policy. The SDPP was aligned to the mandates assigned by the provisions of the Constitution."

Now other than that, Mr Minister, how will you also like to make a conclusion before this Commission? Do you want to add anything?

MR LEKOTA: Commissioners, I have nothing to add. This is the net input I at this stage would like to table before you. Thank you.

ADV NGOBESE: Thank you, Commissioners. No further questions.

CHAIRPERSON: Is there any person that would want to cross examine Mr Lekota?

MR BROWNE: Yes, I would.

CHAIRPERSON: More or less how long is it going to take?

MR BROWNE: About 10, 15 minutes.

CHAIRPERSON: 10, 15 minutes. Any other person?

UNKNOWN: No cross examination [indistinct]

CHAIRPERSON: Thank you.

ADV DE VOS: Yes, Chair, I would also like the opportunity to cross examine. It depends on a specific question I am going to put to the witness and if the answer is what I think it is, I may have to ask for an adjournment so that I can look into the situation, but if he answers something differently, then I will be very short.

CHAIRPERSON: What is very short?

ADV DE VOS: 10 minutes.

CHAIRPERSON: 10 minutes, thank you. Mr Browne?

Cross examination:

MR BROWNE: Thank you, Commissioner. Mr Lekota, you are the National Chairperson of the African National Congress from December 1997 till 2007, as well as the Minister of Defence from 1999 until 2008, is that correct?

MR LEKOTA: That is correct, Commissioners.

MR BROWNE: Thank you, sir. You were not involved in the arms deal negotiations as one of the Cabinet's arms deal sub-committee, that sub-committee comprising Mr Mbeki, Mr Erwin, Mr Manuel, Ms Sikau and Mr Modise, your predecessor as the Minister of the Defence, is that correct?

MR LEKOTA: That is correct, Commissioners.

MR BROWNE: You became the Minister of Defence [indistinct] in 1999 only after the negotiations had been completed and so inherited the arms deal scam, is that correct?

CHAIRPERSON: Just hold on [intervenes]

MR LEKOTA: Commissioners [intervenes]

CHAIRPERSON: I am sorry Mr Crawford Browne, you said he inherited what?

MR BROWNE: He inherited the arms deal.

CHAIRPERSON: Okay, thank you.

MR LEKOTA: Correct, Commissioners, I inherited the arms deal.

MR BROWNE: And nonetheless it is your signature on the 3rd of December 1999 with the primary contractors that

committed South Africa to the arms deal contracts, the DAE and German Frigate Consortium [indistinct] are included in the bundle that you have and there is your signature on pages 00052 and 01351, would that be correct?

MR LEKOTA: I do not have the document, but it is correct that I signed the [indistinct]

MR BROWNE: [indistinct] The agreements you have signed were however still subject to the finalisation of financing arrangements with banks [indistinct] by the Minister of Finance, is that correct?

MR LEKOTA: That is correct, Commissioners.

MR BROWNE: And these financing arrangements were in fact signed by Mr Trevor Manuel on 25th of January 2000, is that correct?

ADV NGOBESE: Commissioners, sorry, Mr Crawford now is referring to a document which I am not sure whether the witness is in possession of that document. If he perhaps can just tell us which document is he referring to.

CHAIRPERSON: Oh, I see.

MR BROWNE: [indistinct] attached to the [indistinct]

CHAIRPERSON: What is the number of the document again?

MR BROWNE: It is not in that bundle. [indistinct] it is not in that bundle [indistinct]

MR LEKOTA: No, I have got the file here.

CHAIRPERSON: Mr Lekota, can you just switch off there. Thank you. Mr Crawford Browne, you were trying to address [indistinct] about the document.

MR BROWNE: Thank you Commissioner. Yes, although the Minister of Defence, Mr Lekota had signed the supply agreements, they were nonetheless contingent upon the completion of the deal by way of the financing arrangements, which were signed about five to six weeks later by the Minister of Finance.

CHAIRPERSON: That is the question that you are putting to Mr Lekota?

MR BROWNE: Yes, sir.

ADV MOERANE: Chair, this witness is not in a position to deal with the subsequent questions asked by Mr Crawford Browne. Mr Trevor Manuel is coming here tomorrow, he will be in a position to answer those questions.

MR LEKOTA: Indeed.

CHAIRPERSON: Mr Browne, how do you respond to that?

MR BROWNE: Thank you, Commissioner. [indistinct] Mr Manuel, but my point was simply that the loan agreements followed the supply agreements, so that the loan agreements...the whole arms deal acquisitions were contingent upon the loan agreements which were signed by Mr Manuel about five to six weeks later. But that is fine, I will take this up with Mr Manuel.

CHAIRPERSON: Thank you.

MR BROWNE: Mr Lekota, the arms deal affordability study that went to Cabinet in August 1999, warned the Ministers that the arms deal was a risky proposition that could lead the Government into amounting economic fiscal and financial

difficulties. It also warned the Cabinet that negative economic consequences could lead to job losses and that the offsets could not be guaranteed, yet the affordability study and its warnings were ignored, is that correct?

5 MR LEKOTA: Commissioners, they were not ignored. Cabinet considered what was tabled before it and its collective mind was to conclude that it was in the interests of the country and it was a manageable thing to proceed with tranche 2.

10 MR BROWNE: May I rephrase that to say that the arms deal affordability study was overruled rather than ignored?

MR LEKOTA: Commissioners, as I understand the situation it was on the shoulders of Cabinet to weigh everything and take a decision and that decision, having

15 considered everything, was to go ahead with tranche 2.

MR BROWNE: Now Mr Lekota, section 217(1) sets out the Constitutional requirements for Government [indistinct], there must be fair and equitable transparent competitive and cost effective, yet as we have heard the costs was removed

20 from the consideration in respect of the DAE contracts and the DAE Hawks and the DAE Gripen contracts. The DAE contracts amounts to roughly half the cost of the entire arms deal and yet your predecessor Mr Modise, removed the costs from consideration in what he termed his [indistinct]

25 approach. Did the Cabinet even apply its mind what the arms deal acquisitions [indistinct] un-constitutional rights and perception?

MR LEKOTA: I did not subscribe to that...I was convinced among others, that it was in the interests of the country, it was a correct thing. It was affordable and voted [indistinct] Thank you.

MR BROWNE: Mr Lekota, I think there will be a considerable debate on whether it will be transparent, or competitive or cost effective [indistinct] consideration and there are other deals made behind closed doors for political reasons, but it would not have complied with the Constitutional requirement, but I move on from there.

CHAIRPERSON: Mr Crawford Browne, if we can avoid making such type of remarks before you ask the witness a question, I will really appreciate that. Just put questions to him. Whatever you want to argue at a later stage, you can do that at a later stage.

MR BROWNE: Thank you, Commissioner. I beg your pardon, but I will move on, thank you. You were the Chairman of the ANC as well as the Minister of Defence? Would it be a fair assessment that the arms deal was the political pay back by Mr Mbeki to your predecessor, Mr Modise, for Mr Modise's role of really supporting Mr Mbeki's ambitions to succeed President Mandela?

CHAIRPERSON: I am not going to allow that question, unfortunately. There is no basis for it.

MR BROWNE: Now in connection with your position as Chairman of the ANC after 1997, as former Chairman of the ANC could you now confirm the revelation by a senior

member of the ANC's National Executive Committee as recorded on page 177 of [indistinct] book "After the Party", that the ANC funded the 1999 election from bribes connected with the arms deal? Is it true that the ANC funded the 1999 election from bribes that undertook in the arms deal?

CHAIRPERSON: I am not going to allow that question. Thank you.

MR BROWNE: Mr Msimang was the ANC's [indistinct] for 1997 until 2007, the same period when you were the ANC's chairman. He was the ANC's representative in England during the 1960's, he subsequently became South Africa's High Commissioner in London after 1994, when DAE was blogging to sell fighter aircraft which the South African Air Force [intervenes]

CHAIRPERSON: Mr Browne, that is a very long statement. What is the question?

MR BROWNE: I am almost there, sir, I am almost there. The Air Force had rejected the aircraft as unsuited [indistinct] South Africa's requirements. Is it correct that he was Treasurer General and he was also the High Commissioner during the crucial period in the negotiations?

MR LEKOTA: Commissioners, it is correct that he was Treasurer General. It is also correct that at some point he was Ambassador of South Africa and that is all I can attach and nothing beyond that.

MR BROWNE: Commissioners, from the [indistinct]

financial report at the ANC conference in Polokwane in December 2007, Mr Msimang declared he was happy to announce that the market value of all our investments stands at no less than 1.75 billion. "That is what [indistinct] owns". At 1.75 billion the ANC has suddenly by 2007 evolved from perpetual insolvency to one of the richest political parties anywhere in the world. Is that correct?

CHAIRPERSON: I am not going to allow that question, it has nothing to do with what we are investigating.

MR BROWNE: Mr Lekota, the arms deal supply contracts that you signed on the 3rd of December 1999, all contained remedies in case of bribes clauses, is that correct?

MR LEKOTA: I cannot [intervenes]

CHAIRPERSON: I am sorry, Mr Browne. Can you repeat the question? I missed the last portion.

MR BROWNE: The supply agreements signed by Mr Lekota on the 3rd of December 1999, all contained remedies in case of bribes clauses which he will find in the bundle of papers that have been provided to him, in case of DAE [indistinct] it is paragraph 20 on page 00048.

ADV MOERANE: Chairperson, I do not know what documents Mr Crawford Browne is dealing with. If it is the loan agreements, those agreements have not been declassified.

MR BROWNE: Commissioner, they are [indistinct] in the supply agreements, not in the loan agreements.

CHAIRPERSON: Are you referring to the supply [indistinct] agreement?

MR BROWNE: Yes, sir.

CHAIRPERSON: Ok, these are documents that they have just put in front of you there. We all were also given a copy about five minutes ago.

MR LEKOTA: Commissioners, to the extent that it can...those documents can be tabled before the Commission and the say-so, I would concede that.

MR BROWNE: Commissioner, may I read the clause in particular? It is not very long. [indistinct] in case of bribes paragraph [indistinct] 20.1 :

"If the seller or of its members or representatives in relation to negotiating [indistinct] of the agreement as;

20.1.1 been convicted or having committed an offence under the Prevention of [indistinct] or analogous legislation in any relevant jurisdiction by for example having promised or caused on his behalf to be promised, offered or given any kind of illegal gift, illegal advantage, or illegal consideration or

20.1.2 been convicted of fraudulent, illegal or criminal acts in obtaining or in execution of the agreement ARMSCOR and the South African Government acting together may summarily cancel the agreement and claim damages resulting from the cancellation or claim an amount equal to 5% of the total contract price as agreed for pre estimated liquidated damages."

Would that be correct?

MR LEKOTA: Commissioners, once again I want to say

that to the extent that those may be shown in the documentation which I do not have, I would agree with that and I think it can only show that there was determination on the part of Government that there would be no accommodation for any corruption, corrupt activity.

MR BROWNE: Mr Lekota, in your capacity as given in that statement, as both former Chairman of the ANC as well as the Minister of Defence, how could those remedy clauses [indistinct] to cancel the arms deals contracts when the allegations came up and action was taken both in Germany and in the United States, I will put it to you that the reason is clear [indistinct] is the [indistinct] were not also any rational South African Defence requirements but for the bribes, the equipment itself was irrelevant, is that correct?

MR LEKOTA: I reject that entirely. The rationale for the acquisition has been clearly set out. It was approved by the National Assembly after the white paper had been tabled there and I became part of the team to implement and I have not come across anything to suggest to me that this major national project could have been taken to benefit one or two individuals, or whatever number. So I reject this proposal, proposition.

MR BROWNE: Mr Lekota, as an example, it is public knowledge informed by the current Minister of Defence, that the DAE [indistinct] are now many in storage but South Africa has neither qualified the pilots to fly them, the mechanics to maintain them and even the fuel to, the money

to fuel them. So in other words these are...there was no rational defence requirement, when we did not have the personnel to operate [indistinct]

MR LEKOTA: Commissioners, as far as I am aware the position that South African had done under the old Apartheid regime back in the 60's had become absolute and the reasons are tabled extensively in the literature around the time of the debate on the white paper and I do not propose to traverse that, because I was not in the National Assembly at the time, or in its committee. But I am quite satisfied that there was credible grounds for the country to equip itself as it had determined through its representatives in the National Assembly. Thank you.

MR BROWNE: Mr Lekota, the Scorpions in November 2008 seized 460 boxes and 4.7 million computer pages of evidence against DAE and this in fact was the cause for the establishment of this committee. DAE has been fined 479 million dollars in the United States for accounting regulations relating including to South Africa. The Auditor General when he made his report to Parliament in September 2000, included amongst the various issues that he raised, that there was no consideration given to the personnel requirements either for the aircraft or for the submarines, is that correct?

CHAIRPERSON: I am not sure what, Mr Browne, when you said to Mr Lekota, is that correct? Which question are you putting to him, because you have made a very long

statement and from there, you say is that not correct. Should you not perhaps break your questions into smaller questions, so that he can be in a position to [indistinct] the questions properly?

5 MR BROWNE: I will do, Commissioner. The Auditor General when he made his report to Parliament in September 2000, which became the basis of the 14th report from [indistinct] which was unanimously approved by the National Assembly in November 1999, referred to the fact that no 10 consideration had been given to personnel requirements either for the submarines, or for the aircraft and this [indistinct] that the acquisitions were not made for any rational defence needs, but for bribes.

MR LEKOTA: Commissioners, to the extent that I am 15 familiar with the situation, I have already said that I am convinced even at this moment as I sit here, that the acquisition so carried out was well founded based on national interest as provided in the National Constitution and I cannot therefore support any proposal to the contrary. 20 As a matter of fact if I did not...if I had an inkling that this was nothing but for corruption, I probably would have refused to accept appointment as the Minister of Defence or to do something like that. I did it because I believed in the correctness of what I was doing. Thank you.

25 MR BROWNE: Mr Lekota, I come back to the fact that you signed the first and the second tranche on DAE weapon contracts, yet in the second tranche, in the second test it

was after the collapse of the Rand in 2001 which brought home the validity of the concerns expressed in the affordability study, that the foreign exchange risks comprised about 75% of the [indistinct] in foreign exchange and this was a reckless issue to be taking on board, given the international situation at the time, yet you signed the second tranche, is that correct?

MR LEKOTA: Commissioners, I did. It often happens in economies that there are fluctuations sometimes. Something might happen that might suggest that you need to revise your position. The collective mind of Cabinet even in that period, still indicated that it was nothing long term, that the difficulty we were in, it was manageable, it was something that could be overcome and once again the collective mind of Cabinet at that time, was that we had to proceed and we proceeded.

MR BROWNE: Mr Lekota, the point I made previously was that poverty, was the security crises facing South Africa in the 1990's up to the collapse of the Apartheid Government, and in fact three issues they [indistinct] to define the Mbeki's Presidency is Zimbabwe, the arms deal and AIDS. At one stage an estimated 1,000 South Africans per day were dying of AIDS related causes, yet one of the most bizarre arms deal offsets was DAE funding for the Virodene so called miracle cure for AIDS, which used an industrial solvent and in which the ANC had a 6% interest. So whilst squandering millions I would suggest on the arms deal

[intervenes]

CHAIRPERSON: Mr Browne, unfortunately I am not going to allow that question.

MR BROWNE: Mr Chairman, the point I am making [indistinct] while people were spending money on the arms acquisitions, a huge number of people in South Africa were suffering the consequences of HIV and AIDS until the Constitutional Court intervened, and yet we were spending money on armaments that we did not have and had to borrow offshore and the point I want to put is that this was a reckless proposition.

CHAIRPERSON: Mr Lekota, I am sure you have heard what the question is. In short you were reckless by spending this type of money when people were dying of AIDS.

MR LEKOTA: Commissioners, I would like to, if I may, let me...I must say that I was a member of Cabinet, whenever we considered the budget we considered extremely seriously the conditions of life of our people. At no stage did we consider that the social conditions of the people and all that goes with it is irrelevant, the only thing that is important is armaments. As a matter of fact I think it is fair for me to say, many of the people in the armed forces used to feel that I was not putting the case for increased budget for defence, as much as I should and I constantly had to remind them that whilst the country is busy steadily building capacity to defend itself if anything were to arise, we could not ignore and I could not put pressure that everything else

must be forgotten. None of us in Cabinet were just military people. I am not even a military person. I am just essentially an activist for the cause. In fact when the President appointed me to this position I wondered why he had sent me to there to defence. Of course you have to look at...to make sure that it is within policy and all of that and so on, but I was one of the people continuously concerned and supportive of the budgeting that we did for education, for health, for HIV and AIDS. I still feel that we were hammered very unfairly for...because we put so much of the budget of health into AIDS... "love life", was what was run under the leadership of our Cabinet and I still feel that we did far more than society acknowledged but nevertheless, that is history. Thank you.

ADV MOERANE: Chair, just to intervene at this stage, this line of cross examination has reference and is relevant to the evidence that was given by Mr Donaldson, particularly at page 0038 of his submission, where he breaks down the budget, paragraph 78, where he indicates how much was spent on SDPP expenditure, 6 billion and 62 billion on education. 34 billion on health services. 41 billion on social security and welfare services. 13 billion on housing and community developments. 13 billion on transport and communications. 20 billion on policing services for the 2002 and 2003 year. I think the question should be put in that particular context.

MR BROWNE: Commissioner, [indistinct] South Africa

does [indistinct] GDP on education and health, yet as we know tragically it does not seem to filter through into results. But Mr Lekota had touched on an issue that I had actually cut out of my questions and which I would now like to raise. But why he and Mrs Matlala Routledge both of whom were pacifists, were appointed to be Deputy...Minister and Deputy Minister of Defence, despite [indistinct] appointments which perhaps you would like to explain. But I will [indistinct] if I may, that Mr Lekota of course has now left the ANC and is resident with COPE as he has said. In his recent campaign he has in fact referred to the arms deal as one of the issues that was the genesis [indistinct] South Africa, so [indistinct] with the wisdom and benefit of hindsight, would you now concur that the arms deal was a reckless proposition?

MR LEKOTA: Commissioners, first of all, I am not a pacifist. I have never been a pacifist. I was of course non-violent because I did not join the armed wing of the liberation movement. So I would like to put that first and foremost. Secondly, I have thought very carefully about what I have done through my life. When I look to the things I did as a member of the African National Congress, I have nothing to apologise for or to regret, or that I think was wrong. When I did come to the conclusion that there was a serious deviation, it is when I moved on to motivate others with me to set up the Congress of the People. I identified a number of reasons why I felt at that point that I could no

longer continue to support the [intervenes]

CHAIRPERSON: Sorry, Mr Lekota, if those reasons that you have identified have got nothing to do with our investigation, maybe you should not even mention, you should not even go there and take that route, if they have got nothing to do with our mandate, unless if you say the reasons that made you to leave the ANC was something to do with our mandate, then surely we might allow you to continue and explain that.

MR LEKOTA: They had nothing to do directly with this matter here. They had to do with the principles for which we had fought and struggled. Thank you, sir.

MR BROWNE: Thank you, Commissioners. I have no further questions.

CHAIRPERSON: Advocate De Vos?

ADV DE VOS: Thank you, Mr Commissioner. I just want to make sure, Mr Lekota, if you look at page 5 of your bundle, there is the minutes of the Sub-Committee of the Cabinet Ministers of the Strategic Defence Package and during this particular meeting, item 2, refers to the fact that Mr Naidoo made a report to each member and it was called apparently the "blue file". Was that the affordability report that was contained in the blue file?

MR LEKOTA: Ja. This was the motivation why...well evaluation and then of course motivation why it was correct for us to proceed with tranche 2 as I recall it. I am...do you want me to put it on. No, I think I have made my reply, unless you want me to say something else?

ADV DE VOS: Mr Lekota, maybe we are not...maybe I do not understand it, I am not here all the time so it is possible that I have got it wrong, but this says 31st of August 1999 and it was...Mr Naidoo was there and I understand that the re-introduction of the Gripen aircraft as a tranche option was discussed and its implications to the SA Airforce fighters [indistinct] was noted. So was the decision to continue with tranche 2 taken in August 1999? I do not think that is possible. I think this meeting refers to the original decision to enter into the agreement that contained the Gripen and the Hawk and the various tranches included in that.

MR LEKOTA: It says:

"The re-introduction of the Gripen aircraft as tranching option was discussed and its implications to the South African Airforce fighter capability was noted."

That was noted, but to the best of my memory the question of tranching, the decision on the tranching had already been taken at this time.

"The decision to separate tranche 2 and tranche 3 from the initial approval of the core requirement is largely due to the unpredictability of the exchange rate."

Or, I think at this point it was at this...in this discussion that this choice had to be made about what portions we should take at a time.

ADV DE VOS: My question therefore is whether the...that was the meeting during which Mr Naidoo explained the

affordability report, is that not correct?

MR LEKOTA: Well, among...Commissioners, among other things. In order to get to this question of tranches, the fact was we could not afford to just take a decision to buy everything at a go. So in order to ensure that at every step it is affordable, this choice had to be made.

ADV DE VOS: Mr Lekota, please listen to my question. I am not talking about the choices that you made. I simply want to know whether the affordability report was presented to you during this [intervenes]

CHAIRPERSON: I am sorry, Advocate De Vos, [intervenes]

MR BROWNE: Commissioner, I think I would be able to assist on this issue of the history of [indistinct] tranches for the Gripen [indistinct] programmes were agreed to, because I think it is pertinent, given the fact that the affordability study had at one point recommended that the Gripen programme should be deferred or even abandoned, but the Cabinet went ahead with that...with the decision in August 1999. But then there were, as you recall, the question of the option to take the subsequent batches and my recollection is that decision was made in 2003 or perhaps 2004, after the Rand had collapsed significantly on foreign exchange markets, because Mr Naidoo explained yesterday the front loading by DAE was such that the costs would be excessive in not following through with the second option, so we were actually had [indistinct] that it was not actually an option [indistinct] drawn into this [indistinct] where the

contracts were established.

CHAIRPERSON: Advocate De Vos?

ADV DE VOS: Commissioners, I am going to request an adjournment until tomorrow morning. My answer has actually been answered, my question has been answered and I would like to have the opportunity, because I was not aware of the fact that Mr Lekota was present when the decision was made to re-introduce the package, as now I see in this minute. I need to take instructions from my clients as to whether they want to pursue the issue of the affordability report with Mr Lekota, and if so, I need the opportunity to have a look at the documentation that deals with that. In any event I will not be...well I cannot really say, I suppose, I must wait until I get instructions.

CHAIRPERSON: I think you were just about to tell us how long you think you are going to be. I think you were just about to, if you can just finish and tell us?

ADV DE VOS: I hope not to be longer than let us say 30, 40 minutes at the most.

CHAIRPERSON: 30, 40 minutes.

Note: Caucus.

CHAIRPERSON: There is a suggestion that maybe we should adjourn until tomorrow at ten o'clock. I am not sure whether we should make it ten o'clock or nine o'clock. We will have to make sure that we start with Mr Manuel at ten o'clock.

ADV DE VOS: Mr Commissioner, on that point the Lawyers for Human Rights have not received Mr Manuel's statement

or any documents that he intends to rely on, so perhaps that can also be addressed after the adjournment, because obviously if there is going to be a substantial statement from Mr Manuel, we would like to cross examine if possible and I would in the meantime look at the documentation.

CHAIRPERSON: So tomorrow, should we start at nine or should we start at ten o'clock?

ADV MOERANE: Chair, I was really going to propose that we complete Mr Lekota's evidence. He has been here the whole day today. The question of the affordability report, the Commissioners will recall it came up during Mr Alec Erwin's evidence. It was declassified then. Lawyers for Human Rights were given the opportunity to cross examine Mr Alec Erwin which offer they declined. Mr Jayendra Naidoo yesterday gave evidence about that affordability report and there was another opportunity for my learned friends to cross examine Mr Jayendra Naidoo. Mr Alec Erwin is coming tomorrow.

MS RAMAGAGA: No, Trevor Manuel.

ADV MOERANE: Trevor, I beg your pardon. Trevor Manuel is coming tomorrow. He certainly would be more au fait with that particular report than the present witness.

MR LEKOTA: I agree.

ADV MOERANE: Who has been out of Government now for some six years.

Note: Caucus.

CHAIRPERSON: Advocate De Vos, there is a suggestion that

you know maybe Mr Manuel will be in a much better position to deal with the question of affordability, better than the current witness.

ADV DE VOS: Chair, the position is the following: when the Cabinet took the decision in August 1999 as, or the sub-committee, Mr Lekota was part of that sub-committee. Certain facts were placed before him and he personally had a discretion and had a role to play and I submit that it would be in the interest of this Commission that Mr Lekota also be cross examined on how he saw the report and the impact of the report on his decision. Clearly every single person present at that meeting who had a role to play and who made decisions, who had a discretion, may have had a different view and therefore maybe Mr Manuel felt that it is more risky, maybe Mr Lekota felt it was less risky. Those are things that I would like to debate with the various witnesses, and I submit that it is in the interests of this Commission to get that information from this particular witness. I am not going to be unduly long. I think the Commission has seen that I do not waste time.

CHAIRPERSON: [indistinct] it is not your intention to go into details and an analysis of that report with the current witness?

ADV DE VOS: Not unless it is necessary, but there are certain issues I would like to debate with the witness.

CHAIRPERSON: Okay, maybe in that case we will try. Let us postpone until tomorrow, let us see what sort of

questions come up. One cannot make a determination up front whether the questions are fair or not. One can only make a ruling at the time when the questions are put to the witness. Unfortunately, Mr Lekota, it appears as if you will have to come back tomorrow. We have [indistinct] until six o'clock, we were not in a position to finish with your evidence. It does not seem to be possible. [indistinct] Advocate De Vos says that she still needs to prepare one or two issues that she wants to address with you. Unfortunately you have to come back tomorrow.

MR LEKOTA: I will oblige. I hope I can finish fairly early because I have really lost a whole day already. But this must be done though. Thank you.

CHAIRPERSON: We will adjourn until tomorrow morning and we will start [intervenes]

MS KONGWA: Chair, from the DTI or rather on behalf of the DTI, we would like guidance from the Commissioners whether a ruling has been made regarding the use of the contracts that we have been handed...that have been handed to us in the bundle. Mr Crawford Browne's bundle. They contain the supply agreements that [indistinct] and we were not...we just wanted to put on record that as the DTI we have not given any consent as to the production of the supply [indistinct] up to the point that the DTI had given evidence, these contracts were not declassified. So we would object to the use thereof.

CHAIRPERSON: I am not quite sure if what you are say is

correct. I am not quite sure. I think discuss it with the secretariat and try and clear up that question. But I do not think that your statement is correct. Try and clear it up with them. Apparently we have been given permission to use the details, some of the supply contracts. Just raise it with the secretariat. It is not necessary for us to debate it here. We will adjourn until tomorrow morning at nine o'clock. Thank you.

ADV MDUMBE: Chairperson and Commission [indistinct] I beg leave to clarify that position. I understand the question to be whether the documents that Mr Terry Crawford Browne has made available to the various interested parties, including the [indistinct] whether he got that from the Commission. I understand that to be the question. The documents include several copies of the umbrella agreement, and agreements in the supply [indistinct]. We want to put it on record Chairperson, and Commissioner Musi that these documents that Mr Crawford Browne has referred to...this witness to, he did not get them from the Commission. There has been this...there has been a new development with regard to the use of the umbrella agreements, the [indistinct], we did supply terms which issue I will be more than willing to discuss with the official from the DTI and clear it up, before we part ways this afternoon. But the agreements that...or copies of the agreements that are contained in the bundle, that Mr Crawford Browne has made available to the Commission,

those copies he did not get them from the Commission. Thank you, Mr Chairman.

CHAIRPERSON: No, it is just that one was not even aware of what is contained in these documents, because this file was just put on our desk just after we started at one. We never even had an opportunity of going through them and see what is contained in these documents. Mr Crawford Browne, you are the one who made copies of these documents.

MR BROWNE: Yes, I can confirm that I made those documents available. I will also be making available tomorrow the loan agreements for the DAE contracts signed by Mr Trevor Manuel, which have been verified in court as authentic in the Cape High Court and those documents precede [indistinct] discovered. Not in these, but there were related to the loan agreements that I obtained from a source in England over the internet.

CHAIRPERSON: And these copies of documents that you have put before us, I suppose these are the ones that you say that they were given to you, after you said you discovered the affidavits, after you served Mr Manuel with a request to discover?

MR BROWNE: Yes, I obtained the loan agreements over the internet and the supply agreements from other sources. We also obtained them through court actions in South Africa. So I will [indistinct] the supply agreements and also give him the financing arrangements that I got

internationally and which have been verified [indistinct]

CHAIRPERSON: Okay, can I make this ruling? Tomorrow morning before we start with this matter probably before nine, can Advocate Mdumbe together with the DTI and then Mr Crawford Browne, try and sort out this issue and let us see what has been...what we can use and what we cannot use. I think in that case then let us adjourn until tomorrow morning until nine o'clock. You know I did not know what was in these documents. This file was just given to us just 10, 15 minutes after we sat. But in any event try and sort it out and then we will come back tomorrow morning at nine o'clock. Thank you.

(COMMISSION ADJOURNS)