

**ARMS PROCUREMENT COMMISSION**

*Transparency, Accountability and the Rule of Law*

**PUBLIC HEARINGS**

**PHASE 2**

**DATE : 10 NOVEMBER 2014**

**(PAGE 8701 - 8784)**

10 NOVEMBER 2014

PHASE 2

**HEARING ON 10 NOVEMBER 2014**

CHAIRPERSON: Thank you. Good morning, everybody.

COMMISSIONER MUSI: Good morning, Chair.

ADV SELLO: Good morning, Chair, Commissioner Musi. Today we lead  
5 the testimony of Mr Shamin Shaik and if I may ask that the witness be sworn  
in.

**SHAMIN SHAIK**: (d.s.s.)

ADV SELLO: Thank you. Before we get started, by way of housekeeping,  
Chair and Commissioner Musi, you have before you two files. We could  
10 name them Shaik one and Shaik two and that is the bundle from Mr Shamin  
Shaik in this Commission. If, if it would be of assistance to the  
Commissioners, file one, as per the index, runs from pages 1 to 398 and all  
those would be contained in Shaik one. That would be the statement, his  
CV, ANNEXURES A to Z. File two will contain ANNEXURES AA all the way  
15 to UU, the letters UU. Thank you, Commissioners. If I now, if I may now turn  
to the evidence of this witness. Mr Shamin Shaik, could you please state  
your full names for the, for the record?

MR SHAIK: My name is Shamin Shaik, also known as Chippy Shaik.

ADV SELLO: You confirm that you have prepared a statement for, for this  
20 Commission.

MR SHAIK: Yes, I do.

ADV SELLO: Please refer to your file one, pages 1 up to 23, 32.

MR SHAIK: Yes. I, I compiled that, yes. That is my signature at the end of  
the submission.

25 ADV SELLO: So, you confirm that is your signature, appearing at page 32?

10 NOVEMBER 2014

PHASE 2

MR SHAIK: Yes, I do.

ADV SELLO: Getting back to your page 1 and the introduction section of the statement, you deal with your names, as you have mentioned, your current residence and the degrees that you hold. Could you place those on  
5 record for the purposes of the Commission?

MR SHAIK: Yes, I can. My family and I reside in Perth, Australia and I commute between Australia and South Africa. I currently hold a degree, a Master's degree in Science, Mechanical Engineering from the University of San Diego state. I have a Master's in Technology in Mechanical Engineering  
10 from what used to be called Natal Technicon and today called Durban University of Technology.

ADV SELLO: You mentioned that you reside in Perth, Australia and you do commute between South Africa and Australia. Are you here on this particular visit for any other purpose, than to provide evidence to this Commission?

15 MR SHAIK: I am here, to provide evidence to the Commission, as I think, the work done by the Commission is of importance to the integrity of South Africa and I thought it was important that I make myself available to the Commission.

ADV SELLO: Thank you. You have included a resume at pages 33 to 34 of  
20 your bundle, Shaik one. Without unnecessarily reading out the entire resume, please highlight for the Commission those aspects of the resume, you deem important or relevant to your evidence in this Commission.

MR SHAIK: Yes. It is, it is to do with the period from 1992 to 1994, where I represented the African National Congress, during the negotiations period on  
25 various work groups that eventually resulted in the creation of the civilian

10 NOVEMBER 2014

PHASE 2

control, within the Defence Secretariat. The other part would be my position as Director of Logistics, which I first joined the department in January 1996 and then the Chief of Acquisition and Procurement, with full management delegation in 1998. Thank you.

5 ADV SELLO: Thank you. Turning now to paragraphs 5 and 6 of your statement, at pages 1 to 2, could you deal with issues you raise in those paragraphs?

MR SHAIK: Yes. The testimony I present here, is largely from, what I will call memory and documentation, I requested of recent from the Department  
10 of Defence, as well as the written responses that I have given to the Joint Investigative Team, under Section 28. The events, relating to the arms procurement acquisition programme, commonly known as the Armsdeal, is something that started from 1997 and got signed off in late 2000 and, and you then, had the various investigations in 2001. There, there have been two  
15 other such prior investigations. One was the Auditor General's investigation, into the, into the procedures, process, et cetera, that lasted just under a year. Then, you had the Joint Investigative Team investigations that started and a report was tabled to Parliament. Most of these investigations, I am saying is all in the public domain. What, what I wanted to read into the record, as well,  
20 is starting on paragraph 6, which I think, is relevant, in the sense that I would like to contextualise the way we got to the defence package, as we know it today. It is something that has come up repeatedly, as to, what was the rationale of some of the elements that were introduced. So, for me, paragraph 6 highlights about six or seven key points and I would like to read  
25 it in, with your permission.

10 NOVEMBER 2014

PHASE 2

*"I resigned my post on Department of Defence as Chief of Acquisition and Procurement around April 2002 and ceased any further contact with the department, up until the Commission was established. My memory into specific events, during the acquisition period, may not be correct. Or I may*

5 *simply not be in a position to recall some specific events at all, due to the lapse of time. Most of the DOD and Armscor officials and Cabinet Ministers, who have testified before the Commission, have provided an explanation on the process and events, surrounding the acquisition programme. I do not*

10 *intend to contradict their evidence, in my testimony, other than to try to explain some of the events, that may have been presented, thus far, to the Commission, that I consider to be of some relevance to this Commission.*

*There are some issues, raised by the Secretary of Defence at the Commission that may require of me, a response. I do so, because if left unchallenged, it may create a negative perception, of my role in some of the*

15 *actions that were taken, at the time. I fully understand the concerns of Mr Steyn, at the time, as accounting officer of the Department of Defence. But, the role of Chief of Acquisition and procurement in the Defence Department was simply a manager of the acquisition process, within the department. I*

*had no decision making authority to approve or disapprove of any of the*

20 *acquisition programme under investigation. The final decision rested with Cabinet and the Minister of Defence was the overall custodian of the defence acquisition programme, as outlined in the Defence Review and the Modac one to three studies. The conflict between or the roles of responsibilities of the Minister and the Director General and senior government officials are not*

25 *unique, only to the Department of Defence. This had occurred in many other*

10 NOVEMBER 2014

PHASE 2

*Ministries, over a number of years, a number of years, arising out of the implementation of the Exchequer Act. However, it was my understanding that the Modac policies, as well as the Defence Review placed the final authority of acquisition procurement and production of military equipment on*

5 *the Minister of Defence and Cabinet, as the final executive decision making body of the country.”*

Thank you.

ADV SELLO: Thank you. You have now dealt with paragraphs 5, 6 and 7 of your statement. Just to go back a bit, to confirm a few things that I think,

10 you did not place on record. At page 2 of your statement, the top, the first two sentences on that page, that is the tail end of paragraph 5, you mentioned that you remained in the employ of the DOD until all these investigations were completed. The investigations being those you referred to in that paragraph and that no adverse finding were made and then, do you

15 confirm so, for the record?

MR SHAIK: Yes, I do.

ADV SELLO: Now, at paragraph 6, again, the last line, you rely on the Defence Review, Modac one to three studies and the Armscor Act, as the documents, established in the regulatory frame work for your understanding

20 that the decision rested with Cabinet and the Minister of Defence. Is that correct?

MR SHAIK: Yes, with a, with a slight correction. I, I may not have deleted the Armscor Act and I would like it to be deleted. So, I would like to let it read:

25 *“As outlined in the Defence Review and Modac one to three studies.”*

10 NOVEMBER 2014

PHASE 2

Delete Armscor Act.

ADV SELLO: Thank you. We shall so do. Chair and Commissioner Musi, may, before I, we proceed any further, I was [indistinct] in some respects, when are dealing with the issues of housekeeping, I overlooked an important  
5 fact. Mr Shamin Shaik is represented in this Commission by Advocate Nazir Cassim SC, who is instructed by the, the State Attorney and in particular Mr Isaac Tsowe. I wanted to place that on record and Mr Cassim is in attendance today.

CHAIRPERSON: Thank you. May you, just for my own understanding, in  
10 the beginning, Mr Shaik is now staying in Australia?

MR SHAIK: Yes, Sir. I do.

CHAIRPERSON: Oh. No. Thank you. It is just that we are now raising that question, because I know, before this Commission there are other people, who raised the question of extra-territorial jurisdiction. So, maybe,  
15 right at the beginning, I should say thank you for coming here and coming to testify, even if you are staying in Australia and really not raise the question of the extra-territorial jurisdiction. Thank you.

ADV SELLO: Thank you, Chair. Now, before we leave chapters, paragraph 6. Mr Shaik, now at paragraph 6 towards the bottom of that paragraph, you  
20 state, you state:

*"I fully understand the concerns, raised by Mr Steyn, at the time of the, as the accounting officer of the DOD. But, the role of the Chief of Acquisitions and Procurement and the Defence Acquisition and Procurement Division was simply a manager of the acquisition process, within the DOD."*

25 Can you please explain exactly what you mean by the department and the

10 NOVEMBER 2014

PHASE 2

Chief of Acquisition being the manager of the acquisition process?

MR SHAIK: Sir, the role of, of the Chief of Acquisition was to co-ordinate, be a single point of co-ordination, between the requirements of the Arms of Service before it goes into a contracting, or, which was the Armscor  
5 contracting agency. Now, prior to that, there was a larger role played by Armscor in determining requirement, within the greater DOD department. So, during the civil, the initiation of civil oversight role, the Chief of Acquisition position, then became a, a manager, who applied an oversight role, between what was procured and what was required. The role of the Secretary of  
10 Defence had high level budgeting programmes and an oversight function. This, in some way, tried to ensure that what the Arms of Service, themselves wanted, was what was procured on their behalf. Thank you.

ADV SELLO: Thank you. You, you have touched on paragraph 7, where you raised the issue of conflict between roles and responsibilities between  
15 the Ministers and Director Generals. At paragraphs 8 and 9, it is so that you deal with some of the peculiar conflicts that occurred, within the DOD is that correct?

MR SHAIK: Yes, I do. In particular, it was a time when almost all of the management staff, within the Department of Defence and Armscor were from  
20 the previous administration, pre 1994. What was coming out of these negotiations that this had to change in some way or the other. So, you have to contextualise it within the time and the period in which we all came into existence, where there was this integration of the MK [indistinct] like, et cetera, into a new structure, which is alien to itself. It was literally opposing  
25 armed forces members, which were integrating. So, the culture was different

10 NOVEMBER 2014

PHASE 2

and I make a note of it, and the previous administration had a different outlook, from the very beginning on, on the way the Department of Defence should be structured. So, I tried to put a note of that in paragraph 8.

ADV SELLO: You, you go further at paragraph 9, to then, you deal with the  
5 detail of this integration process and the subsequent appointment of a first black defence minister and SANDF general. Is that correct?

MR SHAIK: Yes, I did. This was one of the, if I vent you to say, one of the only departments, where a black director general or a black general came in, at a later stage. The other departments did have previous good  
10 administrators. But, in, in the defence department, you first had to go through an integration process and an integration process was specifically designed to ensure that the right quality and calibre of individual was positioned in the right rank. Now, a rank became a serious issue within the Department of Defence, where we had a British agency, coming in to  
15 evaluate and assist in the integration process. So, yes, so this took some time, before we could get a, a black general. We may have had initially, two lieutenant generals appointed, but the ultimate decision to get a fully fledged black general, coming out of the Department of Defence, was as a result of a process, rather than an appointment.

20 ADV SELLO: Thank you. You then, proceed from paragraph, paragraphs 10 to 16, which is pages 4 to 17, to deal with issues, under the heading the National Negotiations Period 1992 to 1994. Before you deal with the contents of these paragraphs, could you explain to this Commission, why you deem it necessary to deal with these events, which precede the SDP  
25 procurement.

10 NOVEMBER 2014

PHASE 2

MR SHAIK: Yes. A lot of the Modac's workshop one, two and three or the Defence Review has its origins in the documents that were discussed, during the 1992, 1994 period. You would see, and I would show later, that the topics that arose in the Modac studies, were in fact, topics that come  
5 from the TEC document, which I call the TEC document. That is pre 1994. The diagrams of the DOD and Armscor had origins in this process. So, you have to understand, what the thinking pre 1994 was and the concerns of Armscor and the Department of Defence pre 1994, to understand how the outcomes came out of the Modac studies and the Defence Review. So,  
10 this was like a pull through, from what happened before pre 1994, until what eventually transpired, in the Defence Review, Modac, Defence Review, et cetera. So, you cannot look at it, in isolation. These were agreements that we reached at, prior to the first democratic election. Thank you.

15 ADV SELLO: You mention, in paragraph 10 then, that you personally took part in some of the working groups of the TEC.

MR SHAIK: Yes, I have. In particular, is the defence industry working group that produced a comprehensive document on how the future of the defence industry should look like. There were some concerns, at the time,  
20 about whether a potentially new government would be a supporter to the defence industry sector, as the previous one was. So, those issues, those issues were addressed in the, the document that was eventually submitted to the TEC, sub-council on defence and it reflects the concerns, at the time of what a future defence industry should look like. It brought in issues of  
25 offsets/counter trade, as you know it today. There were issues of what

10 NOVEMBER 2014

PHASE 2

level should the counter trade be at. Should it be at 5 million dollars? Should it be at 10 million dollars? A lot of those issues are reflected in those documents. The other one of maybe, slight note is the issue of logistics, which required the integration of weapon systems, previously held  
5 by the arms, the, the non-statutory armed forces, which were largely Soviet Union base type of equipment and the concerns, where the philosophy of equipment that would be used, post 1994, there was an anxiety that, that the non-conventional, and I use the word non-conventional, armed forces like Umkhonto we Sizwe, would be biased toward a Soviet type of weapon  
10 systems. So, those were issues that came up in the logistics. They may not necessarily reflect them, may be reflected in the defence industry work group. But, what was of concern in the defence industry work group was the understanding that, at the end of, end of the Cold War and at the end of the arms embargo against South Africa that there will be cheaper imports  
15 of military equipment into South Africa that would negatively effect the defence industry that existed, at the time, within the State.

ADV SELLO: Thank you. With that narration you have covered, I think, your paragraphs 11, 12, 13 and 14.

MR SHAIK: Yes, Madam. I did.

20 ADV SELLO: If, if then, we can turn to what you deal with in paragraph 15. You, you had, I alluded already to the separation of Denel from Armscor, but most importantly, you deal with certain key policies and their dates, the dates on which they, they were approved or adopted. Do you want to highlight those?

25 MR SHAIK: Yes. I, I do not want to dwell on the Modac studies. I am

10 NOVEMBER 2014

PHASE 2

told the Commissioners have heard about the Modac studies. Other than to say that while negotiations at a national level were taking place and that is, up until April 1994, there were parallel documents, being generated by Armscor. Armscor itself, at that period, had the separation of its manufacturing side from its, from Armscor, technically the Arms Manufacturing Corporation of South Africa. So, the arms manufacturing side was taken out. A new company, called Denel was created, under new a Ministry and what remained of Armscor is really an acquisition function. So, it now had to write up its own policies on how it is going to do acquisition, as if it is going to buy out. Before, it was not buying out, it was buying in. It means it was the manufacturing corporation. So, you have to look at the documentation, whether it is VB1000, KP1 or 10, 019, et cetera, in that historic perspective. So, in relationship to the decisions that were brought in on VB1000, a VB1000 document has a graph summary in it, that then, eventually became reflected into the Modac studies. So, on the, of if you go into the KP109, about the decision making powers, it talks about, which came, and this document is of recent, in the sense that it is literally a year, after Denel separated from Armscor. It then talks about and that came into 26 July 1993. It then talks about the powers of the various individuals or bodies within the procurement acquisition agency Armscor. Then, that document was followed by the VB1000 document. The VB1000 document is technically a week or two away from the first general elections. So, these are new documents that were created, while there was a national dialogue taking place. Now, other than to say that this sort of, is the document standard that everybody is judging the new department

10 NOVEMBER 2014

PHASE 2

by, even though it is a relatively, a document that came into existence a couple of weeks before a new minister came in, or a new, before elections took place and a new minister came in. Thank you.

ADV SELLO: And then, at paragraph 16, having explained the role you played and the defence industry working group TEC, you mentioned that, after the report was submitted to the TEC, after the 1994 elections, you had no further formal interaction with the DOD, until end of 1995. Is that so?

MR SHAIK: Yes. There was an integration process of MK members into the Department of Defence. I was a member of Umkhonto we Sizwe. I was on the CPR list as a member. I opted not to integrate into uniform. I have been a lecturer, prior to that. I decided to go back to lecturing.

ADV SELLO: From paragraph 17, you deal with the integration and the transformation period. I think, as from paragraph 17, you then deal with your, the period, the time you joined the DOD, the functions you discharged, within the DOD. Starting with paragraph 17, please highlight the key issues, in this respect?

MR SHAIK: Yes. The position that was advertised was a Director of Logistics Policy, within the Defence Secretariat. This was relatively a new position, very little staff. So, I literally generate an entire department for the Director Logistics Policy. It was a policy position, with regard to logistics, within the Department of Defence. A large part of that responsibility was on transformation, assisting in writing the defence white paper, sorry, the Defence Review. So, it was a policy function that oversees transformation and integration, during that period.

10 NOVEMBER 2014

PHASE 2

ADV SELLO: In paragraph 18, you deal with Modac [indistinct], Modac one, two and three. Would you like to deal with paragraph 18?

MR SHAIK: Yes, I do. The Modac one study had largely to do with acquisition, the Minister's role, the Secretary's role, the various forums, et cetera. I would like to put on record that I only joined the department, after  
5 the completion of Modac one and Modac two studies. Modac two was completed on 26 of September 1995. I joined the department in January of 1996. I had some role to play in the Modac three studies. Thank you.

ADV SELLO: You, you go on at paragraph 19 to deal with this. Just, let  
10 us, so you are clear. Please accept that the Commissioners have been informed in, in sufficient detail about the various Modacs, Modac one, Modac two, Modac three. Now at 19, you made reference thereto. Is there any particular issue would like to draw the Commissioners' attention to these Modacs, without re-hatching what other witnesses have already put  
15 on record.

MR SHAIK: Yes, I do. It is in regard to showing the relationship, or the correlation between the VB1000 document diagram, that is on figure 8.3, and how that became the Modac one diagram that gives the role to the Minister, under the AAC, it gives the role of the Secretary of the Defence,  
20 under AACB and gave the Chairman of, or Chief of Staff Logistics the role as Chairman of the AACB. So, in so far as, where do these roles come from, I am saying it comes through from the VB1000 document. That can be seen on figure 8.3 of VB1000 on page 23.

ADV SELLO: Thank you. You complete this section of your statement  
25 with paragraph 20, where you introduce the Defence Review and the

10 NOVEMBER 2014

PHASE 2

structures, the restructuring programmes, within the DOD. Would you like to touch on that?

MR SHAIK: Yes. This was a very, very busy period, within the Department of Defence. It was Defence Review time. The first time the  
5 Defence Secretariat was trying to get itself off the ground. Understanding the role of the Defence Department, because of the explanation to Parliament. It was the first time we had a Parliament standing committee on defence. So, this was a busy time, within the department. We had integration, transformation, lots and lots of policy documents, being  
10 generated, interaction with Parliamentarians on all different forums, et cetera, so. It is an important point, because as a Director of Logistics, within the Secretariat, I was required to be on some of these, these transformation and work groups that were busy, trying to establish the Defence Secretariat. Thank you.

15 ADV SELLO: From paragraph 21, you deal with the Defence Review policy period. Again, evidence, some evidence has been led on this. So, if you could just confine yourself to those aspects that you think, are relevant to your testimony and, and, you know, to point out.

MR SHAIK: Yes. Important part of the defence review is, or what is, is in  
20 chapter 13. That, the chapter 13 is about the acquisition management process and it pulls in information from the Modac one to three workshop and from the TEC document that was submitted in 1994. Of importance here, was that Members of Parliament were, were invited in the work group. So, the work group that designed and drafted this chapter was a  
25 collaboration of Arms of Service, industry, Armscor, Department of Defence

10 NOVEMBER 2014

PHASE 2

and Members of Parliament. So, Members of Parliament from different political parties sat in work groups, drafting the chapter by chapter of this acquisition management document that how acquisition would be fulfilled, going forward. So, this was a collaborative effort. It was not as if the  
5 Defence Review was tabled in Parliament, then approved in Parliament, with zero input from Members of Parliament. In fact, this was one of the view work groups, where Members of Parliament helped draft the chapters of this, this section in the Defence Review. Thank you.

ADV SELLO: Moving then, to paragraph 25, you refer specifically in that  
10 paragraph to a document, you called the report on the findings of the acquisition work group on the boundaries and interfaces between the Department, the Acquisition and Procurement Division and the Armaments Corporation of South Africa. Could you state the relevance of this document and point the Commissioners to any significance that you think,  
15 they should take into account, in considering that document?

MR SHAIK: Yes. Because the Acquisition Department or DAPD, and I will use the word DAPD, was a new department within the Ministry of Defence and within the Department of Defence, literally what was happening, is that Arms of Service were seconding personnel to this new  
20 department. The budgets were being seconded to this new department. The roles of Armscor as the exclusive agency to determine the needs and the contracting were also an issue of concern. A work group was formulated between the Arms of Service, my department DAPD and Armscor that worked out the boundaries of each entity, within the  
25 acquisition family, be it Arms of Service, be it Armscor, be it DAPD, be it the

10 NOVEMBER 2014

PHASE 2

project team. So, if you look at page 183, one, eight, three.

ADV SELLO: Commissioners, that would be ANNEXURE B3 in file one.

MR SHAIK: Of significance on page 183, from this entire document, it is capitulated in a table format. It will show you, for example, who is the  
5 process leader and if you take item five, select best option and the process leader there, is a project team. So, in each of that combination of the multi roles, played by the various entities, within the acquisition, Arms of Service, my department called Defence Acquisition and Procurement Division, Armscor Project Team, you would see a specific function is given to the  
10 project team. They ultimately, are the ones that open the tender, read the tender, make the evaluation and make a recommendation. So, my job was more a manager's role. In this document, the role of DAPD is defined as a management role of the process. Thank you.

ADV SELLO: If one has regard to page 158, of that B3, it is, this is the  
15 date, the 1<sup>st</sup> of December 1997 to 12 December 1997 and at the bottom is the 31<sup>st</sup> August 1998, regarding the relevance of these dates that you report.

MR SHAIK: Give me one second.

ADV SELLO: One, five, eight.

20 MR SHAIK: *Ja*. That is when this department, this workshop was undertaken. During that period, I was given a, I was appointed as Chief of Acquisition (Designate). The Department of DAPD was still in its infancy and still to be formed. So, the relevance of that date for me, it precedes the RFO's. The RFO's were issued in 1998.

25 ADV SELLO: What is the status or importance of this document,

10 NOVEMBER 2014

PHASE 2

generally, within the legal framework of the DOD, or Armscor, or the acquisition process, within those departments?

MR SHAIK: This document would be then, an annexure to the policy document that governs acquisition and the Department of Acquisition and Procurement. So, this will give rise to a policy document that will sit within the department. So, we all will then, sing off the same hymn sheet. So, this then, becomes a policy document.

ADV SELLO: We have just dealt with paragraph 25, but I, I omitted to deal with paragraph 24. In 24 you are dealing with counter trade offsets and you have told us the, the history of counter trade and offsets. Is there anything you want to highlight in paragraph 24, in particular?

MR SHAIK: Yes. There are a lot of concerns about the origins of the offset, where did they come from? Was this some thing that was concocted within the department to, to acquire equipment? I am saying that is not true. If you go back and you trace the origins of this word offset, you will find its first beginnings in the TEC document that we have submitted pre 1994 elections. So, this was a concern raised then, by Armscor and the Department of Defence and the local defence industry that, should we acquire equipment above 5 million dollars, at that time, them we should strive for a 50 per cent offset. This number was then, started to move to maybe we should get it at 80 per cent. So, you will find that, on paragraph 64 and 66, the number then moved to 10 million and the difference is, you now have a DIP and NIP component, within that. Thank you.

ADV SELLO: And you conclude this discussion in paragraph 26, where,

10 NOVEMBER 2014

PHASE 2

where you mention that, you mention certain findings made by this report in paragraph 26.

MR SHAIK: Yes. Some of the findings or the issues, as related to the conflict of roles or potential conflict of roles, between the head of department or head of Department of Accounting, we were one of the few  
5 departments that had two heads. We had a Director General, as the accounting officer in, in the form of the Secretary for Defence and you had a Director General, in the form of Chief of SANDF, on issues of military matters. So, here we are talking specifically to the, the accounting officer  
10 role and we said, in our own workshop, we said there is going to be a conflict between the two roles. It was highlighted, as an issue to be resolved. So, it was stated, right up in 1997 that there is an issue with the Minister's role and the Secretary's role in acquisition. Thank you.

ADV SELLO: Thank you. Now, turning to paragraph 27, you, you  
15 referred to the 1997 approaches by various countries to the Department of Defence with package equipment offers. Now, I must point out to you that Mr Esterhuysen dealt, in some detail with these offers. I would not want you to engage the Commissioners further, unless you have anything you want to add, to what he may have said, or to explain why it is necessary for you  
20 to make reference to this.

MR SHAIK: Yes. The reference is in so far as these were new times for South Africa and a totally unique experience for the Department of Defence and Armscor. Armscor and Department of Defence functioned in an arms sanctions period. So, their policies were not written for unsolicited offers.  
25 This is the first time, where foreign countries and governments started to

10 NOVEMBER 2014

PHASE 2

approach the Department of Defence and Armscor on these, on providing a package solution. So, if you notice, I make specific reference to governments. So, it was United States, sorry, the government of United Kingdom and the government of France and followed by the government of  
5 Germany and et cetera. So, it is the first time, governments coupled with companies, came to make an offer on equipment. Thank you.

**ADV SELLO:** You deal, in paragraph 28, with what flowed from these approaches.

**MR SHAIK:** Yes. Out of this, the Secretary of Defence and the Chief of  
10 SANDF, at that time, thought it was prudent to write a letter to the then, President of the Republic of South Africa, the late Nelson Mandela. Out of that, came a directive from the Secretary of Defence, the Chief of Logistics, in a letter, or in a directive, dated 9<sup>th</sup> of June 1997, that started the  
15 the these unsolicited offers, in the view of providing advice or guidance to the Minister.

**ADV SELLO:** You, you go on then, to deal at paragraph 29, with the establishment of a work group and you do so, with reference to ANNEXURE D. Can you take us through the detail of ANNEXURE D and  
20 its importance?

**MR SHAIK:** Yes. ANNEXURE D, at that time, there was a, a tussle of control within the Department of Defence and the Secretariat of Defence. The Secretariat of Defence was trying to establish itself and assumed its oversight role, as mandated. So, Chief of Staff Logistics at that, at that  
25 period, used to report directly to the Chief of SANDF. So, the Secretary of

10 NOVEMBER 2014

PHASE 2

Defence wrote the letter to the, to the Chief of Staff Logistics, advising him and under paragraph 6, to put together a work group, from staff divisions, logistics, finance, acquisition, policy and plans, Arms of Service and Armscor. He made a request to the Chief of Logistics to include acquisition  
5 in this work group. I am copied at info as Chief of Acquisition. At that point, I was still Chief of Acquisition (Designate). That is the reference to the letter. Thank you.

ADV SELLO: And Chair, Commissioner Musi, for record purposes that ANNEXURE D appears at page 196 of File one. Now, if you could assist  
10 us, Mr Shaik, you, you use titles for the various functions quite often and quite often also we may get lost. So, where possible, please give us names as to who occupied the position of Chief of Logistics as a recipient of the letter and who was the Secretary of Defence. Because, I think, the Commissioners know more or less familiar with the names, rather than the  
15 various positions.

MR SHAIK: At that time, the Secretary of Defence was Mr Steyn and the Chief of Staff Logistics post, at that time, also sometimes called Chief of Joint Logistics Policy and Support was Lieutenant General Phillip Du Preez. So, at that time, Lieutenant General Phillip Du Preez, reported  
20 directly under his command structure to General Meiring.

ADV SELLO: Thank you. You, at paragraph 30, you deal with the nomination, by the Chief of Policy and Planning of the Chief of Acquisition (Designate). Can you deal, can you explain to us, firstly, the title, Chief of Acquisition (Designate) and where and how it arose?

25 MR SHAIK: Yes. During that period, I was still holding the post of

10 NOVEMBER 2014

PHASE 2

Director Logistics Policy, within the Defence Secretariat. I have been given a letter by the Secretary of Defence appointing me Chief of Acquisition (Designate). So, Chief of Staff Logistics wrote the letter to the Chief of Policy and Planning, at that time, who I was directly reporting to, asking for  
5 nominations to the work group. I was nominated from the Chief of Policy and Planning, to serve on that work group, amongst others. That is listed in ANNEXURE E ...[intervene]

ADV SELLO: Page?

MR SHAIK: Page 198. It reads:

10 *“Policy and Planning Division nominates the following persons to the work group on the international defence equipment offers.”*

And it is Director of Force Structure, Director of Strategy and Chief of Acquisition.

ADV SELLO: Is it so that, notwithstanding the fact that, in ANNEXURE E  
15 at page 198, you are referred to, or, to as Chief of Acquisition, your correct designation, at the time, was Chief of Acquisitions (Designate).

MR SHAIK: That it, that is correct and it could be found in some of the communicae between the Chief of Staff Logistics to myself, where the designate is included in brackets.

20 ADV SELLO: At paragraph 31, you then deal with the results of what you have set out in paragraph 29 and 30. Could you share that with us?

MR SHAIK: Yes. It was my understanding, at that time, that this was, this work group was approved by the Ministry of Defence and this policy document, on how to, to proceed with this work group and this work group  
25 was then chaired by Lieutenant General Phillip Du Preez and Eric

Esterhuysen. During that period, I am saying that it should be noted, the military works on very strict command structures that Lieutenant General Phillip Du Preez reported to the Chief of SANDF, at that point in time.

**ADV SELLO:** Chair, Commissioner Musi. I see it has just gone quarter  
5 past 11. I do not know if the Commissioners would like to take a tea break, or because of the late start, the Commissioners are comfortable that we proceed? We intend to deal with this particular annexure, the witness has just referred to, in some detail. I, I just wanted guidance, whether I should go into it or whether the Commissioners would prefer a tea break first.

10 **CHAIRPERSON:** I suggest that we take a 10 minutes break.

**ADV SELLO:** Thank you.

**(COMMISSION ADJOURNS)**

**(COMMISSION RESUMES)**

**SHAMIN SHAIK:** (s.u.o.)

15 **ADV SELLO:** Thank you, Chair, Commissioner Musi. Now, Mr Shaik, before we broke for tea, we were dealing with your ANNEXURE F, at page 200 of Shaik one.

**CHAIRPERSON:** What page is that?

**ADV SELLO:** 200. Have you located the document?

20 **MR SHAIK:** Page 200.

**ADV SELLO:** Yes.

**MR SHAIK:** Yes. Okay.

**ADV SELLO:** Okay. Please keep your finger on that document and refer to your paragraph, the paragraph 31 of your statement at page 12.

25 **MR SHAIK:** Yes. Yes.

10 NOVEMBER 2014

PHASE 2

ADV SELLO: In this paragraph, in this paragraph at 31, you state:

“This request resulted in the approval of a MOD policy, by the Council of Defence, COD, on the 8<sup>th</sup> of August 1997, in dealing with these defence strategic partnerships. During this period Lieutenant General PO Du Preez was the Chief of Staff Logistic, reporting to the SANDF. Then, you refer to the annexure at page 200, ANNEXURE F. Is that so?

MR SHAIK: Yes, I do.

ADV SELLO: Just so you are aware, there is, this policy has been referred to previously, by other witnesses. But, we will deal with it, in so far as, it relates to you. For the record, could you describe this policy, as you understood it?

MR SHAIK: It was my understanding that this policy gave rise to the work group that was established to deal with the defence acquisition packages and it was formulised, by being submitted to the Minister, in the Ministry, in the COD. It has an origin and a date and a planning directive number on page 200. It says CL that is Chief of Logistics/Director Weapon Systems S/R/302/B. That number will then be carried through in the subsequent documents that you will see. So, you sort of have an idea of the origins of it. Thank you.

ADV SELLO: Now, at the second page of that document, 201, it is signed by General Meiring and Mr Steyn, the Secretary of Defence. Is that right?

MR SHAIK: Yes, it is.

ADV SELLO: Were, at the time, you were the Chief of Acquisition, did you become aware of this policy? If so, under what circumstances?

10 NOVEMBER 2014

PHASE 2

MR SHAIK: Yes. This policy document was the one that the group took as a reference point, to formulise its existence and ultimately resulted in drafting up a constitution to assist the, the management work group, which was known by many names. Thanks.

5 ADV SELLO: Was a copy or, yes, a copy of this policy, or was this policy ever formally presented to you?

MR SHAIK: Yes. Under page 202, under Chief of Policy and Planning, I am listed as Chief of Acquisition.

ADV SELLO: So, is it your testimony that, as Chief of Acquisition, you used  
10 or you relied on this policy to discharge in part, your, your obligations, as set out in this policy?

MR SHAIK: Yes. I and the rest of the work group did.

ADV SELLO: Now, there is the evidence before this Commission, no, before I say that. Please refer to page 201. You will see the handwritten  
15 note there, after the signatures of General Meiring and Mr Steyn and it reads:

*"Approved in Council of Defence 8 August 1997."*

Do you see that?

MR SHAIK: Yes, I do.

ADV SELLO: Now, it has been established, through one of the authors and  
20 in particular, the Secretary of Defence, Mr Steyn that notwithstanding the encryption there, this was, in fact, never approved by the Council of Defence or at least on the 8<sup>th</sup> of August 1997. Were you aware of that?

MR SHAIK: No, I was not.

ADV SELLO: After it was circulated and you received it, did you ever  
25 receive any communication from anybody and in particular the Secretary of

10 NOVEMBER 2014

PHASE 2

Defence, advising you, not to rely on this policy, because it was never approved by the Council of Defence, as alleged, at page 201?

MR SHAIK: No, I did not get any instructions that rescinded this policy.

ADV SELLO: Thank you. Now, we then, move to paragraph 32 of your  
5 statement at page 12. At 32, you deal with the meetings of this inter departmental management committee. Can you take us through, what you state in paragraph 32?

MR SHAIK: Yes. This inter departmental management committee was co-chaired by Lieutenant General Phillip Du Preez and the acting CEO of  
10 Armscor Mr Eric Esterhuysen, at the time. This was a management committee. The, the entire word is inter departmental management committee, but we, many times referred to this as a management committee and it then, made presentations to the Council of Defence on the second order value systems and what I say, 31<sup>st</sup> of October 1997. So, this  
15 committee, in its recommendation on COD meeting, the Secretary of Defence was present in the COD meeting and one of the remarks, recorded in those minutes is the comment that the value system was only a decision support mechanism. The politicians had the final say, when selecting the best offer. Now, this is a remark that the Secretary made, when the whole  
20 validity of the value system was, was questioned. Thank you.

ADV SELLO: You have annexed, or you refer in paragraph 32 to ANNEXURE G. That appears at page 208 of your statement, if you go there. This meeting, if one has regard to item 5.5 of the minutes at page 209, deals with the international offers, contender evaluation. Now, a number of issues  
25 are raised in this document. Is there anything in particular, you would like the

10 NOVEMBER 2014

PHASE 2

Commission to become aware of?

MR SHAIK: *Ja.* One of the points was this whole issue of the offset of the counter trade, where initially, in the Armscor practice, a 50 per cent offering was made on offset. As you move further down in the TEC document, there  
5 is this issue about this number of post 1996 should be increased to, at least 80 per cent. So, this 80 per cent is coming from the TEC document that the work group submitted that said post 1996. So, we are already in the 1997 period. So, it, it was considered appropriate then, to increase the number from 50 to 80 and the Minister was hoping that we could even better the 80  
10 number and bring it up to, at least 100.

ADV SELLO: Now at paragraph, at item 5.5.3, it is stated that Captain Dube presented the evaluation value system, explaining the various components. Are you aware of this evaluation value system, as referred to in these minutes? If page further at page 212, there is a second order  
15 evaluation system attached. Are you able to lead the Commission through the nature and purpose of this document?

MR SHAIK: Yes. This document was to find a way to evaluate the various components, within the evaluation that was undertaken and that was the component of the military and that was captured in the military value and the  
20 component of the industrial participation and that was captured in the industrial participation context, as well as the finance. So, it was a high level, what they call best value, military value plus industrial value, divided by the financing consideration. So, there was some concern, at that point, that financing would play a very important part in the entire decision making  
25 process.

10 NOVEMBER 2014

PHASE 2

ADV SELLO: And was it your understanding that this would be the evaluation system, to be employed and to assist officials, to use during the evaluation phase?

MR SHAIK: Yes, I did.

5 ADV SELLO: You then deal at paragraph 33 with the functions, provided by the Chief of Staff Logistics Department and Captain Dewey. Can you take us through that?

MR SHAIK: Captain Derek Dewey, at that time, was working under the Director of Weapons Systems, Rear Admiral Keg Verster. Captain Dewey  
10 provided a secretariat function to the committee, this management committee and reported directly to Lieutenant General Du Preez. So, he would be the one, responsible for drafting the minutes, drafting the, the various letters or communicae between members of the committee and drafting the documentation that ultimately, would result in the presentation to the COD.

15 ADV SELLO: Thank you. At paragraph 34, at page 13, you deal with the meeting of the 4<sup>th</sup> of March 1998 of the International Government Offers Management Committee meeting. You are dealing there with the drafting of the Constitution and the plan briefing to the Joint Parliamentary Standing Committee. Would you like to take us through the contents of your  
20 paragraph 34?

MR SHAIK: Yes. There, there was a concern raised, I think, by the Secretary of Defence. But, subsequently to this meeting, a new organisation was created. The reference of this meeting in 4<sup>th</sup> of March pre-dates the 1<sup>st</sup> of April, by roughly a month. This meeting on the, it is, it is many meetings  
25 that this International Offers Committee, management committee had. If you

10 NOVEMBER 2014

PHASE 2

notice, it is quite a long title to give a committee, International Government Offers Management Committee. So, it was quite a long meeting. It was common, commonly referred to as a management committee, a government to government committee meeting. But, of significance here, is the draft  
5 constitution that was presented. It is the drafting of the constitution, et cetera that that was tasked to Kevin Hanniffy and Derek Dewey. I am just trying to find the paragraph, where a request was made, for them to draft the constitution.

ADV SELLO: If I may assist you, are you referring to item 4.4 of that minute  
10 at page 217?

MR SHAIK: Yes. Thank you very much, that is the one.

ADV SELLO: Is the Commission to understand that, then that on the 4<sup>th</sup> of March meeting, Mr Hanniffy and Captain Dewey were tasked with drafting a constitution for this management committee. Is that your testimony?

15 MR SHAIK: Yes.

ADV SELLO: Now, who chaired this meeting?

MR SHAIK: I, from the minutes, it is reflected as Mr Esterhuyse.

ADV SELLO: And you took part in this meeting, as well?

MR SHAIK: Yes. The, yes, I did and the co-chair was Lieutenant Phillip  
20 Du Preez.

ADV SELLO: I would like to refer you to page 216 of that minute and in particular, to paragraph 4.1. Please read that, what is stated therein and explain to the Commission what, what that paragraph means.

MR SHAIK: It is under the heading of Department of Finance  
25 representation:

10 NOVEMBER 2014

PHASE 2

*“Lieutenant General Du Preez requested that permanent membership of the management committee be granted to the Department of Finance and the motion was approved. Mr Shaik was to draft a letter of invitation for Mr Pierre Steyn’s signature.”*

5 And this then, subsequently resulted in the letter I drafted for Mr Steyn to sign.

ADV SELLO: You, you then, speak of a planned briefing to the Joint Parliamentary Standing Committee on Defence that was scheduled for the 17<sup>th</sup> of March 1998. To the best of your knowledge, did that briefing take  
10 place?

MR SHAIK: Yes, it did.

ADV SELLO: Were you at, were you part of the team that was briefing the Joint Parliamentary Standing Committee on Defence on that date?

MR SHAIK: To the best of my recollection, I, I think I was.

15 ADV SELLO: And delivering that briefing to the committee, did the team prepare any document that you could reveal to the Commission, or was it a question and answer session purely?

MR SHAIK: If any such document on briefings, it would be with the secretary of the meeting, would be charged with the responsibility to compile  
20 a set of briefings. So, I cannot recall me, having such documentation. But, it was a briefing and if I am not mistaken, it could have been in Cape Town. But, it has been some time ago. But, yes, there was a briefing.

ADV SELLO: You, you say, if there was anything prepared in writing that would normally be done by the secretary of the meeting. By the secretary of  
25 the meeting, are you referring to the secretary of the management committee

10 NOVEMBER 2014

PHASE 2

meeting?

**MR SHAIK:** Yes. The management committee meeting, he may not necessarily have been in the meeting himself. He would have compiled it for Lieutenant General Phillip Du Preez.

5 **ADV SELLO:** And based on what you have previously told the Commission, that secretary would be Captain Dewey.

**MR SHAIK:** Yes.

**ADV SELLO:** At the conclusion of that paragraph, paragraph 34, you made reference to ANNEXURE H and that appears at page 214 of your Shaik one,  
10 if you go there. I apologise Mr, Mr Shaik, we just disposed of ANNEXURE H.

**MR SHAIK:** Yes.

**ADV SELLO:** I want to, at that ANNEXURE H, I would like you to go to page 218. That is where I want to get to.

**MR SHAIK:** Was that 218, yes?

15 **ADV SELLO:** 218, yes.

**MR SHAIK:** Yes.

**ADV SELLO:** Now, when you find 218, please consider it, together with page 219 and explain to the Commission what those documents communicate.

20 **MR SHAIK:** This was a document that, that, in the beginning, where the group was trying to get a sense of when it would be in a position to do the evaluation. When it would be in a position to consolidate the results and make the submission to the various acquisition forums. So, the table out there, reflects some time line, as to when it is possible to brief the Minister  
25 and the various other forae, outlined in 218. The project plan, which is on

10 NOVEMBER 2014

PHASE 2

219, is basically, a more detailed document that shares, this is when we think we can get a Cabinet decision. This is when we think we can do negotiations. So, it was, before we even received the results, what was the expectation of eventually contracting. That base line number, you could see, on contracting comes to very close to the time it eventually ended off, under December 1999. Thank you.

ADV SELLO: You say, at, thank you. You say, at page 218 is the time line plan. If you refer to page 215, paragraph 3.1 or item 3.1 is that the master plan of activities and associated time scales, presented by Captain Dewey?

10 MR SHAIK: Yes.

ADV SELLO: And on that, in the second, the third paragraph of that item, as regards to page 219 is that the project plan that again, was presented by Captain Dewey?

MR SHAIK: Yes.

15 ADV SELLO: Okay. Now, we understand that by the 4<sup>th</sup> of March 1998, the management committee had a master plan and a time scale and also had a project plan, in terms of which it intended to discharge its obligations. Would I be correct in so suggesting?

MR SHAIK: Yes.

20 ADV SELLO: At paragraph 35, if you may turn your attention to that then, you mentioned that, after the tabling of the defence review in Parliament and its approval, the appointment of all new divisional chief posts, as outlined in the Defence Review in chapter 9 were approved by the Minister. Could you unpack that a bit for us and explain what exactly you are talking about?

25 MR SHAIK: Yes. Up until that point, I was given a title, called Designate,

10 NOVEMBER 2014

PHASE 2

Chief of Acquisition (Designate). The Defence Review in itself, detail under force structure, under chapter 9, it detailed the formation of the new divisions, within the Department of Defence and the closing down of some of the departments. So, one of the departments that was new, in its creation is the

5 Chief of Acquisition and Procurement Department, commonly known as DAPD. The other was a new post, which is now no more Chief of Staff of Logistics, but Chief of Logistics. So, that means that the post of Chief of Staff of Logistics was now made redundant.

ADV SELLO: Thank you. Your second sentence of that paragraph makes

10 reference to the, the third Council of Defence meeting of the 20<sup>th</sup> of March 1998. You point out certain key issues regarding that meeting. Would you like to explain to explain to the Commissions, to the Commission what that is?

MR SHAIK: Yes. That is reflected in the ANNEXURE I.

15 ADV SELLO: Page?

MR SHAIK: Page 221, 221, going down to 222, et cetera. The, the importance of that paragraph relates to page 223, paragraph 5.3.2, where Phillip Du Preez stated the aims and turn over the page, 5.2.2.4, it stated the aims of the presentation as being to obtain guidance from the council,

20 regarding the overall management ...[intervene]

CHAIRPERSON: I am sorry, Sir, can you just give is a chance to try and follow your evidence. We are still trying to look for those paragraphs. Give us a chance, so that we can all try and follow you.

MR SHAIK: My apologies, Chair.

25 ADV SELLO: I do apologise ...[intervene]

10 NOVEMBER 2014

PHASE 2

CHAIRPERSON: Can you start and refer to, to the relevant paragraphs?

ADV SELLO: Chair, with your permission, if I may, maybe we should, we should start over. At paragraph 35, Mr Chair, you refer to the third Council of Defence meeting 3/98, held on the 20<sup>th</sup> of March 1998. Is that correct?

5 MR SHAIK: Yes.

ADV SELLO: Now, at, at the end of that paragraph, you have ANNEXURE I and that, Commissioners, appears at page 221 of Shaik one. Mr Shaik, do you confirm that these are the minutes of the third Council of Defence 3/98 of the 20<sup>th</sup> of March 1998, you referred to in that paragraph, under discussion?

10 MR SHAIK: Yes, I do.

ADV SELLO: I have stated that, in this paragraph and with reference to these minutes, you make out, you make a number of points. If you could slowly take the Commission through the points that you bring them to, you want to bring to their attention, arising from this minute.

15 MR SHAIK: Yes. There are a few points of importance that were raised, at this Council of Defence meeting. The one being was, the plan that was discussed at the inter departmental work group. This acquisition management plan and what its proposed time lines was, was presented, where it was indicated in that presentation that there was a shifting to the  
20 right, of when the work group would be in a position to brief and update the various forums. There was some concern on the, the pushing to the right of this decision to come and brief the Minister's forum or the Secretary's forum. It was recommended that, the Minister recommended that the group should strive to try to have the evaluations completed in July. So, it is the same plan  
25 that the management team put together, made a presentation to the Minister.

10 NOVEMBER 2014

PHASE 2

It is that same plan that the Minister is saying, come back, try to do it earlier, pushing it far to the right may not necessarily help the cause of the Department of Defence. In paragraph 3, 5.3.8 if I could just turn to it ...[intervene]

5 ADV SELLO: Before ...[intervene]

MR SHAIK: Sorry. Ja.

ADV SELLO: Before that, just so the Commissioners know where you are, what you have just explained is that, what appears at page 224, items 5.3.3 to 5.3.6. Please take a moment, consider that and confirm if, if that is where,  
10 the issues you raised are reflected.

MR SHAIK: Yes, it is.

ADV SELLO: Thank you. You may proceed.

MR SHAIK: On paragraph 5.3.8 was the issue of how we could shorten this time period. I made a recommendation to the Minister that we could  
15 eliminate the Armaments Acquisition Control Board and the Armaments Acquisition Steering Board and thereby, shortening the time. What eventually did transpire is that we made a presentation to the Armaments Acquisition Steering Board. We did not make a presentation to the Armaments Acquisition Control Board. The reason being is that this was a  
20 cardinal project and the Acquisition Control Board was chaired by myself and Eric Esterhuysen. In many ways the, the management committee did the same function. So, an approval was sought from the Minister to not, to present results from one body that you chair to the same body you chair. So, we then put this proposal in to say, it is one way of shortening the time.

25 ADV SELLO: So, is it your testimony to this Commission that, much as you

10 NOVEMBER 2014

PHASE 2

had proposed in 5.3.8 that you had proposed an elimination of both the AACB, which you chaired with Mr Esterhuyse and the AASB. This in fact, did not come to pass and presentations and authority was sought from the AASB, as the process unfolded.

5 MR SHAIK: Yes. That is true and largely, due to the fact that the AASB had an important role in the sense that it was chaired by the accounting officer of the department and present to that, was the Arms of Service Chief. So, we thought it was important to hold on the AASB, even though a recommendation to bypass was made.

10 ADV SELLO: Okay. You may continue.

MR SHAIK: Another issue that was present by Lieutenant General Du Preez was, is reflected in 5.3.11, on the issue of the management structure and my replacing him as the alternate/co-chair. The issue was largely due to his retirement from the SANDF in end of March.

15 ADV SELLO: At 5.3.11, could you please take a moment to clarify to the Commission, what exactly General Du Preez was suggesting, in relation to the structure of the management committee?

MR SHAIK: It is my understanding, it is the same management work group that has been working with the projects or the SDP's all along. It was merely  
20 my replacing him as the alternate chair, on the basis that he was resigning or retiring at the end of March. It, it goes on, onto paragraph 5.3.14:

*“Lieutenant General Du Preez explained that he was retiring, as Chief of Staff Logistics at the end of March and for the sake of continuity, he proposed that he would continue to serve as a management co-ordinator.*

25 *The post of management co-ordinator was not supported by the Deputy*

10 NOVEMBER 2014

PHASE 2

*Minister and ultimately, the Secretary of Defence also, did not support that position.”*

ADV SELLO: So, for the record, if I may read 5.3.11 for clarity:

“*General Du Preez was suggesting a management committee, comprising of*  
5 *the Chief of Acquisition.”*

Which is yourself. Is that correct?

MR SHAIK: Yes.

ADV SELLO:

10 *The General Manager Aero Maritime of Armscor as an alternate*  
*chairperson.”*

And that was Mr Esterhuysen. Is that correct?

MR SHAIK: Yes.

ADV SELLO:

15 *“A special defence package management co-ordinator, himself.”*  
That is General Du Preez.

MR SHAIK: Yes.

ADV SELLO: And the Chief of Finance.

MR SHAIK: Yes.

20 ADV SELLO: Okay. Now, you explain that this was necessitated by the  
impending retirement of General Du Preez, at the end of March.

MR SHAIK: Yes.

ADV SELLO: Now, was a management committee, as suggested by  
General Du Preez, ever set up?

MR SHAIK: It was with my understanding, on the, page 230 ...[intervene]

25 ADV SELLO: Before, just, sorry, before you take me there. May I correct

10 NOVEMBER 2014

PHASE 2

myself? I asked you a wrong question. You, you testified that General Du Preez was suggesting changes to the management committee and I said the management committee was being set up and I realised my error. The question I want to pose is whether the changes suggested, by General Du Preez, in this meeting, were ever effected.

MR SHAIK: The only change would have been my assuming the co-chair position and formulating the representation of the Arms of service.

ADV SELLO: And this, at the time this suggestion was made, was Mr Esterhuysen already a co-chair, or assumed any function of chairing that committee?

MR SHAIK: Yes. The minutes previously, for the Inter Governmental Committee reflects that Eric himself was a co-chair.

ADV SELLO: I would now like to refer you to firstly, page, the beginning of that minute, 221 and just to, for the record to understand, are you a member of the Council of Defence?

MR SHAIK: No. I am not.

ADV SELLO: You are attending this meeting, on invitation. Am I correct?

MR SHAIK: Yes. Specifically to deal with the, the package.

ADV SELLO: Now, the suggestion put forward, by General Du Preez, required the concurrence or adoption, by Council of Defence. Is that a correct understanding?

MR SHAIK: Yes.

ADV SELLO: Now, please refer to page 227 and in particular, paragraph 5.3.19, which reflects a decision, after a number of discussions were heard, starting from 5.3.11 through to 5.3.18, including *inter alia*, the newly

10 NOVEMBER 2014

PHASE 2

structured management committee. Do you see that decision?

MR SHAIK: Yes, I do.

ADV SELLO: Do you agree that, as far as five, item 5.3.19 is concerned and I will read what is stated therein, for the record:

5       *“General Du Preez asked if he may have guidance on the SDP management plan and structure.”*

Underneath it notes:

10       *“Decision, council will come back to the work group with a final decision. In the meantime, nothing is stopping the work group from continuing with their work.”*

As people not involved in the process, would you accept that from what is stated in 5.3.19, it would appear the COD did not, did not as at that date, approve the suggestions of General Du Preez?

MR SHAIK: The, the issue or the point of discussion or the point of non-  
15 concurrence was largely to do with the, the management plan, which affected the time lines. There was concern that the time line was far much more significant than the structure. The issue of structure had less to do with the decision and the reason being is that the Defence Review would have been passed and the role of the Chief of Staff of Logistics no more existed, post  
20 April, or post, post April. So, my understanding, the work group had to continue and the post of Chief of Logistics does not exist, in, and Chief of Acquisitions post came into. So, we continued with the work group, because it was not, we felt that it was not, a position was not reached, where it was stated categorically that the structure does not have to exist, because we  
25 were asked, tasked with the function of continuing.

10 NOVEMBER 2014

PHASE 2

ADV SELLO: Now, please refer to page 230 of the same file. Is that the management structure, as suggested by General Du Preez?

MR SHAIK: Yes.

ADV SELLO: Having regard to the discussion, we have just had, about the  
5 decision of the COD, was this structure, post this date, actually implemented?

MR SHAIK: Yes.

ADV SELLO: Are you aware whether General Du Preez communicated to the rest of the management committee as to the new structure that was  
10 presented before the COD?

MR SHAIK: At the very next meeting of the Inter Departmental Committee meeting, reference is made to the Council of Defence meeting. Nothing is recorded that says that the structure was not approved. The implementation of the structure felt its way through. If you look at the issues, relating to the  
15 management structure, there is a bullet point that says:

*“Letter to the Department of Finance, to nominate a representative.”*

And that is, in fact, the letter that the Secretary of Defence signed, subsequently to this meeting.

ADV SELLO: When you say, at the next meeting or subsequent meeting,  
20 are you referring to the meeting of 1<sup>st</sup> April 1998, of the management committee?

MR SHAIK: Yes, I am.

ADV SELLO: And Chair and Commissioner Musi, the minute of that management committee appears as ANNEXURE J, at page 234. Now, Mr  
25 Shaik, you, you referred us to, to this minute and you say this minute refers

10 NOVEMBER 2014

PHASE 2

to the COD meeting, unless I did not quite understand you. But, what point exactly were you making in that perspective?

MR SHAIK: On page 235, on item 3.2 the chairman requested the minutes of the recent COD meeting, to reconcile with the capital budget planning requirements for clarity purposes. There was no other point that said that the structure was not accepted.

ADV SELLO: Okay. Thank you. While we are on that annexure, at item 4.1, there is reference to you, drafting a letter for Mr Steyn's signature. Could you tell the Commission what that is about?

10 MR SHAIK: Yes. Now, under that presentation that we made to the Minister, that we read out under the, the structure, one of the issues I addressed that was identified was to write the letter, inviting a representative from Department of Finance. So, we followed through that recommendation that we made, to the Council of Defence.

15 ADV SELLO: If you turn two pages beyond that to page 237 and at item 6.3, that item deals with meeting constitution. Could you explain to the Commission what that is?

MR SHAIK: Yes. This is the first time that a formalisation of the management committee was put into effect, by drafting a constitution for that management committee. This operated previously, under the management directive of, issued to Chief of Staff Logistics. In that presentation, I speak about, that was made to the Council of Defence, it was noted under issues relating to management structure point one bullet, was letter to the Department of Finance to nominate a representative, two, constitution of the management committee. So, this was a follow up meeting of the

20

25

10 NOVEMBER 2014

PHASE 2

International Management Committee. Captain Dewey tabled for the first time, a draft constitution and if I would refer to the draft constitution, it would be on, a few pages down and I think it is page 246.

ADV SELLO: Now, that constitution, at page 247, item 9, the constitution of  
5 this management committee, as reflected in item 9, is that consistent with what General Du Preez had suggested to the COD meeting, in March?

MR SHAIK: Yes.

ADV SELLO: But, at this 1<sup>st</sup> of April meeting, when this was discussed, the structure was still along the old lines, not recognising you, as the co-chair  
10 and the other representatives of the Arms of Service, as part of this management committee. Is that so?

MR SHAIK: Yes. It is the first time that my position had come into effect, as now being brought in, in line with other managers, or chief of, in chiefs positions.

15 ADV SELLO: If we could just pause for a while at paragraph 36 of your statement and that paragraph you mention that the Secretary of Defence signed your new management directive, as the Chief of Acquisition on the 26<sup>th</sup> of March 1998. What, what are you dealing with exactly there?

MR SHAIK: Up until that point, I have been Chief of Acquisition  
20 (Designate), from 26 onwards, I was given a management delegation, to now, function as the Chief of Acquisition. A copy of that was requested from the Commission Secretariat, to provide to the Commission. I do not have one anymore, in my possession.

ADV SELLO: And what do you rely to, to give such a definitive date, as to  
25 when it was signed?

10 NOVEMBER 2014

PHASE 2

MR SHAIK: I pulled the date out of my submission, I have made to the Joint Investigative Team, when I was still in the Department of Defence. So, I can, I looked at that document, to see what the exact date was. So, I am relying on that document.

5 ADV SELLO: So, as of the 26<sup>th</sup> of March 1998, you became a fully fledged Chief of Acquisition. In the rest of that paragraph, you deal with the function of Chief of Staff Logistics and the consequences of your, the confirmation of your appointment. Could you explain to the Commission what all that is about and its relevance?

10 MR SHAIK: Yes. Up until that point, Chief of Acquisition (Designate) did not have functionally staff underneath him. I was still doing the dual role of Director of Logistics Policy. So, when my management delegation was signed, it was, it was my recollection, from that point onwards, the Director Weapons Systems, which manage acquisition of material two, or the  
15 management of acquisition material one, at least, which is weapon systems, then had to relocate his office to my side of the building. So, it is about the only time, where I started to get staff to come to work underneath me, to help me with the functions of acquisition of material one equipment.

ADV SELLO: Thank you. We now, according to your statement, move on  
20 to the Softcom period. We have already disposed of what you set out in paragraph 37 and this concerns the meeting of the first of the Softcom, no, International Government Offers Management Committee meeting of the 1<sup>st</sup> of April 1998. Is that correct?

MR SHAIK: Yes.

25 ADV SELLO: Turning then, to paragraph 38, at page 15.

10 NOVEMBER 2014

PHASE 2

COMMISSIONER MUSI: Can I just get clarity on, on the change of name from, in from the IMC to Softcom, when, when this, the name of Softcom comes into being and how it came into being?

MR SHAIK: Yes. It is, it is reflected on page 246 of the constitution, that  
5 was tabled at that International Government Committee meeting of 1<sup>st</sup> of April. A name change was suggested there, only to make it easier to identify. So, if you look at page 246, it says, International Offers Management Committee and in brackets, it is called Softcom. So, that is the first time the acronym Softcom was introduced. But, it is reflecting the very same name of  
10 the International Offers Management Committee. It was my understanding that the Secretariat, at that point, felt it would be easier to refer it to as Strategic Offers committee. So, we called it Softcom. Thank you.

COMMISSIONER MUSI: Thank you.

ADV SELLO: Thank you, Commissioner Musi. Mr Shaik, we are dealing  
15 with paragraph 38 of your statement, at page 15. In this paragraph, you made reference to a letter, prepared for you, for your signature, by Captain Dewey, dated the 7<sup>th</sup> of April 1998. Would you talk us through the contents of your paragraph 38?

MR SHAIK: Yes. The content of that letter comes out of the presentation  
20 we made, to the Council of Defence, under the various issues and we raised it as issues. One of the issues, to be addressed and those issues are on page 230. I go back again, that says, letter to the Department of Finance to nominate representative, constitution of the management committee, which we dealt with. Point 3 on it was appointment of chairpersons or members.  
25 So, this was to give effect to the appointment of members or chairpersons.

10 NOVEMBER 2014

PHASE 2

So, it draws its reference from, again, that name comes through and it is in brackets on the second line, CL/D Weapons Systems.

ADV SELLO: I apologise, Mr Shaik to, to interrupt your train of thought. Chair and Commissioner Musi, I think, the witness is now referring to the document, appearing on page 249 and that would be his ANNEXURE K.

MR SHAIK: Yes. My apologies the top part of my copied document that showed it slightly different, so it is 249, my, my error. That document was written, seeking appointment, formalising that appointment to the, to the management team, to the management committee. The letter was written, taking its reference from that management directive, which we, we see is that number Chief of Logistics/Director Weapons Systems/S/R302/6/B and it give it the date as 2<sup>nd</sup> July 1997. So, it was given effect, to formulise this thing. So, letters were then, sent to, for under action, Chief of Finance, Chief of Log, Chief of Army, Chief of Air Force, Chief of Navy and Armscor, to reaffirm their representation to this work group that, although if we go previous minutes, you will see those members are sitting in there. We just wanted a formulation of it, to say that, yes, those members sitting there, have the authority to sit there and they are supported by their respective Arms of Service chiefs, because again, new chief titles have come in. So, it is no more Chief of Air Force, so each of the titles was slightly changed. So, the, the Chief of Staff title was taken out and the Chief of Logistics title came in, or Chief of Air Force came in. So, it is just merely to keep good housekeeping.

ADV SELLO: Now, at paragraph 2 of that letter, it states that:

25 *"The enclosed draft constitution is presently being considered by*

10 NOVEMBER 2014

PHASE 2

*representatives that attended the first April 1998 management committee meeting.”*

The constitution, referred to here, is that the constitution presented to the management committee by Captain Dewey?

5 MR SHAIK: Yes.

ADV SELLO: Now, firstly, you state at paragraph 38 that this letter was prepared by Captain Dewey. Why do you so say?

MR SHAIK: On the top, right hand side, it has a file number as ChiefAc/Director Weapons Systems. So, that reference is to, the party,  
10 where the file can be located.

ADV SELLO: And how that, how does relate to Captain Dewey, again?

MR SHAIK: Captain, Captain Dewey was the Secretariat for the Committee and he worked under the Director of Weapons Systems, who now, reported to myself and previously reported to the Chief of Staff Logistics  
15 and then, on paragraph 3, you would see that all correspondence is to go to Captain Derik Dewey.

ADV SELLO: Now, you say, you said in paragraph 38, this letter was confirmed, under your instruction. At the bottom, is that your signature, appearing there?

20 MR SHAIK: Yes.

ADV SELLO: And below the signature it has in brackets S Shaik and below that name, typed name the designation Secretary for Defence, Director General. Were you the Secretary for Defence, Director General, at the time this letter was drafted?

25 MR SHAIK: No. I was not.

10 NOVEMBER 2014

PHASE 2

ADV SELLO: Under what circumstances does this letter come to be issued under your name, designated as Secretary for Defence?

MR SHAIK: There are different conventions in, within the Department of Defence and how you write letters, on behalf of the department or on behalf of yourself. The convention used by Derik, was normally to say Lieutenant 5 Phillip Du Preez, underneath it will be Chief of SANDF, or Secretary of Defence and General Phillip Du Preez would sign. So, he would follow the same convention. This is about one of the first letters that was written on my behalf, when my department was structured. It would have been better, or 10 more correctly, in non-military convention, or at that time, to have stated my title as Chief of Acquisition and underneath it, it could have been Secretary of Defence. But, no ill intent was meant, as we were still working our way through, in the newly established department. Under the action for, you would see, it went to the various Arms of Service chiefs, who clearly knew, I 15 am not the Secretary of defence and for information, it went to the Chief of SANDF and the letter itself, did go to the Secretary of Defence. So, you know, in absence of me, seeing an original, without the, or I would accept, it could have been an error in convention.

ADV SELLO: At the time, this, this letter was issued and signed, were you 20 aware about the wrong designation set out in this letter?

MR SHAIK: I signed it, on the basis that this was the accepted convention, applied by Derik, at that time. I may not have seen the Secretary of Defence and I merely signed the letter. It is going to be hard to say, 15 years later, whether I knew exactly that was the secretary, I am signing for. Other than to 25 say, there is no possible conceived way, I could write a letter, addressing it to

10 NOVEMBER 2014

PHASE 2

the Arms of Service Chief and making out that I am the Secretary of Defence. That is, for me, it will be preposterous.

ADV SELLO: Now, you mentioned that the Secretary of Defence was copied, if that is the right word, on this letter. Is that so?

5 MR SHAIK: Yes. As well as the Chief of SANDF.

ADV SELLO: The Secretary of Defence at the time was Mr, was Mr Steyn. Is that not so?

MR SHAIK: Yes.

ADV SELLO: Now, Mr Steyn has testified that he first saw this letter, when  
10 he was preparing for, to give evidence, before this Commission. So, which would have been 2013, 2014. Are you aware of that?

MR SHAIK: I have been aware of that, subsequently, yes.

ADV SELLO: If one has regard to page 54 and the distribution list. It is on  
page 250, I do apologise. I, I apologise, Chair and Commissioner Musi, we  
15 use a, documents are used and re-used and we, you know, I fell for the bigger number. Our numbering is page two, five, zero. Mr Shaik, I want to find out, if one has regard to the distribution list, as appears in page 250, would I be correct to understand that the Secretary of Defence, would have, or should have received a copy of this letter, around the same time as other  
20 addressees, which is around the 7<sup>th</sup> of April 1998.

MR SHAIK: Yes. He would.

ADV SELLO: Lastly, was it ever your intention to put yourself out, as the Secretary for Defence, when you signed this letter?

MR SHAIK: No. I do not have any delusions.

25 ADV SELLO: Thank you. If I may then proceed to, before I proceed, before

10 NOVEMBER 2014

PHASE 2

I proceed, could you explain does the wrong designation affect any action, taken by you, in terms of this letter? Or by the management committee, which was sought to be formalised by this letter. In other words, did the wrong designation, reflected in this letter, affect the process or anything, at all, regarding the SDP's?

MR SHAIK: No. Absolutely not. It was a continuation, as I said, earlier on, of the management directive, given by the Secretary to the Chief of Staff Logistics, which is in fact, pointed out, in that letter. So, nothing changed on that. I, and to further to add to that, under the action points, our divisional chiefs, which makes up members of the Council of Defence or the Defence Staff Council, which was a member of the Defence Staff Council. So, I interacted with each of those divisional chiefs on a daily basis, with the Secretary of Defence, on a daily meeting in the Defence Staff Council. So, the fact that I have sent it to Chief of Finance, Chief of Log, Chief of Army, Chief of Air Force, Chief of Navy, are people, who are interacted every day, at seven o'clock in the morning with the Secretary of Defence. So, every one of them would have known, I am not the Secretary of Defence.

ADV SELLO: Thank you, Mr Shaik. Now, if we continue to page, to page 16 of your statement, paragraph 39 ...[intervene]

COMMISSIONER MUSI: Can I, can I just, before you go further, just get clarification here? Who is the author of this document, this letter, of the 7<sup>th</sup> of April? Who wrote it?

MR SHAIK: Sir, it would have been my staff, in, in absence of time. It would have been Derik Dewey, who wrote it on my behalf, to action the appointment of the representatives to the committee.

10 NOVEMBER 2014

PHASE 2

COMMISSIONER MUSI: So, this designation, Secretary for Defence, it is the author of the letter, who wrote that, not necessarily yourself.

MR SHAIK: Yes, Sir. It is followed with a slight numbering system in the bottom, what I presume would have been in, on his computer filing system.

5 COMMISSIONER MUSI: Thank you.

ADV SELLO: Thank you, Commissioner Musi. Maybe, if I can just pose a final question, arising from what Commissioner Musi has said. To your recollection, in the period, you were an employee of the Department of Defence, have you ever issued, or caused to be issued a letter, in your name, using the designation Secretary for Defence, besides the one, before us now?

MR SHAIK: Could you please repeat the question?

ADV SELLO: I wanted to find out, to your recollection, has it ever again happened, that a letter is issued in your name and you signed it, where it reflects you, as Secretary for Defence, except the letter, we are dealing with now?

MR SHAIK: No, I do not.

ADV SELLO: So, you are not [indistinct].

MR SHAIK: I am not aware of any other letter.

20 ADV SELLO: Thank you. If I may then proceed to paragraph 39, you, you deal once again, with a letter, dated the 14<sup>th</sup> of April 1998. Could you take us through the contents of your paragraph 39?

MR SHAIK: That is the letter that would be the letter, I drafted for the Secretary of Defence, to submit to the Director General of Finance. This is again, one of the issues that came up in the plan that we submitted to the

10 NOVEMBER 2014

PHASE 2

Council of Defence, where we seek, formally, representation from the Department of Finance. So, my name would appear right on the top, which means it is a letter, I drafted on behalf of the Secretary, to request a nomination.

5 ADV SELLO: Without moving your finger off that page, is this the letter, referred to in the management committee meeting of the 1<sup>st</sup> of April 1998, at page 235, ANNEXURE J, and in particular, item 4.1?

MR SHAIK: Yes. Yes. I, it is.

ADV SELLO: And you mentioned that you prepared this letter, for and on  
10 behalf of the Secretary of Defence.

MR SHAIK: Yes, I did.

ADV SELLO: To your knowledge ...[intervene]

CHAIRPERSON: I am sorry. We, we are trying to get this ANNEXURE L.

ADV SELLO: Chair and Commissioner Musi, it is from 254.

15 CHAIRPERSON: Not 235?

ADV SELLO: I apologise if I said 235, 254. If the Commissioners have located the letter, the question I then, pose to Mr Shaik is whether this letter, appearing at 254, is the letter, referred to in the meeting of the 1<sup>st</sup> of April of the management committee at item 4.1 on page 235. That is how 235  
20 comes into the picture and then the witness confirmed that that is the letter that he was supposed to draft. Now, Mr Shaik, if may continue, is it your contention that Mr Steyn was at all times, aware that you have been mandated to draft a letter of the nature of ANNEXURE L, for his consideration and signature? Is that what you are contending?

25 MR SHAIK: Yes. Because that was the presentation, made to the COD,

10 NOVEMBER 2014

PHASE 2

where he was present, present and it was one of the issues that were raised, at the COD.

ADV SELLO: And are you satisfied that as, Mr Steyn signed this letter, he understood, exactly, what you just told this Commission?

5 MR SHAIK: Yes.

ADV SELLO: I pose this question, because Mr Steyn appeared to have difficulty with the contents of this letter, when he testified and in particular, as to which management committee, you were referring to, when you drafted this letter. Do you have a comment on that?

10 MR SHAIK: Yes. The writing of this letter appears on the very same page of the presentation given, to the Council of Defence, which I read out earlier on, on the issues that need to be fulfilled. So this is on the same management letter, same issues of the same management committee. This is not any new committee. This is the very same committee that, that he  
15 established, under his policy directive, that was presented to the COD, by Phillip Du Preez on the 20<sup>th</sup> March and under that action point was writing a letter, to ask for the nomination of a representative from the Department of Finance. So, it is one and the same committee.

ADV SELLO: Thank you. Chair and Commissioner Musi, I see it is two  
20 minutes to one. We are about to start on paragraph 40 and the issues raised in 40 will go all the way to paragraph 45. I do not know if the Commissioners deem it an opportune moment to take a lunch break, or whether I continue. I will be moving on to a different topic now.

COMMISSIONER MUSI: Can I, in the meantime, make a quick  
25 observation? I see the typing on page 56 is not the same as the typing on

10 NOVEMBER 2014

PHASE 2

page 50, on page, the typing on 255 is not the same, as that on 245. Is there any explanation for this? In other words, paragraph 5 and 6, the typing is completely different from the typing on paragraph 1, 2, 3 and 4. Any clarification of that?

5 **MR SHAIK**: I, I noticed that, Commissioner. I would like to refer back and come back to it. It is based on documentation I got from the Department of Defence. So, other than to say that these are documents I got, there must be some explanation. I, I can come back to you, on that.

**COMMISSIONER MUSI**: Thank you.

10 **CHAIRPERSON**: We will take a lunch adjournment and maybe, let us come back at quarter to two. Thank you.

**(COMMISSION ADJOURNS)**

**(COMMISSION RESUMES)**

**SHARIM SHAIK**: [s.u.o]

15 **ADV SELLO**: Thank you Chair and Commissioner Musi, when we went to lunch we were dealing with Annexure L appearing at page 254 to 255 and Commissioner Musi had requested the witness to explain why the first page, 254, would appear to have a different font from the next page 255 and the witness had requested an opportunity to consider the document and he will  
20 provide his response after lunch. Mr Shaik is now in a position to do so?

**MR SHAIK**: Yes, other than to say that these are the documents that I got from the Department of Defence on request. There is number right in the bottom right hand corner it starts off with "SDPM - 018436" and that number is sequential on the very next page and it reads "SDPM - 018437." So those

10 NOVEMBER 2014

PHASE 2

numbers are sequential. It does appear that there must have been ...; somebody must have printed it or enlarging it but it is consistent with the numbers. So the numbers are consistent. So this could be something to do in the printing itself, either the font or the print is darker or lighter. But those  
5 two numbers are consistently consecutive ending with "36" and ending with "37." That is about the best explanation sir for now I could provide other than saying the original then should be sought from the Department.

ADV SELLO: Thank you Mr Shaik. Maybe to assist Commissioner Musi, Mr Steyn also had a copy of this letter as an annexure to his bundle we will  
10 extract a copy there from and provide it to the Commission tomorrow morning if it may assist the Commission to clarify the issue.

COMMISSIONER MUSI: No, I do not have a problem.

CHAIRPERSON: I do not think it is necessary.

ADV SELLO: Thank you Chair. As there are no further questions arising  
15 from Annexure L therefore may we proceed Mr Shaik to your paragraph 40 at page 16 of your statement. Are you there?

MR SHAIK: Yes.

ADV SELLO: Now from paragraph 40 you deal with the Special Ukhozi Control Council meeting. Please talk to us about what you have set out in  
20 paragraph 40?

MR SHAIK: The Ukhozi Control Council is normally a project coordinating council ...; each project in the department gets a name and this particular one

10 NOVEMBER 2014

PHASE 2

had the name Ukhozi and it has a controlled council. This is largely an interface between the air force and Armscor and the rest of the defence department. It was at the time of April 24<sup>th</sup> 1998 where a military value of higher than 60% was sought before an RFO could be issued to the  
5 respective bidders. So the significance here was that the military value of 60% and higher is used and that is reflected in the minutes of that meeting under Annexure M on page 256. Sorry, 265, under agenda point 5.1.2 it reads as follows:

10 “The following Manufacturers / aircraft should receive an RFP, based on a Military Value result from the value system above 60% and a life cycle cost-effectiveness above 8,0.”

Thank you. If I may add, the other point worthy to note in the same minute is something that is stated in the note and I think it is note 2. It says:

15 “The HAWK 100 is the only aircraft in the recommended shortlist that could be linked to the ALFA procurement in the Government - to - Government packages.”

ADV SELLO: And if one has to go back to page 264 of Annexure M, I note that you attended this meeting is that correct?

MR SHAIK: Yes, I did.

20 ADV SELLO: How then did you understand note 2 that you have just read out of the Hawk 100?

MR SHAIK: I think at this time it was more about the configuration of the

10 NOVEMBER 2014

PHASE 2

aircraft design, philosophy, the interior of the aircraft being the cockpit etcetera but in order to go to the Alfa aircraft there was two aircraft in that category, the Alfa and the Lift, that had a commonality on design philosophy that will be the cockpit; it will be the avionics etcetera that has a commonality.

5 So if you want to keep the form of continuum then these two aircrafts offered that continuum with regard to the way the cockpit layout, etcetera, is designed.

ADV SELLO: Thank you, you proceed at paragraph 41 to have reference to the South African Air Force Command Council meeting on 30 April 1998  
10 what is the relevance of that?

MR SHAIK: The relevance is again there was a note that this meeting ...; the previous meeting may have been incorrectly entitled Ukhozi Control Council meeting but in fact it should have been the Air Force meeting. So could I just go back again to that minute and the other point of note again this  
15 minute is reflecting 68% rather than the 60%.

ADV SELLO: Please refer to the relevant passage in the minute?

MR SHAIK: It is on page 269 under agenda point 5.1.2, I read:

“Decision: The following Manufacturers / aircraft should receive an RFP, based on a Military Value result from the value system above 68% and cost  
20 not taken into account at all.”

ADV SELLO: Do we understand you correctly that as at 24 April 1998 that meeting, Annexure M, recognised the military value to be no less than 60%

10 NOVEMBER 2014

PHASE 2

and a week later that value was increased from 60% to 68%; is that correct?

MR SHAIK: Yes, a special note for me to bring to your attention as well I was not present at this 30<sup>th</sup> of April meeting.

ADV SELLO: And the second issue that you have pointed out is that at the  
5 meeting of 30 April the decision was to increase the value system and cost not to be taken into account is that correct?

MR SHAIK: Yes, at the 30<sup>th</sup> of April at the new Air Force Command council meeting.

ADV SELLO: What did you understand by the requirement that “cost not be  
10 taken into account at all”?

CHAIRPERSON: I am sorry, just before I get lost. I see this statement where it says that: “The minutes of this meeting reflecting a decision to recommend to the AAC a value system above 68% and with cost not taken into account.” Where did you get that?

15 ADV SELLO: Chair what the witness had directed us to is now Annexure N, N for Nellie, and that is titled “Special Ukhozi Control Council Meeting 22b/98 Held at AAF HQ Room B1010 on 30 April 1998” and if your turn over to page 268 ...; sorry, 269 my apologies Chair. At item 5.1.2 the one that the witness read the cost issue appears therein.

20 CHAIRPERSON: Before we end this point can I just find out from him I see there is a decision at 5.1.2. Where does this notion emanates from that valuations can be made about cost [inaudible].

10 NOVEMBER 2014

PHASE 2

MR SHAIK: Sir I have tried to trace back that decision whether it was something that came from the Minister or something that came from the air force itself. It appears that part of that decision of this visionary approach adopted by the Minister was after this presentation. I want to separate the

5 issue about the visionary approach and this costed and non-costed. What was coming out quite clearly is that the aircraft categories can be clustered into different clusters of pricing. For each price range you get a specific type of performance that goes within that. These are, in my view, arbitrary clusters. You could very well take a cluster from 60 to 70 and have a cluster

10 within that category rather in saying I have got a cluster from 70 to 80. So the number that originally started off by saying let us use 60 as a cut off, which means that there were other aircrafts that would have been cheaper than the MB339. By moving this continuously upwards, you go from 60 to 68 to 69 to the point where 69 is an arbitrary number.

15 This number does not come out of any investigations that say there is an internationally accepted number called 69. It is just an arbitrary number. What 69 in fact does it then makes the only other aircrafts just go above 69 to be the MB339. So this issue about if you push up the value of the military value ... [incomplete]. If you push the number of the military value up then

20 the issue of cost becomes important because where should you place the correct number. So this issue about cost/non-cost is largely due to the fact that you have military performance on the one hand and cost on the other and that graph is quite steep. It is not a lenient relationship. So the better performance aircraft will sit with a higher military value and the cheaper

10 NOVEMBER 2014

PHASE 2

aircraft will sit on the left hand side with a lower performance.

So the air force thought it was prudent that a better way to address it is if there should be cost or should there be no cost. If money is not the deciding criteria then you want a better performance aircraft. So if you take  
5 the word "money" out you gets a better performance aircraft. So my understanding a large part of this came from the air force itself.

CHAIRPERSON: What you are saying could have been the reason, can I tell you why is because in this minute [inaudible] we have just seen that statement talking about the none costed as an option. I can tell you one of  
10 the witnesses testified and said that you gave the instructions to [inaudible] and the non costed option. I specifically asked that witness where are this emanating from and the witness said that you gave him instructions to do the calculation [inaudible] the non-costed option. I think it is an issue that you really need to deal with?

15 MR SHAIK: I understand sir. First of all it is not in my management delegation to issue such instructions. It was not my role and my responsibility etcetera. That matter is purely an air force matter on functionality because functionality of aircraft and cost goes hand in hand and the air force has made those presentations to itself under the air force  
20 command council that this is the type of aircraft it would prefer if cost was not a consideration. So the concept, the notion of let us do a calculation with cost and without cost is an air force presentation. As I go further down you will see that the air force presented to itself and to the Ministers a non-costed option. So this has always been an issue within the air force.

10 NOVEMBER 2014

PHASE 2

CHAIRPERSON: Maybe let us leave this question of cost or none-cost option for tomorrow. I will tell you why I say that, I have made full notes about that issue which I thought I was going to raise it with the witness and for some strange reason I left my notes at home. So maybe we can reserve  
5 this question and to deal with it tomorrow.

ADV SELLO: Indeed Chair ... [intervenes]

CHAIRPERSON: I am sorry you wanted to say something

MR SHAIK: Yes, just for the record I needed to answer the specific question you posed to me. I did not instruct anyone to include the cost and non-cost  
10 option. I was merely accepting the presentation from the air force. Thank you.

ADV SELLO: Thank you Chair. We would be able to deal with this matter tomorrow which means according to the statement we will skip paragraphs 40 to 43 which is where the issue of cost or un-costed and the minimum  
15 accepted military value is dealt with.

CHAIRPERSON: Maybe let me just mention it there are some of the notes that I have made here ...; some of the notes that I have made here it appears as if someone said why they said that the special SAAF Command Council meeting held on 29 June 1998 the need [inaudible] recommendation should  
20 presented [inaudible] was formulated and approved. Following the decision [inaudible]. Paragraph 3.3, a special recommendation is required where costed and non-costed options are not taken into account as per the request from the Minister of Defence. I think I have seen that type of statement in

10 NOVEMBER 2014

PHASE 2

two or three of the meetings and two or three of the minutes. Unfortunately I have left those minutes at home and I wanted to put this to the witness and ask him to comment on that. So that is why I am suggesting that maybe let us leave that question of non-costed and costed option until tomorrow  
5 morning.

ADV SELLO: Indeed Chair in fact the witness deals with these issues specifically in these paragraphs because we drew his attention to the fact that there probably a general understanding amongst the Commission by now that the whole issue of cost and non-costed was introduced by him in  
10 the procurement process and in a [inaudible] to counter that he has provided minutes of the SAAF Command and the Ukhozi Project Council to try and track when this has arose. The minute that he refers to at Annexure A, page 266, would appear at least for now and that is the minute of 30 April 1998 ...; would appear for now to be the first time that the notion of cost and a none-  
15 cost appears.

The minute there is a minute of June 1998 and by then when the witness deals with the decision of the Ukhozi Control Council of 30 April 1998 I believe the Chair would understand what the minute of two dates then means. That would not be the first time that the matter arises. That would  
20 be a continuation of a matter that has been the subject of discussion and presentation to the AAC as of the 30<sup>th</sup> of April 1998. We do, however, I believe that to enable the Commissioners to find their notes on this very important aspect and probably overnight the witness to align this documents, his [inaudible] so to speak, to prepare himself to come and engage in this

10 NOVEMBER 2014

PHASE 2

issue in full tomorrow morning so that from his perspective the Commissioners are able to understand the genesis of this issue.

CHAIRPERSON: Thank you.

ADV SELLO: Thank you Chair. With your permission then Chair and  
5 Commissioner Musi as I have indicated we will skip paragraphs 40 to 43 which is where these issues are dealt with and we will start off with them tomorrow morning. We will now proceed to paragraph 44 on page 18. Mr Shaik do you have that paragraph?

MR SHAIK: Yes, I do.

10 ADV SELLO: From paragraph 44 you deal ... [incomplete]. You are back again dealing with the meeting of the management committee that you have referred to earlier. By now as you have testified following the draft constitution that is now referred to as Sofcom. Please take us through your paragraph 44?

15 MR SHAIK: The key point in paragraph 44 that I wanted to address was at which point in time we all became aware of the meeting to be scheduled for Sofcom 1 and 2 July 1998 where we will be receiving the consolidation of the value results. So paragraph 44 talks about the 6<sup>th</sup> of May 1998 Sofcom meeting chaired by Mr Eric Esterhuuse. I was not present at this meeting it  
20 should be pointed out. The letter of the Department of Finance for the secretary of defence requesting a representative was discussed. The feedback to the council of the defence meeting was outlined. A date was set by the members present for the consolidation of the evaluation results on 1

10 NOVEMBER 2014

PHASE 2

and 2 July 1998. That will be in Annexure Q. It is at page 301, it starts at page 301 and it is the minutes of the Strategic Offers Management Committee. That is the name that it presents out there and that paragraph will come towards the end. It is on page 304 under 8(d). It states:

5           “The evaluation consolidation by Sofcom will proceed as a two day work session at Infoplan on the 1 and 2 July 1998, incorporating the scheduled July 1998 Sofcom.”

The importance here is I was not present and it is reflected on the very first page under the “Introduction.” The Chairman opened the meeting at  
10 14:00 and advised that Mr Shaik had tendered his apologies. So this is the day where the meeting was set by Mr Esterhuysen for the 1<sup>st</sup> and 2<sup>nd</sup> of July.  
Thank you.

ADV SELLO: Now staying with that minute, at page 303 under “Matters Arising” at item 4, please identify what is stated therein and explain which  
15 document there are reference to there?

MR SHAIK: I am sorry; I am just getting it myself. Just repeat?

ADV SELLO: 303, the same minute ... [intervenes]

MR SHAIK: Yes?

ADV SELLO: The Sofcom minute of 6 May 1998 if you turn to page 303 at  
20 item 4 under “Matters Arising”?

MR SHAIK: Yes, that was the letter to the Department of Finance that was spoken about right in the beginning of the, I think, 20<sup>th</sup> of March that I

10 NOVEMBER 2014

PHASE 2

subsequently wrote the letter for the secretary of defence on 14 April. So it is saying in this and noting that the letter requesting an official from the Department of Finance's participation in the evaluation was dispatched on 14 April. It is a note to say that requirement has been executed.

- 5 ADV SELLO: And just for the same of completeness would that letter be the one appearing as your annexure L at page 254 and 255 that Commissioner Musi earlier questioned you on?

MR SHAIK: Yes, it is.

- ADV SELLO: We understand then that as at May 1998 Sofcom had decided  
10 that you set aside the 1<sup>st</sup> and 2<sup>nd</sup> of July 1998 as the dates for consolidation of the results. At paragraph 45 you deal with another briefing on 20 May 1998 to the Sofcom members?

- MR SHAIK: Yes, it is progress report with regard to where the various project teams are at their phase of evaluation. So it lists the various  
15 programs and the work executed up until that point in time. It says a progress report from the various teams on where they are at the moment.

ADV SELLO: And according to the record Mr Esterhuyse Chaired this meeting and you were also present?

MR SHAIK: Yes.

- 20 ADV SELLO: What then transpired as regards to the SDP [inaudible] the meeting of the 20 May 1998 which is what you are going to deal with from paragraph 46 ON PAGE 18?

10 NOVEMBER 2014

PHASE 2

MR SHAIK: [No audible answer]

ADV SELLO: Starting from paragraph 46 of your statement at page 18, we have now dealt with the minute of 20 May 1998 of Sofcom or the progress report as you have determined?

- 5 MR SHAIK: Yes, I was merely stating that by the time I started to assume my full delegation and responsibility the RFI and RFO process was already complete before I started to take over as chief of acquisition.

ADV SELLO: What exactly do you mean by complete?

- 10 MR SHAIK: Complete in the sense that invitations were given out to the respective bidders and the information or the tenders from the respective bidders were in. Which means I am now taking over or involved in the process as a Chair. Sort of midway through the process rather than the beginning of the process.

- 15 ADV SELLO: At paragraph 47 you explain that the defence staff council was involved in long and intense work sessions. What point do you make in that paragraph? Can you explain to the Commission what paragraph 47 are about?

- 20 MR SHAIK: Yes, this was the period we undergone the integration, transformation and now we are getting to the rationalisation where staff and posts has to be fulfilled. Separation of command and control has to be executed. So it was literally all day work sessions taking place within the department and this had in some way a negative effect on the acquisition

10 NOVEMBER 2014

PHASE 2

forums that had to meet at regular intervals. So other problems can be executed. So in Annexure S a letter to the secretary is attached indicating the difficulty experienced by the acquisition department on cancellations or the none-forming of the forums to execute the acquisition task. So if I go to  
5 Annexure S starting from page 320 it is a letter from me to the Secretary of Defence where we are stating that the schedule AACB and AASB had been superseded by the convention of the transformation of the Defence Staff Council over the allocated time slots for the AASB and AACB. We state the two meetings had to be postponed or abandoned for whatever reason:

10 “The forthcoming AASB scheduled for 17 June 1998 has been superseded by a transformation DSC without prior notice and rescheduling of the members diaries at such short warning is impossible. The scheduled June 1998 AASB can not be convened because most of the members are involved in the transformation  
15 DSCS.”

So I am trying to point out that this huge exercise that the transformation has taking place having the regular meetings, having these meetings where everybody comes in and sits down approves the project and the secretary signs off there are some issues of complexity because of the  
20 transformation, the long hours that have been undertaken at the transformation. So that is the relevance of it.

ADV SELLO: You then concluded in that letter at paragraph 3 with a suggestion?

10 NOVEMBER 2014

PHASE 2

MR SHAIK: Yes, paragraph 3 reads:

“It is requested that an alternative schedule for the AASB, accepted and diarised by the members, be provided: or that the AASB be scheduled as a standing arrangement after the transformation of DSC meetings that occur on the third Wednesday of every month. Fixed times for the AASB are needed to permit full AASB membership [Armscor included] to plan, and to arrange presentations accordingly. This implies that the transformation DSC must stop at a fixed time, probably 13h00 to allow the members to reconvene as the AASB at 13h30.”

10 So the issue here is as a manager of the acquisition department we were having great difficulty in having these fixed times, fixed allocations previous minutes of that meeting has to be signed because projects get executed as meetings are signed off and monies then has to be transferred from what we call the F1 budget in authority to F2 budget in authority. So 15 this will affect spending of monies within the budget excluding the SDP. Just talking regular, regular projects.

ADV SELLO: You proceed then in paragraph 48 to deal with again with matters relating to Sofcom. Can you take us through that?

MR SHAIK: Yes, this again was a very special meeting which I was not 20 present at. This was a meeting where it was decided by the Chair at the time, Mr Esterhuyse, on how the format to the presentation of the project teams should look like or be when it is presented to the AAC. So the issue of program cost was introduced and the format of the layout of how we should

receive the information from the project teams was presented. That is in Annexure T and I will take you through Annexure T. It is on page 322. Of significance importance is that this was a meeting between Eric as the Armscor representative and the project team leaders. It is written in hand

5 “TL” meaning team leader for finance, the Chair or team leader for the Corvette, team leader for the Corvette, team leader for Nip, team leader for DP, then you have got the Chair for LUH and MH program, team leader for LUH program, the team leader for Subs and the team leader for Alfa and Lift. In here is the issue of program cost best value which is the standard formula

10 we had. Of significance is the program cost. If you go down to paragraph 3.2 it reads:

“Program for presentation to AAC.”

So when Sofcon get this data how it should present its data to the AAC and it says you should put it down as:

- 15 “Program
- Country/Supplier
- Product name
- Quantity
- Program cost
- 20 Financing value
- Military value

10 NOVEMBER 2014

PHASE 2

Industrial value [DIP + NIP]

Best value.”

Ranking.”

This is by enlarge the process that was followed. So it was chaired by  
5 Eric, that was the recommendation to the project team and that is how it  
eventually transpired.

ADV SELLO: You have termed this a special meeting. It was not a Sofcom  
meeting really as such. It was purely a meeting between Mr Esterhuysen and  
the various team leaders on advice of how best to presented the evaluation  
10 results and so forth. Is that what you say to 48?

MR SHAIK: I am not terming it a special meeting. It was termed “Special  
Meeting.” It was signed by Eric and no provisions were made for my  
signature as Co-Chair. So it was just called a special meeting. It did not say  
a special meeting of Sofcom. It just says special meeting.

15 ADV SELLO: You ended paragraph 48 with the comment that the format  
presented at this meeting became the standard for the reporting of the  
evaluation results of the respective programs to the various acquisition  
forums. Are we to understand that the format as recommended at that  
document and in particular on page 323 is now then the results were in fact  
20 presented per program to Sofcom?

MR SHAIK: By enlarge, yes. This would then be followed through from the  
two secretaries or the coordinators, both Mr Captain Derrick Dewey and

10 NOVEMBER 2014

PHASE 2

Dawie Griesel would have been the coordinators, they would then carry this through to this in Sofcom.

ADV SELLO: Thank you. You then at paragraph 98 ...; sorry ... [intervenes]

MR SHAIK: 49?

5 ADV SELLO: Paragraph 49, my mistake I apologise. You deal again with a communication from [inaudible] and so forth. Can you take us through that?

MR SHAIK: Yes, this was a memorandum sent by Mr Eric Esterhuyse to the co-chair of Sofcom that talks about his non-availability but it is a bit ambiguous in the sense that ...; if I may read it.

10 "In view of my absence during the following three weeks. I hereby wish to appoint Mr K P Hanafey as my secundus in the capacity of co-Chairman of the Sofcom."

So here was a meeting set by my Co-Chair for the 1<sup>st</sup> and 2<sup>nd</sup> and he then sends a letter appointing a secundus.

15 ADV SELLO: I think earlier before you read that document you said it was addressed to the Co-Chair?

MR SHAIK: No, I am sorry that was an error it was just sent to the Strategic Offer Committee. He is in fact ...; under him it is written "Co-Chair." So it is my error. It was from the Co-Chair and it was not sent to me specifically. It was sent to the Strategic Offer Committee. So it was not to the secretary, it was not the coordinator and not to the Co-Chairman. It is just entitled Strategic Offer Committee.

20

10 NOVEMBER 2014

PHASE 2

MR SHAIK: And when did you become aware that your Co-Chair would not be available to sit for the 1<sup>st</sup> and the 2<sup>nd</sup> of July during the representation of the evaluation results?

MR SHAIK: To the best of my recollection I only got aware of this the day  
5 the meeting started on the 1<sup>st</sup> and the 2<sup>nd</sup>. The day the meeting started on the 1<sup>st</sup>.

ADV SELLO: Do you confirm that the Sofcom meeting proceeded nonetheless on the 1<sup>st</sup> and the 2<sup>nd</sup> and you received the evaluation results without [inaudible]?

10 MR SHAIK: Yes, it would have been ...; both coordinators/secretaries would have alerted us of any appointing as secundus.

ADV SELLO: You at paragraph 50 deal with a further document regarding a work session scheduled for the 1<sup>st</sup> and the 2<sup>nd</sup> of July?

MR SHAIK: Yes, an agenda for that first and second Sofcom meeting was  
15 drawn up by Captain Dewey. The coordinator/secretary of Sofcom. Detailing how the committee envisaged proceedings on those two days. Outlining which program would be presented first and which program would be presented last over the two days. Of significance importance is that it was sent to the various arms of services. Chief or finance, chief of army,  
20 chief of air force, chief of navy, chief of intelligence and Armscor. The various divisional heads within Armscor. For information on page 331 is the secretary of defence. So the secretary of defence would have received a copy of this letter alerting him that there is an evaluation process or

10 NOVEMBER 2014

PHASE 2

consolidation process taking place on the 1<sup>st</sup> and the 2<sup>nd</sup>. Thank you.

ADV SELLO: Thank you, and you were so alerting the secretary of defence whilst providing you with a copy of the agenda for info only on the intention of having to attend the presentation?

5 MR SHAIK: It is for info only so he is aware of Sofcom having that evaluating meeting.

ADV SELLO: Chair and Commissioner Musi at paragraph 51 on page 19 leading onto 20 we again deal there with the issue of cost and none-costed option, we will stand down what is stated in that paragraph and deal with it  
10 tomorrow morning.

CHAIRPERSON: I agree can we try and get a copy of those minutes because I mean those minutes are important because the paragraph that I have quoted is from this thing and I see in the statement that portion that I thought was important is not included. There was a portion that I saw this  
15 document from it says that that option, of the the non-costed option was [inaudible]. So can we try and get hold of this ...; of the minutes of this particular meeting.

ADV SELLO: Chair if you ...; if the Commission is having regard to page 20 at the end of paragraph 51 there is Annexure W in the witness' pack and that  
20 would be the minute of 29 June 1998 of the SAAF Command Council. Let me just check if you heard the interaction I had with the Chair. What you deal with in paragraph 51 we will skip for today and we will come back to that tomorrow morning when we will deal with all the other ...; with the costed and

10 NOVEMBER 2014

PHASE 2

non-costed issues. We then go to paragraph 52 and we are now on the 1<sup>st</sup> and 2<sup>nd</sup> of July 1998 and Sofcom is having the evaluation results. Would you like to talk the Commissioners through that?

MR SHAIK: Yes, the membership of this committee comprise from members  
5 from DTI, Department of Finance, Department of Defence, Arms of Service  
and Armscor. To the best of my recollection both the coordinators took  
notes, recorded the number or the points scored per program per category  
and we followed the convention as recommended by Eric in that special  
meeting of the 10<sup>th</sup> of June. For each of the programs if you were to take  
10 any specific program, if you were to take some of the non-contentious ones,  
let us say the tank program, the product or the name was put down. The  
country where the product comes from. The technical scores out of a 100  
were tabulated. The industrial participation was tabulated and that was  
broken down into two. The defence, non-defence and then the finance  
15 scoring was put down. So each of the project teams were asked to come  
independently and I think they handed in ...; they may have handed in a small  
report of some sort to devote the coordinators and the committee and they  
wrote down the score that they had scored for each of the bidders and that  
was written down. Technical team, TIP team, NIP team and the finance  
20 team. At the end of that program both the coordinators would then have  
added up the score and the committee members would have then assisted  
them in making sure that the addition is correct. So that was a pure  
mechanical exercise of adding scores, scores being written down on the  
board. It was written on a board in the room and those numbers then were

10 NOVEMBER 2014

PHASE 2

added up. So there was no room for manipulation of the numbers by any committee member for any project team. No project team knew the score of the previous project team and *vice versa* and no member could influence any individual score per category. It was a pure addition. So whatever the numbers came out to be was what the numbers ...; is what the ranking score out to be.

ADV SELLO: And the minutes of the first and second presentation as your Annexure X appearing on pages 345 and 346 is that correct?

MR SHAIK: Yes.

10 ADV SELLO: Now you spoke of coordinators do you recall who did when and what physical were their function?

MR SHAIK: Both Derrick, Captain Derrick Dewey, and Dawie Griesel were secretaries/coordinators of this meeting in the sense that they had to receive the documentation and show the documentation from each of the project teams is received and that the scores that the project team present to the committee is the correct scores as reflected in their handed documents. So that was the check that whatever was written down on the board would be exactly the same as what is in the presentation itself.

20 ADV SELLO: You are aware that each program ...; each team prepared an evaluation report in respect of the program that they managed. A formal evaluation report that was signed off. Are you aware of that?

MR SHAIK: Yes, that would have been part of the requirement to hand it in.

10 NOVEMBER 2014

PHASE 2

I cannot recall specifically if every member got one or just the coordinators but a report would have been submitted.

ADV SELLO: Do I understand you correctly that the figures that were captured by the coordinators in respect of each program would correspond  
5 with the figures and details provided in the evaluation report per program?  
Would that be a fair conclusion?

MR SHAIK: Yes, that would be a fair conclusion.

ADV SELLO: Have you had an opportunity to consider and/or verify the accuracy of what the coordinators captured and what is contained in the  
10 evaluation report at any time?

MR SHAIK: No, I would not.

ADV SELLO: Now if I may take you to that minute of the 1<sup>st</sup> and 2<sup>nd</sup> July 1998 at page 345. Are your there?

MR SHAIK: Yes, I am.

15 ADV SELLO: Firstly if you could help clarify this for me at page 346 regarding the "Main Battle Tank" under item 3 it is stated that VAT and Ad Valorem was calculated at 26% and included in the program cost in respect of the main battle tank. My question to you is if these were important ...; all these were important equipment what percentage for VAT was used and  
20 applied?

MR SHAIK: I am sorry I may not recall it off hand but it the issue of the standard VAT, 14% etcetera so, I stand maybe under correction until I see

10 NOVEMBER 2014

PHASE 2

the documentation.

ADV SELLO: I am accepting your explanation. Now if you can go to page 347 under "Maritime Helicopter", item 21 you will find that under Maritime Helicopter it is stated that:

5 "The uncertainty regarding the inclusion of VAT in the Eurocopter offer must be clarified."

Are you able to explain to the Commission what these difficulties were of the inclusion of VAT in the helicopter; where is it accepted that VAT is payable in regard to the other problems?

10 MR SHAIK: At some point we would have had to do a standardisation of does the prices all include VAT or does it all exclude VAT. As a program management ...; as a program manager within the department we were under obligation to include all statutory costs ultimately when you make a presentation to higher level. So it may be different at a program manager's  
15 level where VAT may not necessarily be an issue but as you go seek authority for a particular budget you have to include all cost that is management cost, statutory cost etcetera. So hence Eric Esterhuyse briefing to the project team on what to include has relevance. So the question is whether the project teams executed it. So my understanding is that at some  
20 point when we did the final presentation we had to include the statutory cost.

ADV SELLO: I understand about the statutory cost but my question related specifically to the being a team. I just wanted to check whether you understand whether it was payable or not in these transactions and if so what

10 NOVEMBER 2014

PHASE 2

the difficulty then was in the maritime helicopter. Do you know or do you not know?

MR SHAIK: I cannot comment at this point on the maritime helicopter in absence of some of the documents.

5 ADV SELLO: The other issue that I want to discuss with you is on page 348. It is the issue of Lift and we are back at cost and non-costed. I again then ask that we pass this matter until tomorrow morning Chair. That is at page 348, item 29. Do you understand Mr Shaik that we will come back to this minute tomorrow to deal specifically with this matter?

10 MR SHAIK: I do.

ADV SELLO: Now you have annexed to your papers or in particular Annexure X. Handwritten notes of the result representation of two days why is that?

MR SHAIK: I thought it was important to have a full comprehension of what  
15 transpired on that day and sometime it is best reflected in the handwritten notes of the day being Captain Derrick Dewey. So this is the handwritten notes of Captain Derrick Dewey giving us an indication of what really happened and what time did the program start, what were the issues that were recorded. In this particular case although we have this matter standing  
20 down until tomorrow it would have been the issue of costed or not-costed which is merely a note made made that the costed or non-costed issues were here. He does not say that the Chair instructed, it does not say who instructed other than to say that two options for the military value to be

10 NOVEMBER 2014

PHASE 2

included. That is it. So it was presented. My contention is that it was presented on that day.

ADV SELLO: Is it your contention that the formal minutes of the 1<sup>st</sup> and 2<sup>nd</sup> July are not as detailed as as the handwritten notes. The handwritten notes  
5 provided to fill in the gaps.

MR SHAIK: Yes, that is true and also to the fact that it shows what really was written from the handwritten notes to the final typed. So if anything was added or deleted this is a much better reflection of what the secretary at the time recorded.

10 ADV SELLO: Okay, thank you. Having dealt then with paragraph 52 that will take us to the “The Acquisition Forum Period” and you has already dealt with that from paragraph 52. Do you have it?

MR SHAIK: Yes, I do.

ADV SELLO: At paragraph 53 you deal with a presentation to the AASB on 8  
15 July 1998. Will you take us through that?

MR SHAIK: This is the first time that we are now presenting the consolidated results of all the bidders per category of equipment to the AASB. Of importance there is the invitation extended to the Director General of DTI and the Chief of SANDF. Traditionally the AASB is only chaired by one Director  
20 General. Here we have two other Director Generals invited being the Chief of SANDF and being the Director General of DTI. So the Director of DTI ...; Director General of DTI is assuming to some degree the responsibility of the

10 NOVEMBER 2014

PHASE 2

scoring that was done by his staff under the IP section and to some extent the the Chief of SANDF is also representing his arms of service chief within his command line. So if you turn to Annexure Y and Annexure Y would be at page 238 moving on to page 239. It will show you the various people  
5 represented at that meeting and you would see ... [incomplete] I am sorry ... [intervenes]

ADV SELLO: I am sorry, I apologise to that I think we have just mislead the Commissioners. You have read the old pagination. The correct page of Annexure Y is 359.

10 MR SHAIK: Yes.

ADV SELLO: And not 239.

MR SHAIK: I thank you it is my error. On page 359 you would see under "Invitees" is the Director General of of DTI and the Chief of SANDF. A presentation was made with all the members of Sofcom present, all the  
15 programs were stipulated and in the end, in the "Overall Summary":

“The ASSB notes the progress and resolves not to make any pronouncement on what was presented.”

So the Chair took a conscientious decision not to make announcement.

“However the Minister of Defence and the members of the AAC must be  
20 advised of the progress.”

The last bullet will be:

10 NOVEMBER 2014

PHASE 2

“Arrangements to brief the Minister of Defence 'n 13 July followed by a Select Cabinet Committee briefing on 21 July are underway.”

So of significance is a discussion, a conscientious decision, was taken not to make a pronouncement.

5 ADV SELLO: What exactly does not making a pronouncement mean? This is a meeting where Sofcom presents to the AASB a second level of decision taking forum. So when AASB resolves not to make an announcement what do you understand that to mean?

MR SHAIK: These were all cardinal projects and a cardinal project is defined as anything that has a monetary value above this R80 million or had a degree of higher level national issues attached to it. So there are a whole lot of descriptions of what makes a cardinal project. So in this particular case the Director Generals all decided that it would be best served before the Minister rather than making a decision on the correctness of a selection or a  
15 recommendation.

ADV SELLO: Is it not so that in terms of departmental policies AACB makes a recommendation to AASB which in turn make a recommendation to AAC. Am I correct in my understanding?

MR SHAIK: You are correct in your understanding.

20 ADV SELLO: So I am then to understand that in this instance when an evaluation report is presented to the AASB the decision of the AASB is not to make a recommendation to the AAC as prescribed by policies but to direct

10 NOVEMBER 2014

PHASE 2

Sofcom to make a presentation directly to AAC. Am I understanding that correctly or not?

MR SHAIK: Yes, you are understanding it correct. It would affect particularly the Lift program where two options were presented to the  
5 committee. The committee decided not to make that pronouncement. If I could also just conclude on the discussion point of that very same meeting it records that:

“The rationale to solicit a decision from the current Government, as opposed to permitting this decision to await the new Government, could  
10 include difficulties experienced by the military; and the boost to the national economy.”

So there was some urgency. If I am not mistaken there was an election period where a decision to say, listen, before we have a change ...; potential change of ministers etcetera, let us see if we can get this decision to a higher  
15 level as soon as possible.

ADV SELLO: Before we get to that I just want to finish off this point. The ASB had then forgone the opportunity to make recommendations to the AAC or am I putting it too strongly?

MR SHAIK: You are putting it very correctly.

20 ADV SELLO: Now you then read from the discussion at item 34; the rationale to solicit a decision from the current government as oppose to permitting this decision to await the new government and the fact that this

10 NOVEMBER 2014

PHASE 2

could include difficulties for the military and the boost to the national economy. I am not sure I quite understand that. Are you able to explain it in clearer terms?

MR SHAIK: Not other than to say, again if my memory does not fail me, it was that election period. I think it was the election period and the uncertainty of changing ministers etcetera before and after a decision has come and the past experience of the department of defence is that a new minister may not necessary concur what the set of program is. So a note was made that it will be preferably better to have this matter serve before the current minister rather than awaiting the change. So it may have been not well stated or over emphasised but that was the gist. My understanding is it would have been the gist of it.

ADV SELLO: We know from the testimony already placed before the Commission and in fact from the annexures that you have provided that subsequent to this meeting there was yet another ASB meeting on 16 July 1998 is that correct?

MR SHAIK: Yes, there was.

ADV SELLO: Going back then to this minute if you look at page 364 at the bottom it is signed by D Dewey, SSO Acquisition and it was intended to be signed by Pierre Steyn Chairman of AASB but instead was signed by Mr Grundling on 25 February 1999. Do you know why Mr Steyn did not sign this minute and it could only be signed 8 months later by ...; I do not know his title but by Mr Grundling?

10 NOVEMBER 2014

PHASE 2

MR SHAIK: I think the question was why it was not signed by Mr Steyn and signed by Jack Grundling. Jack Grundling acted as, if I am not mistaken, the acting secretary after the resignation of the secretary of defence. Minutes of this committee meeting would have been signed at the very next meeting of the AASB and so on and so on. This became an issue because subsequently in my affidavit I have showed documentary proof to say that we could not get the meeting's minutes signed by the current Chairperson. So in absence of the current Chairperson making a decision to sign it Jack Grundling signed it when he became the acting secretary. You will notice that Mr Jack Grundling is a member to that meeting and he is a full member to the AASB and he is present on that day. So the minutes would have been written, compiled waiting for a signature and unfortunately they were not signed and at some point somebody had to take the initiative to sign them.

ADV SELLO: You proceed then at paragraph 54 to deal with a presentation made to the AAC after the AASB presentation of 8 July and this you say was done on 13 July 1998. You deal with that at paragraph 54.

MR SHAIK: Yes, I have. This was a presentation that was made to the minister, myself and Eric. The data that would have been captured in the presentation would have been compiled by both the secretaries, Dawie and Dewey and that presentation then would have carried through the results that came from the Sofcom that went to the AASB and then would have went to the minister's AAC. Of importance here is that the Minister of Trade and Industry is accompanied with his Director General. So there is a continue ... [incomplete] The Director General of Trade and Industry was in the AASP

10 NOVEMBER 2014

PHASE 2

presentation. He is now in the AAC. The Minister of Trade is there. The Minister is now carrying his colleague Minister of Trade with him in the decision making and a presentation was made on both the Lift options. Which would have been the costed and non-costed option. There is a long  
5 meeting. Lots of discussions. It was also agreed at that meeting to carry over the industrial participation presentation for the 16<sup>th</sup>. So half or part of that presentation would have followed on to the 16<sup>th</sup> and it had to do with offset whereas the main part of that briefing would have been who tendered, what were the scores, who are the winners, who are the second best  
10 etcetera. So the 13 captured the key information to both the Ministers.

ADV SELLO: And you have a minute of that meeting appearing as Annexure Z from page 382 is that right?

MR SHAIK: Yes.

ADV SELLO: Now if one pages through to page 390, those tables all the  
15 way to 398, are those a result of ...; these tables reflect exactly what was captured Sofcom on the 1<sup>st</sup> and the 2<sup>nd</sup> of July 1998?

MR SHAIK: Yes, those are the tables and I would presume they captured everything exactly.

ADV SELLO: Chair and Commissioner Musi there have been a request on  
20 our part to have time to consult with this witness on one or two other aspects that currently form part of this statement but which we believe that he must comment on. We request if it would be possible that we may break early today to finalise the issues. Having problems earlier he could only avail

10 NOVEMBER 2014

PHASE 2

himself for a very limited period and we did not have an opportunity to cover all the issues. So we make this request of breaking half an hour earlier today to enable us to finalise these issues with the witness.

CHAIRPERSON: Is there any objection with the suggestion that we adjourn  
5 now until 09:30 tomorrow.

ADV SELLO: None from me personally Chairperson.

CHAIRPERSON: Thank you.

ADV CANE: No objection Chair.

CHAIRPERSON: Thank you.

10 MR CASSIM: I have no objection.

CHAIRPERSON: Thank you. Mr Chowe?

MR CHOWE: No objection Chair.

CHAIRPERSON: Thank you sir. Mr Shaik we are going to adjourn now and we start tomorrow morning at 09:30. Thank you, we will now adjourn.

15 **(COMMISSION ADJOURNS)**

20