

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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PROCEEDINGS ON 23 MAY 2015

CHAIRPERSON: Good morning everybody. Ms Ramgaga?

MS RAMAGAGA: Good morning Commissioners. The topic that this team will be dealing with in its submissions relates to rationale. The submissions will be presented through reading the written submissions into the record. Where not necessary some of the paragraphs will be skipped. We will indicate to the Commission as to which areas we will skip. Also the Commissioners will indicate to us in cases where they are of the view any portion of the submissions is already on record or that it is something that is already common cause. I now beg leave to commence to record the submissions. Chair, may I proceed?

CHAIRPERSON: Yes.

MS RAMAGAGA ADDRESSES COMMISSION: I proceed:

Introduction:

15 *On 4 November 2011 the President of the Republic of South Africa Mr Jacob [indistinct] Zuma appointed the Arms Procurement Commission in terms of section 84(2)(f) of the Constitution of the Republic of South Africa Act ...[intervenes]*

CHAIRPERSON: I am sorry Ms Ramagaga.

20 MS RAMAGAGA: Yes, Chair.

CHAIRPERSON: You know paragraph 1 is common cause. We know the submissions obtained in that paragraph. Same applies to paragraph 2. If you can start with paragraph 3 which is on page 2.

MS RAMAGAGA: Thank you Chair. Then I proceed to read the content of the written submissions into the record. Commencing at page 2,

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paragraph 3:

“In these submissions we intend dealing with the term of reference 1.1 in respect of the rationale for the SDPP. In its investigation of the term of reference on the rationale of the SDPP the Commission received

5 *various documents from relevant state departments lead oral evidence from former and current officials of the relevant state departments and interested parties.*

In particular oral evidence was lead from the current and former officials of the Department of Defence. The Armament Corporation; the

10 *Department of Treasury and the Department of Trade and Industry as well as the former cabinet ministers who were in the Ministers Committee appointed to consider the recommendations from the relevant committees evaluation the SDPP’s.*

In preparation of these submissions we have considered the relevant

15 *documents submitted to the Commission as formal submissions in response to the invitation to make submissions. Documents submitted by state departments and the evidence of witnesses who testified to the Commission. Noting that the terms of reference require the Commission to consider the constitution; relevant legislation; policies and guidelines*

20 *in its investigation. We also considered these instruments.*

During the opening address by the evidence leaders on the eve of the commencement of the hearings at the Commission the evidence leaders undertook to present evidence on the rationale to deal with the following. That just outlines the headings/topics that the evidence

25 *leaders took the Commission through the opening session”.*

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I now proceed to paragraph 6 which is on page :

"In these submissions we intend dealing with the term of reference relating to the rationale in the following terms, which in our view will encapsulate the issues set out in paragraph 5 above:

- 5 a. *Whether the decision to acquire the relevant arms was justifiable.*
- b. *Whether the acquisition was duly authorised.*
- c. *Whether the decision to change the acquisition model was justifiable.*
- d. *Whether the acquisition model was justifiable.*
- e. *Whether due process was undertaken to mitigate the risk inherent in*
10 *the procurement process, especially the procurement of the such*
magnitude; whether due process was undertaken to ensure the
affordability of equipment.

In dealing with the questions raised in paragraph 6 above we have taken into account from inception to the eventual implementation of the
15 *SDPP's various administrative and executive decisions were taken. It is*
therefore opposite to deal with the question whether the decisions made
throughout the SDPP procurement process, until implementation met
the rationality test.

In enquiring into the rationale of the SDPP's it is imperative that the
20 *Constitution of the Republic of South Africa Act 200, 1993 that is the*
Interim Constitution be considered as it applied at the conception phase
of the SDPP's. As it will appear more fully hereunder the mandate for
the acquisition for armaments were further amplified in the Constitution.
We submit that in considering the rationale of the SDPP's it is
25 *inescapable for the Commission to take judicial notice of the fact that*

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procurement of this magnitude was novel and unprecedented. The traditional procurement process for armaments by Armscor in our view had to be reconsidered by inter alia, insuring that the executive and Parliament had the necessary oversight of the SDPP process from

5 *conception to the eventual implementation thereof. It is further unavoidable to note that the traditional acquisition process by Armscor before the advent of the democracy in 1994 was being implemented during the Arms Embargo in sanctions imposed against the Republic of South Africa.*

10 *It is for this reason that we also deal with the rationale to deviate from the traditional DoD and Armscor Procurement Processes, hereunder. The Commissioners will also have to take into account the legislative framework available at the time of conceptualisation of the SDPP's. That which evolved during the procurement process and implementation*

15 *phase.*

At the time of the inspection of the SDPP's process the relevant legislations were the Defence Act, the Armaments Development and Production Act as well as the Ex Checker[?] Act and the Audit Act as well as the interim Constitution. However during the SDPP process the

20 *Constitution and the promotion of Administrative Justice Act the Public Finance Management Act were promulgated. In particular Paga[?] was promulgated to give effect to section 33(1)(2) of the Constitution dealing with the right to administration action that is lawful, reasonable and procedurally fair.*

25 *While the PFMA inter alia gave effect to section 217 of the*

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Constitution requiring organs of state to procure goods and services in accordance with a system which is fair; equitable; transparent; competitive and cost effective. Notable, Paga only came into effect on 9 March 2001 while the PFMA came into effect on 1 April 2001”

5 . 2000 I beg your pardon Chair.

“This was after the appointment of the suppliers in 1999 and during the signing of the supplier contract and loan agreement in 2000 and 2001 respectively.”

Now I proceed to deal with the background Chair.

10 *“Prior to dealing with decision of by the Government by the Republic of South Africa to procure armament. It is apposite to consider the relevant background leading to the justification to the SDDP’s decision making. In particular it would be inappropriate not to consider the embargo that was imposed against the South African Government*
15 *before the advent of democracy in 1994.*

in dealing with the contextualisation of the SDPP’s we are mindful of the fact that at the advent of the first democratically elected government of the South African Armscor was in the process of procuring military equipment on behalf of the DoD. This acquisition process related in
20 *particular to the South African Navy and the South African Air Force. However during this period the United Nations Security Council’s Resolutions on Arms Embargo against South Africa were still enforced. We therefore wish to briefly deal with the relevant resolutions of the Security Council as a matter of background leading to the initial decision*
25 *making process to acquire armaments.*

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Now on the Arms Embargo Resolutions of the United Nations Security Council:

."The Security Council on 23 July 1970 adopted the United Nations Security Council Resolution 282 which was intended to consider the effectiveness of the previous Resolution 191 which it had adopted on 18 June 1964. The Security Council in adopting Resolution 282 noted that despite the passing of Resolution 191, which had condemned apartheid and established a group of experts to study the feasibility and effectiveness of measures that could be taken under the Charter.

10 It was consent by evaluations of the Arms Embargo passed against South Africa. The Security Council in passing Resolution 282 reiterated its total opposition to the policies of apartheid and re-affirmed its previous resolutions on the topic. The council called upon member states to strengthen the Arms Embargo by seizing the provisions of military training to members of the South African Armed Forces and also by taking appropriate action to give effect to the resolutions made.

20 However if appears that Resolution 282 was not effective to ensure compliance by members as it was voluntary and not mandatory. On 4 November 1977 the Security Council unanimously adopted the United Nations Security Council Resolution 41[indistinct] which imposed a mandatory Arms Embargo against South Africa. However as it is evident from the evidence and documents before the Commission the South African Government continued to circumvent this Embargo in an attempt to strengthen its Navy and Air Force and to sustain its Bush War.

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However according to Rear Admiral Allan Green this resolution had a direct impact in the failure by the SADF to procure Corvettes from France.

Further circumventions by South Africa led the Security Council to
5 *pass Resolution 591. On 28 November 1986 the Security Council*
unanimously adopted the United Nations Security Council Resolution
591. After re [indistinct] Resolution 418, 421; 473 and 558. The
Security Council strengthened their mandatory Arms Embargo imposed
against South Africa by Resolution 418 and made it more
10 *comprehensive. Resolution 591 sought to clarify victims from the*
previous resolutions on the topic.

Most importantly the resolution as members stated that components
of Embargo items did not reach South Africa through 3rd Countries,
including spare parts for aircraft and other military equipment belonging
15 *to South Africa. Any items which other countries may are distend for*
use by the South African Police Force of the military. These items
included, aircraft; aircraft engines or parts; electronic
telecommunications equipment; computers and four-wheel drive
vehicles.”

20 You will notice Chair that there is emphasis on the four-wheel drive
vehicles. This is just to illustrate as to how serious the Embargo's went.
It went even outside the terrain of strictly military armament.

“In terms of arms and related material from Resolution 418 this
included nuclear strategic and conventional weapons, all military and
25 *Para-military police vehicles and equipment and other related material.*

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The Security Council urged particularly against any co-operation in the nuclear field. The Security Council then went on to urge member states to not receive any imports of arms, ammunition of military vehicles from South Africa. Asking those that had not yet done so to put an end to all

5 *exchanges and visits including by government personnel.*

It also requested member states and those who are not a member of the United Nations to not participate in any activities in the country that we contribute to South Africa's military capability. Thus ensuring that national legislation should reflect this. It was apparent from the

10 *evidence of the Department of Defence and Armscor that some states still co-operated with South Africa. This in our view is apparent from the assistance from Israel in the upgrading of the Mirage 3 to a Digital Cockpit and a few tricks to create a Cheetah Aircraft.*

What also comes to mind is the attempt by Spain to assist the

15 *Government of South Africa with regard to the Corvettes during the time when the Embargo was still in place. Further Resolution 591 called on the General Secretary General Javier Perez Quila to report on the progress of the implementation of the current resolution by no later than 30 June 1987. The adoption of Resolution 591 was important to tighten*

20 *the loopholes left by the previous resolutions. It was clear to the Security Council that the South African Government circumvented the Embargo in various ways which included the procurement of military technology and components which it could not procure openly.*

As it will appear more full hereunder the effect of the embargo and

25 *sanctions had an adverse effect on the failure to procure or upgrade*

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equipment for the Navy and the South African Air Force. The aforesaid Security Council resolutions though circumvented in some instances had a direct effect on the status of the Defence equipment prior to 1994.

The embargo was lifted by Resolution 919 following democratic
5 *election in 1994. United Nations Security Council ...[intervenes]*

COMMISSIONER MUSI: Should I not propose an amendment?

MS RAMAGAGA: Yes.

COMMISSIONER MUSI: The words in paragraph 17. “*Adverse effect on the failure to procure*”. Should it not rather be “*adverse effect on the*
10 *ability to procure?*”

MS RAMAGAGA: Ability?

COMMISSIONER MUSI: Yes.

MS RAMAGAGA: Thank you Commissioner. I do agree that, that is how it should read. The aim was to acquire and not to acquire. May I then
15 proceed with paragraph 18?

COMMISSIONER MUSI: Yes.

MS RAMAGAGA: On the same page:

“The embargo was lifted by Resolution 919 following democratic elections. United Nations Security Council Resolution 919 adopted
20 *unanimously on 25 May 1994. After recalling all resolutions on South Africa in particular the many already mentioned resolutions. Then council welcomed the recent general elections and new government and decided under Chapter 7 of the United Nations Charter to [indistinct] the Arms Embargo and all other restrictions against South Africa. Measures*
25 *imposed in other resolutions would also be ended. The Committee of*

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the Security Council established in terms of Resolution 421.”

I meant to read:

“In terms of Resolution 421 was established.”

Was also resolved, I beg your pardon.

5 *“We submit that Resolution 919 was instrumental in paving the way for the SDPP’s procurement. As it will appear more fully here under.”*

Now the background given does actually show that the United Nations Security Council was kept busy over quite a long period of time. Just in order to deal with the armament of South Africa under the apartheid regime. Now I will proceed:

10 *“As it will appear more fully hereunder Germany only agreed to participate in the SDP procurement process in relation to the frigates and the submarines after the lifting of the embargo and sanctions against South Africa. We therefore wish to deal with the status of the arms equipment before the SDPP’s immediately after the lifting of the Arms Embargo, which in our view is relevant to the question of rationale on the decision to procure the armaments.*

Now Chair the paragraph of the heading, the topic that I would like now to deal with relates to the status of arms equipment pre 1994 and the need for armaments. Evidence was led by the witnesses, especially from the Navy as well as the Air Force to indicate to this Commission the status of armaments at the time at the advent of the new democracy.

I would like to get just a directive or a direction from the Commissioners as to whether it is necessary to read into the record this portion of the evidence. Or alternatively an indication would be given by

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or at the appropriate time. The status appear on pages 10 to 27.

CHAIRPERSON: Thank you very much for this information. I think you properly captured the evidence of the various witnesses about the status of the various equipment prior to 1994. I think it is properly captured.

5 MS RAMAGAGA: Yes.

CHAIRPERSON: We are very thankful for that. I do not think it is necessary for you to read it into the record because various witnesses has already testified about this. There was no controversies when it came to this portion of the evidence.

10 MS RAMAGAGA: Thank you Chair. I also do agree with it. With regard to the next topic from pages 27 to 31. It deals with the processes undertaken in response to the mandate to acquire the armaments. That would address the interim Constitution and the final Constitution and then page 31 is the White Paper and the Defence Review. In actual fact
15 all of that until page 36 deals with what we believe is actually common cause and it is something that is not even controversial.

It is just stating the status as to what processes were undertaken. The democratic process that were undertaken. The White Paper and the Defence Review how it was unanimously adopted by all the stake
20 holders. Then where the department derived its mandate from to [indistinct] itself. Unless the Chair directs otherwise I would like to suggest that we then proceed to page 37 which deals with the SDPP's. The SDPP's being the real cause of the establishment of this Commission.

25 CHAIRPERSON: Then we start on page 37.

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MS RAMAGAGA: Thank you Chair. Now the SDPP process:

“The SDPP process was formally initiated on 23 September 1997. The new Cabinet Strategy in tendering actions of September 1997 formally re-started the Project Sitron on the acquisition status in which it had
5 *been in 1994 at the start of the project study.*

Tendering activities of the project studies of 1994/95 offers, evaluations; selections and short listing and [indistinct] study report were rendered...”

May I just request that this be read into, this should be some
10 amendment.

“Where rendered null and void by the restart of the processes in terms of the SDPP’s. Germany had declined to participate in the tendering process executed prior to the lifting of the sanction. Germany was included when the process was re-started. We have heard the
15 *witnesses from the Department of Defence that the defence budget during 1980’s were at its peak and in 1999 the budget was severely. The 1990 the budget was severely reduced and the armaments acquisition was halted in 1991.*

While a conscious decision had been taken to drastically reduce
20 *spending on armaments the country nevertheless still saw the need to procure arms to give effect to the Constitutional obligations imposed on the South African National Defence Force to protect the sovereignty and integrity of the Republic of South Africa. The newly elected democratic Government embarked on the exercise of transforming the Defence*
25 *Force in order to have an integrated and balanced force.*

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The all inclusive investigation on how to model and equipped the Defence Force was embarked upon almost immediately after the new Government was elected. At that time the acquisition process that had been initiated was continuing parallel to the investigation undertaken.

5 *During the democratic investigation leading to copulation of the aforesaid White Paper on Defence and subsequently unanimous adoption of the Defence Review it be became apparent to the democratically elected Government that it would be in the interest of the country that the acquisition process that was already in motion be*
10 *suspended so as to allow the defence review to be concluded.*

The led to the suspension of the acquisition of the processes that had been undertaken then. The acquisitions in respect of the relevant equipment had gone past the DoD arm of service and were now in the hands of Armscor which had the exclusive authority to procure the
15 *equipment.”*

Chair may I just apologise for the manner in which this sentence appears or is captured on this document.

“The acquisition of the following armament which had gone past the request for information process and was due to be considered at the
20 *request of office level was suspended in or around 1995 in order to allow the Defence Review to be completed. Which were the LUA, the submarines and the Corvettes.*

The outcome of the Defence Review confirmed that the armament whose acquisition who had been in place was indeed necessary and
25 *further that there was a need to also add some other equipment whose*

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acquisition had not yet been initiated. In response to the Defence Review and with the intention of complying with the Constitutional mandate the Department of Defence under its executive head.”

CHAIRPERSON: I beg your pardon?

5 **MS RAMAGAGA:** *‘Arrived at a conclusion that the equipment be procured in the form of a package rather than the [indistinct] acquisition... as the case previously was. The armament of the South African Air Force and the Navy had reached a critical stage.*

At the time when the package approach which they came to be known
10 *as the SDPP’s was contextualised the Department of Defence had created the officer of the secretary for Defence who will be referred to as the Sective. The Sective became the accounting officer of the department from 1995. The acquisition unit of the Department of Defence was henceforth located within the Sective’s office.*

15 It is just necessary that Chair that one emphasises or highlight that this office of the Sective was established prior to the introduction of the SDPP’s. So the SDPP’s upon its coming into existence ought to take into consideration all the relevant institutions within the Department of Defence. Also competencies within the Department of Defence.

20 *“Upon investigation of the procurement process it became clear that the existing policies were not adequate to facilitate the package acquisition. The Executive Head of Department of Defence then promulgated policies that would augment the policies thus securing the deficiencies. Further the interim Constitution which was then applicable*
25 *advocated for transparency and accountability in respect of*

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procurement. The model created to accommodate transparency and accountability was the acquisition model with a three tier evaluation process being the first to the third order.

The advent of this model meant the introduction of a new dispensation where Armscor could not be the sole role players with regard to procurement at the project level...”

Again Chair, I apologise.

“In order to ensure that the experiences that the Armscor personnel had gain over time Armscor had presence in all the authorities or institutions that participated in the procurement from the project study to the final stage of the execution of the acquisition plan. The unanimous adoption of the Defence Review by Parliament confirmed that the acquisition of the indentified armament was necessary as per recommended design option.

Resultantly the Department of Defence was charged with the responsibility to execute the Defence Review directive which sought to implement the mandate of the interim Constitution. This brings us to the consideration whether the decision to change the acquisition model was rationale or not? The evidence before this Commission is that the acquisition model prior to 1997 was generally that on an arm of service basis. One illustration of the deliberate staggering of the acquisition was when the Navy decided that the acquisition of the of the vessels would be structured in such a way that the Corvettes would be prioritised over the submarines.

Notwithstanding the critical status in which the Navy was in relation to

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the above equipment the initial argument was that the submarines replacement acquisition would only be initiated when the procured Corvettes were in the build stage. We have to be mindful of the fact that at the time the approach in respect of the Corvettes was to procure a
5 newly designed Corvette. So the plan was that the design should be approved and when the Corvettes are in a build stage the submarines procurement would then kick in. The submarines that were going to be procured would be the existing armament.

It is also important to highlight the traditional acquisition model in
10 place then was the contract with multiple suppliers in respect of the same equipment. This should be considered bearing in mind that there were at the time when the acquisition model the old, the traditional acquisition model was used there were also problems of the Embargo's and so forth. Hence the approach would be let us contract. let us scout
15 around and get a piece of this there and a piece of this there. This meant that the Department would procure different suppliers, would procure from..."

I beg your pardon.

"Different suppliers and separate contracts with separate suppliers.
20 The Minister of Defence ushered in a novel approach in respect of the above for the acquisition of the armament in compliance with the Defence Review Directive. The acquisition philosophy shifted from the multi contract for one equipment to ..."

May I just rephrase this.

25 "The philosophy shifted from the multi contract for one equipment to

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one contract for one equipment. So it shifted from multi to one, to one to one. In considering the rationality in respect of change of the acquisition model the following facts should also be taken into consideration. South Africa was facing blocked [indistinct] which was of cardinal nature. Thus

5 *the country desperately and urgently needed the equipment.*

This means that if the same model of multi contractors per equipment would be implement the acquisition process would be onerous with the Department with the acquisition of this magnitude. The long overdue equipment acquisition could not be deferred any longer. The practicality

10 *of the armour service approach in the given circumstances would also have to be conceded. This statutory position of the Secretary for Defence was in place and the acquisition unit had been established within the Sective office. This being statutory imperative of the Sective.*

The Constitution and the Defence Act advocated for transparency and

15 *accountability. Now bearing in mind that these are the factors that were also taken into consideration. The Minister then decided to introduce the package acquisition model. The evidence before the Commission is that the traditional acquisition processes were not adequate to execute this novel approach. The Minister then issued Directives to deal with*

20 *the deficiencies in existing policies. The Directives which introduced new elements to the existing model, are described by witnesses as deviations.*

In order to assist in the determination whether the decision to introduce new policies in respect of the acquisition was rationale or not

25 *[indistinct] in policies will be interrogated in the context of the challenged*

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that the old policies posed, if any. Also the impact of the new Directives on the principles of transparency and accountability.

These consideration are based on the evidence of those who supported the procurement as well who were against the procurement.

5 *In considering whether the acquisition process introduced...”*

May I just indicate to the Commission before I proceed to the next paragraph to say. When we say the evidence of those who supported it and those who did not support. I would like to mention that most of those who did not support opted not to give evidence before this
10 Commission. However consideration was never the less made of the representations that were made by them as against the evidence that has been led before this Commission.

*“In considering whether the acquisition process as for the SDPP acquisition was rationale or not the process that was instituted and
15 followed must be interrogated. From the evidence before the Commission the SDPP acquisition was based on two models. The first one being the traditional one until the completion of the RFI phase. The second one being the SDPP phase which effectively endorsed the traditional process undertaken up to before the RFI phase and nullified
20 the RFI process that had been undertaken.*

*The new RFI’s containing the new elements identified for the SDPP purpose was issued. The acquisition was thus done through diffusion of the two processes. Now from the evidence before the Commission the SDPP’s did not come in to displace the existing procurement process. It
25 came in to fill the gaps or cure the deficiencies or the challenges that*

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could stand in the way of the SDPP being a new approach. Now the traditional procurement as followed prior to the SDPP were not informed by a Constitutional framework but were used to a means to circumvent the United Nations Resolutions and in our view could not have met the

5 post-apartheid Constitutional requirements of transparent; competitive and cost effective tender process.

However before we can deal with the rationality or otherwise of the SDPP tender process it is opposite to give an overview of the pre-SDPP procurement process for the armament.”

10 Now Chair from pages 43 to 46, I just outlined the... we are just giving a brief synopses of the traditional acquisition. The steps that we have followed in the acquisition process and this is not controversial. If the Chair agrees then I would beg leave to commence on page 45 with paragraph 111 (one hundred and eleven). May I proceed?

15 CHAIRPERSON: Yes.

MS RAMAGAGA: Thank you.

COMMISSIONER MUSI: I just wonder whether paragraph, traditional acquisition process on page 43. Whether those paragraph through to the SDPP process. Through to...I think there is quite a lot of pages

20 dealing with aspect that I do not think fall within your term of reference just now. There is also dealing with financing on page 56. You have amendments of the RFO, request for offers relating to the... et cetera.

I just wonder whether these fall within the term of reference we are dealing with now. National industrial participation, policy and so on and

25 so on. Maybe up to page 63 I would perhaps understand when you deal

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with the responsibility of the SDPP on page 62 onwards. I think between page 43 and page 62 I doubt whether those fall within your term of reference just now. Also whether it is necessary to go through them. I am just wondering?

5 MS RAMAGAGA: May I respond Commissioner Musi? The... it is our submission that the best way to deal with information that will assist this Commission to arrive a conclusion whether the acquisition was rationale or not. As I have stated right in the beginning is that we need to interrogate the processes that were undertaken. These processes were
10 undertaken in an environment or they led to criticism being levelled against this model. The main criticism that we are focusing on is the criticism that is actually described as deviations from the traditional acquisition model to the SDPP acquisition model. Now Griesel and Captain Jordaan led evidence about the processes.

15 CHAIRPERSON: I think you can proceed.

MS RAMAGAGA: Thank you Chair. In order to save time I will proceed to page 47 which deals with the deviations. The model is criticised mainly because there is an assertion that there were deviations. However the question is where the deviations rationale or not? I will
20 proceed from paragraph 116.

*"The main thrust of the criticism of the above policy is that there was interference with the Armscor process. Further that Armscor was divested of its acquisition powers. As a result of the three order institutions that were put in place to carrying out the functions that had
25 all along being discharged by Armscor exclusively.*

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The cause of complaint is that the DoD Directive 4/147 had the effect of implementing the process that fell outside the Armscor and the DoD directives. The main thrust of the criticism of the above policy is that there was interference with Armscor processes and further that Armscor

5 *was divested..."*

I then proceed to paragraph 118.

"Criticism against the processes relate to the process within the Armscor environment. This is so because the interaction of the procurement who is happening after the DoD process had been

10 *concluded. The witnesses highlighted the following deviations.*

In the SDPP the guidelines were used in the development of [indistinct] system and RFO's but there were deviations in respect of the responsibilities of the Armscor program, manager and project teams. The practice dictates that the process would be led by Armscor and only

15 *provides for participation by the DoD on the evaluation panels. In the SDPP process some of the value systems and evaluation reports were finally approved and signed off by the DoD and not Armscor."*

Now with regard to this criticism we cannot take it further because Mr Griesel who alluded to this indicated that, he just stated that some of the

20 *evaluation... doc... value systems were finally approved by the DoD and Armscor. No evidence was led to just indicate to this Commission as to which those were. He mentions that it seems to be related to some whether Corvettes or submarines but there was no evidence to support this... interrogate this criticism further. Now I proceed to deal with the*

25 *next criticism.*

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“Now the decision making powers and delegations within Armscor were described in this document. The Armscor Board of Directors being the Tender Board. The sole authority that can authorise preferred bidders and also authorise the contract to be placed in identified preferred bidders.

In the case of the SDPP’s the preferred bidders were eventually authorised by Cabinet and subsequent contract placement was also authorised by Cabinet.”

This is common cause. This was a result of the three tier model that was established. Now in paragraph 121

“The cause of complaint is that the SDPP process deviated from the normal Armscor process in the sense that Armscor would not solicit RFO’s from prospective bidders if funding had not been budgeted for. Armscor would also not tender, enter into negotiations with a preferred bidder if a budget ceiling had not been established.

Now the criticism relating to the finances including the budget and the budget ceiling should be assessed bearing in mind that the Department of Finance was also involved in the process at all material times from the beginning to the end. This approach illustrates the appreciation of the fact that this deem a massive acquisition. It would have a serious impact on the economy of the country. Hence the involvement of the Department of Defence which the Department of Finance which unfortunately is also part is also falls under the criticism levelled against the SDPP approach.

The constitution of Softcom did not provide for a decision making

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authority in respect of any matters that would be materially, that would materially affect the evaluation as it pertained to the selection of the preferred bidder. However Softcom was entitled to submit recommendation to the COD. The Minister of Defence had approved

5 *this deviation from the standard Armscor procurement procedures through the appropriate structure.*

That is the evidence before the Commission that he actually had obtained the change or the authority to change the structures through the correct institutions or authorised bodies. In this case the witness

10 *submit that Minister of Defence had approved this deviation from the standard Armscor procurement procedures through the appropriate structures. There is no suggestion that the Minister acted improperly.*

The concern seem to be, why does the Minister flood the Armscor terrain with non Armscor officials. The answer to this is found in the

15 *advocacy for transparency and broad perceptivity in respect of a massive acquisition of this nature. Now the evaluation results indicated preferred leaders that were presented to the AASE; AAEC and the Ministers Committee and subsequently the candidate for approval where all presentations.”*

20 Now the answer in respect of this element of this so-called deviation the question is about how information was presented. The answer to that is that this criticism goes to the type of communication. The authority for a particular style of information sharing was not presented before the Commission. As a result this point cannot be taken any

25 further.

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COMMISSIONER MUSI: Can I just draw you back to the previous paragraph?

MS RAMAGAGA: The previous paragraph?

COMMISSIONER MUSI: Where you state that in this case the witness
5 submits that the Minister of Defence et cetera. Which witness are you referring too?

MS RAMAGAGA: Thank you Commissioner Musi. The witness that I am talking about is Mr Griesel.

COMMISSIONER MUSI: Thank you.

10 MS RAMAGAGA: May I then proceed thank you.

Now the next criticism is that the evaluation result of the DIP and NIP evaluation teams were moderated jointly by the DoD and the DTI. The cause of complaint seems to be that Armscor was excluded from moderating the DIP proposals. The realities is that there were now three
15 distinct areas of evaluation.

With the industrial participation slip into two. Who operated in silos that is the teams operated in silos to avoid or minimise the risk of information sharing. What is important is that the user on his input, or rather what is important is that the user was also formed part of the
20 moderation. The user being the better person vested with the power to determine as to what deal can be [indistinct] at. What also is the subject of criticism is the integrating of the deep-end[?] the NIP.

The DTA was involved in the evaluation of the NIP proposal and a team comprising from the DoD and Armscor was responsible for the DIP
25 proposals.

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Now the response to this criticism is that the... let me just find that. I am trying to shorten this thing. It is found in the evidence that was presented I think by Dr Rastom, J who gave full background and history of the development of the counter trade. As well as Mr Vernon Pillay
5 who also gave evidence regarding the NIP's and the implementation.

Now the brief of this team is not to deal with the nitty gritty of the industrial participation within the DTI environment or any environment for that matter. The brief of this team is to look at the rationality of any elements that were introduced specifically through the SDP and seeing
10 that the introduction of the industrial participation is also subject of the criticism. The team deemed it appropriate to deal with this aspect in its submissions.

I would like to enquire from the Commission as to whether we should proceed to read the information into the record. It is the information
15 leading to the NIP's is slightly long but it is important because it highlight the fact that at the time when the SDPP's came into existence there was already formal policy within the Department of Trade and Industry.

That the industrial policy should be implemented. There is also history of the fact that even prior to the formal adoption of the IEP within the
20 Department of Trade and Industry there had already been cases where large acquisition were actually rejected or cancelled because of the fact that the National Industrial participation had not been factored in. The example being the Corvettes. The attempted acquisition of the Corvettes as well as the attempted acquisitions of the Boeings. With
25 specific reference to the Corvettes they came in and actually interjected

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that prior the adoption of the policy, directed Armscor to go and factor in the industrial participation.

The decision that this portion of this admissions should be read into the record or not is a determination that the Commissioners and Chair
5 can make?

CHAIRPERSON: Thank you Ms Ramagaga. We have that information. I think there has been enough evidence. You are almost nine witnesses from getting out. We will be satisfied with what you are telling us.

MS RAMAGAGA: Thank you Chair. You will notice that at the end of
10 the presentation our submission is that the approach was rationale and that would also include the [indistinct] as appears on the submissions.

I then proceed to the next topic. It is the criticism of the introduction of the IONT into the system.

Now the IONT we are dealing with it from page 53 onwards. Now
15 under the topic IONT we are dealing with the scope of the IONT. We then proceed to deal with the committees that were set up to do the work of the IONT is here. We also deal with the fact that the IONT, upon its establishment realised that there is a need to beef up its competences, hence it then required the assistance of the experts. This
20 is from the financial as well as the legal fraternity.

That information, we believe, is actually common cause. What, maybe we should look at is, because the rationality of the introduction of the IONT is also on the spot. What we have done is to look at the work of the IONT and say, can we say that the manner in which they
25 executed their mandate was rational or not.

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Now, I would like to take the Commission directly to the issue of the amendment of the policy, the Industrial Participation in particular, relating to sizing down the number elements or variables, in respect of which the National Industrial Participation could apply or not. The
5 reason why I would like to take the Commission directly into that is that, at the time, when evidence, when Mr Jayendra Naidoo was leading evidence on behalf of the IONT, both Commissioners raised a question, as to whether the IONT was a policy making forum.

There was an engagement between the Commissioners and myself,
10 as the evidence leader. At the end, that subject was left on the agreement that it would have to be addressed later, not at that stage. Now, I am not sure, as to whether that question is still bothering the Commissioners or not.

So, I will just deal with it shortly and proceed to other areas. The, one
15 of the outcomes, one of the outcomes of the negotiations by IONT is that the variables that would be recognised for the SDPP process, within the industrial participation, industrial participation environment of the DTI was that the variables were [indistinct] down from nine to three.

So, the elements that were to be considered were to be sales, exports
20 and investment. What we did was to also introduce the element of eliminating the multipliers, in respect of the three elements. It is on record that prior to that, or rather the policy that is in place is that, in respect of exports, as well as investments, the, there are multipliers effected in giving two credits to one.

25 Now, what they did was to say, no, no. And the agreement that they

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managed to get was that the weighing or the scoring would be one to one. The elements considered, would only be three. Now, in order to answer the question that was asked by the Commissioners as to whether the IONT was the policy making forum of [indistinct], we have to
5 bear in mind that Mr Jayendra Naidoo's evidence is that they were just an institution that was there to assist Cabinet.

They would make recommendations, not even directly to the Cabinet. They would make recommendations to the Ministerial Cabinet Committee that was established, specifically for the SDPP. They were
10 there, for those purposes. Now, with the consent of the Ministerial Committee, they were able to negotiate with the suppliers and agree about these changes and then placed the changes in the hands of the Ministerial Committee, to be then considered.

The Ministerial Committee, having full details, relating to these
15 changes, then tabled a presentation through Mr Jayendra Naidoo, talking to the issue of the amendment. That is how the amendment and the amendment was then adopted, by Cabinet.

So, the IONT, at no point, ever mistook a level, where they were going to make policies, or amend policies. Now, this amendment was
20 effected by the very Parliament that had approved the existing national policy on industrial participation. We should be mindful of the fact that, Chair, this was actually a special amendment. It cannot be said it was an outright amendment.

It was a special amendment procured by an authorised institution, set
25 up by the Cabinet. We say it is a special amendment, because this

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amendment was done, solely for the purpose of the SDPP and nothing else.

That industrial policy, industrial participation police, within the Department of Trade and Industry continues to be implemented in the
5 manner in which it was for the rest of the acquisition that falls within the threshold for which it was set. Unless there is still anything that bothers the Commissioners about that point, I would like to pass.

CHAIRPERSON: Well, thank you. I think we can pass that point. We are now comfortable about that.

10 MS RAMAGAGA: Thank you, Commissioner. You will see from the, from the submissions that we have dealt fully with all the outcomes of the, what do you call it, the IONT negotiation exercise. There is an issue that seems to also have been bothering some of those that criticise the acquisition.

15 That is the issue of the acquisition of the Hawks and Gripen, while the Cheetah's lifespan was due to expire in or around 2012. That also, is taken care of in the submissions. Unless there is a point that would to take to mean, to take that through, I would do so.

But, what is actually common cause, from the evidence, by the users,
20 is that the three tier system that had to be in place, even at that time of the SDPP acquisition process, was seen to be, the model to be continued with. So, the suggestion that there was, at some point, especially relating to the acquisition process of the SDPP's where the South African Air Force was on any other system, other than the three
25 tier system, will not be correct.

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So, it was just to continue with the system that was in place. Chair, may I just turn to page, now I am losing it. Now, just before I get off the IONT evidence, I would like to take the Commissioners to page 61 of the submissions.

5 In page 61, what I would like to draw the attention of the Commissioners to is that paragraph that deals with the origin of the promises of about 65 000 jobs. Now, the evidence that was led by Dr Jourdan is that the, at the time when the Minister of Defence made a statement, the announcement of the possible, the creation of possibly
10 65 000 jobs, that statement was made, based on what had been presented before the Minister, by the Department of Trade and Industry.

And the Department of Industry where it made the projected figures, when it gave the projected figures that it gave it was relying on the information that had been sourced from the RFO's at the beginning time.
15 Remember, Chair, maybe it is time to talk about even this thing of the NIP's to say, the NIP's after the time of the negotiations by they IONT, they were scored on nine elements, which included jobs.

But, at the time, when the acquisition was finalised, the only elements on which the NIP could be scored was in relation to three, which
20 excluded jobs. So, at the time, when the Minister made a statement of promises of about 65 000 jobs, it was at the time when the elements included jobs. Jobs were taken into consideration, by the Department of Trade and Industry.

If there are any questions on that point, I will deal with them.
25 Otherwise, I beg leave to then proceed.

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CHAIRPERSON: Ms Ramagaga, how long do you think this is going to be?

MS RAMAGAGA: About 30 [indistinct] minutes.

CHAIRPERSON: You know you are, your submissions are quite
5 comprehensive, where I have said that we have gone through them. Maybe, I would suggest that we break for tea, when we come back from tea, touch on those areas, which you think are very critical. We have already gone through them.

Because you know, yesterday, we received them yesterday and we
10 did get time to go through them. So, we are going to adjourn for 20 minutes and when we come back, just try and deal with those areas, which you think they are very, very important. Because fortunately, we do have your submissions, because we need to get to Dr Young's evidence now.

15 **MS RAMAGAGA:** Thank you [indistinct].

CHAIRPERSON: It should be submission for the evidence.

MS RAMAGAGA: Thank you, Chair. We may do so. Thank you. We will trim down to it. Thank you.

CHAIRPERSON: Thank you. Now, lets adjourn for about 20 minutes,
20 just now. Thank you.

COMMISSION ADJOURNS

COMMISSION RESUMES

CHAIRPERSON: Thank you.

MS RAMAGAGA: Thank you, Chair. We have had the opportunity to
25 look at how we are going to present the submissions and move forward.

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The next topic that we were supposed, we are supposed to deal with is the affordability, which appears on page 62 to 76 of the written submissions.

Now, with regards to the affordability, we would just like to highlight
5 that the criticism, arising from the comparisons between the variant factor issue and the [indistinct] are fully addressed in our submissions. Also, the main issue of our affordability, especially in relation to the budget, is also dealt with and we believe, adequately in our submissions.

10 We can just highlight where it be, the evidence before this Commission is that the budget did not just suddenly balloon. The budget remained within the norm. Except for of course, the later years went through for the [indistinct].

The next topic would be the Ministerial Cabinet Committee that
15 appears on 76, pages 76 to 79. The evidence before the Commission is that and the Ministerial Cabinet Committee was actually the bridge between the Cabinet and all other stake holders.

What is important about even the Ministerial Committee is that the Ministerial Committee would also make recommendations to the
20 Cabinet, for the Cabinet to decide.

So, at no point did, or were, was the Ministerial Committee vested with the power to decide and displace the Cabinet. Now, the next topic then is the analysis, which appears on pages 79 to 88. Then, it is the criticism, from pages 88.

25 Now, we would like to then proceed to close, by dealing with the

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submissions. The legal framework or legal authorities that we rely on for reaching conclusions do appear in the submissions. Even the issues of rationality, in terms of the common law in the statute are fully addressed in the submissions. Unless there is any particular point that the Chair would like us, would to like to ask to address him about.

I propose that we proceed to page 119, which deals with the submissions from paragraph 310. It is a few pages, Chair. One can read them into the record quickly. If it pleases the Commissioners, may I proceed? Thank you.

We submit that the SDPP process was not perfect, a perfect process and was here and there be revelled by inaccuracies. However, that does not take away the fact that the process followed, as informed by the pressing needs to, the pressing needs to acquire armament in its fulfilling the said Constitutional obligations, mentioned here above was rational.

Similarly, in the Pepco case, the judge held that recognition of a material mistake of fact, as a potential round of review, obviously, has its dangers. It should not be permitted to be misused in such a way, as to blur far less, eliminate the fundamental distinction in our law, between two distinct forms of relief, appeal and review.

And I proceed to the sections that are highlighted. It would not be possible to review and set aside its decision, merely because the reviewing courts considered that the functionary was mistaken, either in its assessment of what things were relevant or in concluding that the facts exist.

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If it were, there would be no point in presenting the time honoured and socially necessary, separate and distinct forms of leave, which [indistinct] of appeal and review provide. The ultimate question in a review of administrative action is whether the decision falls within the

5 bounds of reasonableness.

It does not appear that the government officials failed to meet the test, when consideration is taken on the novelty of the SDPP's, the funding thereof and the procurement process that followed. Important in the context of the present enquiry is the requirement of prejudice. The

10 question is whether the public or any person would be able to raise prejudice on the procurement of the armaments.

Mr Donaldson and Mr Manuel were able to show that the overall expenditure or social and development issues (the bread and butters) were not affected by the procurement of the SDPP equipment. This

15 also includes the budget deficit, which, at one time had a surplus.

According to Mr Manuel, the defence budget is clearly below the international norm, at about 1.5 percent of the GDP. General Shoke, the Chief of the South African National Defence Force has testified on the overall benefits, in the use of the current equipment and that, in fact,

20 more is needed.

Where in administrative law, a decision maker relies on both permissible and impermissible reasons for acting, Baxter administrative law is the authority. At 521, it postulates the following review test. It is submitted that the test might be better formulated in the following way:

25 *"Would the authority, had it not been actually dent by bad reason or*

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reasons, have reached and being legally entitled to reach the same decision upon that basis of the remaining permissible reasons. The question is hypothetical and its answer involves some speculation. Nevertheless, by characterising it, in this way the public authority is not

5 *penalised for insignificant errors, when it would have reached the same decision anyway. If permissible, reasons for the decision exist and they would still have dictated the decision. No prejudice has been suffered.”*

The approach, advocated by Baxter accords with the approach adopted in the event of a finding of a gross irregularity on review. We refer to the

10 case of SA Veterinary Council at paragraph 40. It was held that:

“In such circumstances, the proceedings can be saved, if it is apparent that despite the irregularity, the applicant was not prejudiced, because the finding would have been the same, if the correct approach had been applied.”

15 It is further apposite to mention that all the, that the allegations made, by Crawford-Browne against Mr Manuel and the SDPP procurement were the subject matter of the court in the [indistinct] case. We submit that the court had the opportunity to consider the rationality or otherwise, of matters relating to the SDPP's in particular, the following findings of the

20 court [indistinct] known to you, at paragraph 46 thereof.

Applicant's charge of irrationality is squarely based upon the existence of the warnings, contained in the affordability report. These warnings must, however, be read in the context of the document as a whole. They are contained in a report, which purported to provide

25 advice to government in regard to affordability of the proposed

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acquisition.

The object of the warnings in the report is to bring possible negative consequences of the decision to the attention of the decision maker. The thrust of the warning is not to advise the decision maker to desist
5 from concluding the transaction in question.

The real thrust is to inform the decision maker what risks to take into account, if he proceeds with entering into the loan agreements. Other elements of the report are quite positive, for example the comments or the method of financing, referred to in paragraph 24 above.

10 It is relevant furthermore, that the affordability report (were the warnings of course) was before Cabinet, when it took the decision to acquire the arms in question. It must be accepted, therefore, that Cabinet approved the acquisition with full knowledge of the wrong, of the warnings.

15 In this case, second respondent said that he did apply his mind to the affordability report, including the warnings. It is trite law that the test on review is not whether the court agrees or disagrees with the decision in question. The question, when rationality is the yardstick, it is whether the decision is so irrational that no rational person would have taken it.

20 By maybe focussing on the warning, on the warnings, applicants have not established such irrationality in this case. I am accordingly of the view that there is no merit in the review of the warnings. We submit that the basis of the findings in Eca Supra will find application in respect of the rationality of the decisions, taken by the government from the
25 formulation of the white paper to the decision of the Cabinet to purchase

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the SDPP equipment.

In particular, after Mr Browne and his co-applicants' for leave to appeal was dismissed by the High Court, the Supreme Court of Appeal and the Constitutional Court on the 17th day of May 2004, 18 August 5 2004 and 3 December 2004 respectively. There is no basis, in our view, for the Commissioners to find that the SDPP process did not meet the rationality test.

However, even if there may have been a material irregularity, still, that does not justify the cancellation of the SDPP agreements. In 10 particular noted, the period of time that has lapsed since the acquisition of the equipment, in fact, the Commissioners can take judicial notice that the Department of Defence is currently busy with another defence review.

It is appropriate to mention the remarks of Scott JE, the chairperson 15 standing Kenda Committee and others case.

"In appropriate circumstances, a court will decline, in the exercise of its discretion to set aside an invalid administrative act, as was observed in the Oudekraal Estates case. It is that discretion that is cause to judicial review, it is essential and pivotal role in administrative law, for it 20 constitutes the indispensable moderating tool, for avoiding or minimising injustice, where legality and certainty collide. Under the Rubik of the second, I would add considerations of pragmatism and practicality. In my view, the circumstances of the present case, as outlined above are such that it falls within the category of those cases, where by reason of 25 the reflection of time (in intervening events and invalid administrative

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act) must be permitted to stand.”

Conclusion and recommendations. We noted that some of the witnesses, who have written extensively on the SDPP process and its alleged irregularities, despite having made written submissions to the

5 Commission declined an invitation to do oral evidence.

However, we submit that, on the basis of available evidence, both documentary and oral, there is no justification to make a finding that the SDPP process was irrational. That concludes our submissions and statement, Commissioners.

10 CHAIRPERSON: Ms Ramagaga, thanks a lot for the submissions. They are quite extensive and I am sure they are going to be helpful to us, when we, when we prepare our report. Thank you.

MS RAMAGAGA: Thank you, Chair. I believe there is, the next person to present the submissions would be Dr Young.

15 CHAIRPERSON: You are right, you are. Thank you. You are done. You are done.

MS RAMAGAGA: Thank you, Chair.

CHAIRPERSON: The next person is Dr Young, who is going to make submissions. I am not sure, Dr Young, whether you want a five minutes
20 adjournment to arrange your things. Or are you in an position to kick off straightaway?

DR YOUNG: No, Chairman. I need as much time as I will get. So I will take the, I will use those five minutes. So, sorry, no. I just wanted to say, I certainly would like to start now. I have, I am in the process of
25 changing my flight from quarter past six this evening, until nine o'clock,

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so that, first of all, not to give me extra time, but hopefully, I will not put myself under pressure. But, also, it should give enough time as well, for the DoD to start their submissions as well.

CHAIRPERSON: Dr Young, I did not quite follow. Are you saying you
5 start now or you are going to require five minutes or so to [indistinct]
onto your things?

DR YOUNG: No. I am quite happy to start now, if you would like. The
main point I just want to make is, I think, I was the limiting factor. I live
in Cape Town and I did not want anybody to think that there is undue
10 time pressure because of me and I subsequently changed my flight to
much later this evening. So, I can be here, until six o'clock this evening.
So, I just wanted to make that point.

CHAIRPERSON: Maybe, ja, I understand you can be here, until six
o'clock. However [indistinct] they told me, during the tea break that
15 resulted that we are here, until six o'clock. So, we might have to
adjourn much earlier than six o'clock.

DR YOUNG: That is fine by me. Okay. I have been listening to three
teams of evidence leaders, since yesterday. Of course, I had to take my
queue from what I have heard. I probably have to state that I am not
20 experienced in giving arguments in, whether it is in court or quasi
judicial proceedings like this. But, what I am going, the basis of my oral
submissions are also going to be slightly, slightly different to what I have
prepared in the last two or three days, because, partly because of what I
have learnt in the last couple of days.

25 But, my understanding was that all the parties, evidence leaders and

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interested parties, would prepare written submissions and then there would be supplementary written submissions. Effectively, that would be like the founding, the founding and then the answering and then the reply.

5 And the oral submissions would mainly be in terms of reply. But, that does not seem to be what I have heard so much. So, what my submissions are going, my oral submissions are going to be is a brief introduction of my written submissions, but not too much of that.

Then, answering statements, based on the written submissions that I
10 received from the parties. That will be the bulk of my oral representations or submissions. Of course, I am not quite sure how one is going to handle replying statements, but be that as it may, for the moment.

By way of introduction, of course, I was subpoenaed, summonsed to
15 the Commission as a ...[intervene]

CHAIRPERSON: I am sorry, Dr Young. If you do not mind, can I help you? I think, the first eight pages, it is your submissions. We do know the background, how you came here, what treatment you have from the evidence leader, how you discussed with the evidence leader.

20 The purpose of the exercise to, is to analyse the evidence and make presentations, in other words, telling us how, in your view, we should write our report. Not to start with the history of how you started with the first evidence leaders. I have looked at your statement.

The first eight pages seem to deal with that. I think, where you start
25 making submissions, relating to the evidence that has been presented,

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you start on page 9. If you do not mind, we have seen the first eight, the eight, first eight pages.

Do you mind to go straight to page 9, where you deal with your evidence? Because the first few pages, you are not dealing with your
5 evidence. You are telling us how you contacted, you were contacted by the evidence leader, where you consulted with them, how many times and so on.

That is on record already ...[intervene]

DR YOUNG: With respect ...[intervene]

10 CHAIRPERSON: [Indistinct] that you know, we have this, we have these first few eight pages. You start with page 9, because page 9 is where we deal with the crux of what we are supposed to be doing today.

DR YOUNG: With respect, Chairman, I was not going to address that
15 at all, at all, in my oral submissions, at all, nothing whatsoever. But that was relevant, as an introduction to my initial written submissions. So, I was not even, I was not even starting off on that point at all.

What I, by way of introduction to my oral submissions, I did not want to refer to that. I was going just going to say what, where my evidence came from and put in the context of my responses to the written
20 submissions of the other, the other parties, specifically, the most important one, from the outset of course, is those of the Department of Defence.

So, okay, basically, what I would say, I was, just by, you know, to say I was subpoenaed to the, as a witness and I gave extensive evidence in
25 March. It consisted of 237 pages of witness statement. It included

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about 7 500 pages of documents in the evidence bundles.

In terms of these submissions, of course, it starts of with written submissions, which of course, are quite new and I will only be addressing those very briefly, by way of summary, just as the other
5 evidence leaders have done. They primarily concentrated on the initial written submissions and not as answers and replies.

But, it consist of two written submissions, a 70 page document, which I submitted to the Commission last Thursday, as well as an 11 page response to a specific request from the Commission, in response of, to
10 Bowman and Gilfillan's letter, to the Commission, copied to me, inviting me to make responses. So, then, basically my written submissions consists of an amalgam of those.

I am saying this in this in the context of what I am going to addressing in respect, in answer, using the correct legal term, hopefully, to my
15 response to the DoD's and other parties' written submissions thus far. Effectively, my written evidence, from my appearances in March culminated in eight days of evidence in chief and four days of cross-examination.

Why I am saying that, it was very, very comprehensive. Okay. All of
20 that was backed up by 15 000 of formally, not only discovered documents, but produced documents to the Commission. My understanding of the law and, of course, I am only an engineer and not a lawyer, is that written evidence, certainly in the evidence bundles, I am not quite sure about documents produced for the Commission, is also
25 evidence produced for the Commission.

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So, I am just saying, in terms of the totality of my evidence, what it encompasses. Okay. I am going to be addressing a number of different themes, just as I did in my initial evidence in March. But, maybe, by way of, in terms of answer, it is appropriate to start off, specifically, if I
5 am going to be addressing, mainly the Department of Defence's submissions.

By the way, they have addressed my own initial evidence in March. They have used the terms ...[intervene]

CHAIRPERSON: I am sorry, Dr Young, let me try and understand
10 what you, or how do you want to approach your oral submissions. Are you going to deal with written submissions that you have given us? Or are you going to deal only, with what you call a reply to DoD's written submissions?

Because if you are going to do, to deal with both, I was going to
15 suggest that maybe first deal with the statement. Lunch time, I was going to make us copies of the, of what you call, a reply to DoD's submission. It will be much easier for us to follow, if we do have copies of your reply.

DR YOUNG: Sorry, Chair. Unfortunately, I need to make the
20 observation that that is clearly impossible. We have all, at this stage, submitted initial written submissions. My understanding is that then, there would be effectively answering submissions, which is effectively going to be the bulk of my oral submissions today.

So, my initial written submissions of, as I said 81 pages, they are self
25 standing, as my initial written submissions. Most of my response today,

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are going to be a brief, not a comprehensive, you know, line by line analysis of the written submissions, of, effectively can one call it, in a, of my opponents.

I do not have, you know, written supplementary submissions for that.

5 That is what I am dealing with here, on oral evidence.

COMMISSIONER MUSI: I am just trying to establish. You do not have any written reply. You are going to read from your notes, or from your computer.

DR YOUNG: Yes, exactly, Commissioner. I have the DoD's and other
10 parties' written responses and I have made notes on those. Just remember, I, to be put in perspective, I only got those later on, the first tranche, very late on Friday afternoon, the second tranche at two o'clock on Saturday morning.

So, it is absolutely impossible that I could have produced
15 supplementary written submissions, in answer to those. So, I have made notes. I have written notes. I have made notes on my computer. If I may, if I may, from my own perspective, is actually make the statement that my submissions here are more advanced than some of them that I have heard, for the last two days.

20 I am not going to be traversing in great detail, where there is already in writing. I am basically going to be responding to other parties, to other parties' written submissions. If one thinks about it that, you know, if we were not, if we were only dealing with our own written, initial written submissions, when would we get the opportunity of providing answering
25 submissions and especially replying submissions?

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That cannot possibly happen, in the time scales that I have heard, you know, between now and next Tuesday. I do not see an opportunity of us, coming back here, or providing other written submissions. So, I intend to deal with that, in the time that I have today.

5 COMMISSIONER MUSI: Can I just get one clarity? You are comfortable that we have read your written submissions and you are not going to go through that, instead, you are going to focus on your replying submissions. Is that correct?

DR YOUNG: Well, you said are you comfortable, I am trying to be
10 pragmatic. Of course, I would be far more comfortable, if I addressed all of my 81 pages of written submissions in great detail. But, I do not think that that is necessary and not a maximisation of the use of time, sitting here, before you.

I think I actually heard the Chairman, in response to the attorney
15 Ramagaga, you know, we have read the written submissions and so certainly, I would hope that the same would apply to me. If they exist, everybody has them and you have got them, they stand.

I do not think there is anything that I want to change in my, so but I, of course, I did not say I only, exclusively want to do answering. I wanted
20 to summarise just the most important points of my written submissions. Typically in, I will not say 10 minutes, but say, 10 percent of the time that I use, analysis or summarisation of that, especially as an introduction to my answers to the other parties' written submissions, if that correctly answers your question.

25 COMMISSIONER MUSI: No. I do not follow what you are trying to say.

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Are you going to go through your written submissions? Or are you going to leave for us, because we have read them and you are going to focus on your replying submissions. Which one of the two are you doing? Are you going to first go through your written submissions? Or
5 do you leave that, in the knowledge that we have read them? Instead, you are going to focus on your replying submissions.

DR YOUNG: I am only going to provide a brief summary of my written submissions, brief summary, mainly as an introduction to the context of what I would call, not replying, but answering submissions, which I am
10 doing orally. So, I am not going to be going through all 81 pages, line by line. I am just going to outline the themes of, thereof and specifically emphasize important points, on which I can hook my answering submissions, which I am now doing orally.

COMMISSIONER MUSI: Thank you.

15 DR YOUNG: Okay. I think it is necessary and this is not to be confrontational, but from what I have adduced for myself in the DoD's written submissions that my evidence in their summary is characterised by arrogance and dishonesty, in the use of words, such as pilfering and preposterous. I certainly hope that none of my evidence that I gave in
20 March is characterised by that.

I certainly would like to concentrate on answering those, if one calls them allegations. I think, it is typical in argument, certainly, in the limited legal experience is that normally one's legal representatives counter those kind of statements, in written argument, including written
25 argument for submission in oral arguments.

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But, that is by way of introduction of what I propose to address. In my own view, is that my evidence, my 12 days of evidence in chief was measured. It was accurate. It is not characterised by any level of dishonesty whatsoever.

5 In fact, even that statement of arrogance and dishonesty are bald. I cannot see any evidence of that, whatsoever. But, and of course, interestingly enough is use of the words such as pilfered, which is very close to the meaning of larceny, which is something that came up in my cross-examination.

10 I would like to say that as an introductory to my, what I will be covering in, coming up. Be that is it may, another very important thing, from what I can remember, the instructions to the parties, preparing written submissions is the point of admissibility of documents.

Of course, a great period of time in my initial evidence was in respect
15 of the German reports. I would argue the admissibility thereof. Of course, coming up, after me, as a witness was Colonel Johan Du Plooy and I was, of course, gratified and pleased, of course, that he submitted those, the copies, exact same German report.

I only got that evidence from Colonel Du Plooy's evidence not that
20 long ago at all. I am unaware that in that particular session of evidence that any rulings were made that those reports were admissible. So, in terms of my own argument, the three German reports that I ventilated at some degree, especially the first one, are indeed admissible.

Certainly, if not for normal, let us say normal courts of law, in quasi-
25 judicial proceedings, such as this that they are certainly admissible for a

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Commission of Inquiry. Of course, that was covered extremely briefly, in Advocate Sibeko's submissions. Of course, I think, I would have to agree that it is up to the Commission to interpret my own interpretation of those German reports.

5 I mean of course that is, you know, what I am asking the Commission to do is to admit those German reports. I do not think it was as contentious, but I also brought up other documentary evidence of a similar nature and that was in the second session of my evidence in chief, what I call my extended, my extended evidence, which was the
10 last week.

There was a gap, where I was away in between. That mainly was in regard of my response to Advocate Fana Hlongwana's evidence and involved equally, the issue of British Aerospace and SAAB. There I adduced into evidence, at least nine, I think it was affidavits.

15 Sorry, sorry, not affidavits, transcripts and evidence under oath that emanated from the Serious Fraud Office, as well as of similar number of documents. I would submit that certainly, for the purpose of this Commission that those documents are equally admissible. I certainly have not, I am not aware of there being any applications from other
20 parties that they should not be admissible.

But, of course, certainly, in terms of the most important part of my evidence, which is corruption, that my evidence stands, not only on, but certainly, partially on that evidence. So, that is something that I am making in here, in submissions.

25 Of course, another very important leg of all of my evidence, regarded

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the responses to the Department of Defence's primary witness, certainly, as regard, regarding my own involvement. Of course, they had a lot of important witnesses. But, that, in my, in my context, at least, the evidence of Rear Admiral JEG Kamerman was particularly
5 relevant.

I have addressed quite a, his own evidence to a extensive amount in my written submissions. I also wish to address some of that in my answering submissions. I think, you know, when I use the term of baldness, there is so many submissions, made by, or averments, made
10 by Admiral Kamerman, in his own evidence that are simply not only unsupported, but are completely wrong.

One has to be very careful, I know, of use of terms like lying. One can make mistakes. But, there are so many of them that is, unfortunately, and I have gone through these, in my written
15 submissions, that are just so outrageous and so wrong and supported by nothing, by nothing whatsoever.

That that is an important part of my oral submissions here that I have heard the term, in the context of Admiral Kamerman's evidence that it is stubborn, stubborn evidence. Unfortunately, it cannot be taken as
20 stubborn. Or certainly it, everything that he gave in evidence, certainly just cannot be accepted as fact, based on his say so.

That being said, as I have outlined or put in point form at least, many different points that are just completely, completely wrong. I never had enough time to ventilate or to do detailed research into every bit of
25 evidence that come up, through this Commission and [indistinct]. But,

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that is just a sample of the things that are completely wrong.

Of course, there are many others that are, only constitute half truths and similar. But, in my view, where my evidence is, in opposing his own and there has not been hard core stubborn documentary evidence, then
5 I would submit that my evidence, where I have provided documentary support, for my averments or statements have to actually take precedence over that.

I think I need a quick break for water and a gathering of my thought. Okay. Possibly, I need to, of course, I have made [indistinct] from
10 notes. I have tried to put this in a logical way. But, it might, it is not as jointed, as I would like it to have been. One of the fundamental things, related to the German reports and the DoD submissions, in the simple writing off of those reports, is they state there, in their submissions that my, that these submissions and my evidence in that regard, is that these
15 were unauthored reports.

Okay. It is clearly, that clearly cannot be correct. First of all, all the reports, as we know, had the, they were not written on the German investigation reports' own stationery, because they were written in word. But the clearly emanated from the German investigating authorities in
20 Düsseldorf.

I, in my own evidence, I specifically said who that, the chief, the commanding officer, Andreas Brünns, that is my own evidence. I think, that came up in the evidence of Colonel Du Plooy, as well. Okay. But, a very important thing, regarding the actual author of that, which
25 contradicts the submissions of the Department of Defence, is that

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Colonel Du Plooy submitted those exact same reports.

But, he obviously got slightly different versions of them and that is the physical author of that. It is somebody called, I think it is Leova Perovsky. It is a woman and she is a detective inspector of the commercial branch of the Düsseldorf police. In Colonel Johan Du Plooy's evidence there, not, I am not quite sure whether he ventilated this in his oral evidence, but certainly in his 2 588 pages of adduced witness bundles, Leova Perovsky's evidence, documentary evidence attributable to her, comes up numerous times.

10 But, each of those reports comes up, as being written by her. It does not have her signature on it. But, it certainly got her name on behalf of what, at least I can remember, the English translation of the detective chief inspector, I think is, of course, what was [indistinct] on behalf of the commanding officer of the unit.

15 CHAIRPERSON: I am sorry, Dr Young, I am not quite sure, whether can you [indistinct] who the author of those documents was, because if I recall, he would not even tell us, where he got those documents from. You said that he might have received them even from you. He mentioned there is a possibility that it could have been anyone, who
20 provided him with those documents.

DR YOUNG: With respect, Chair ...[intervene]

CHAIRPERSON: Maybe, can you just respond to that one, whether will that be the correct position or not?

DR YOUNG: With respect, Chair, that was not the point I was trying to
25 make. In fact, I said, I was not sure whether this came from

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...[intervene]

CHAIRPERSON: Dr Young, I am not saying there is a point that we are trying to make. There is a washing that I have got to do. I am not saying this is the point that I have mentioned, that you are making.

5 DR YOUNG: Yes. What I said is that the documents that were submitted, by Colonel Du Plooy include the three reports. Those three reports, in the evidence bundles have the name of the author as Leova Perovsky. So, that, and that is not necessarily, in his oral evidence, which of course I was not here.

10 But, I have read the transcripts. I certainly know the issue of the reports was ventilated. I think, mainly in cross-examination. But, that is not the point I was trying to make. Is the reports were adduced into evidence and her name appears in the copies of those reports.

Okay. You, if I may carry on. The point of, where the, the source of
15 those German reports is a different point. But, I am glad you remind me. I was address that slightly differently. But, it is, it certainly is an appropriate point, is that the DoD's submissions indicate, state that the source of these reports is unknown.

Okay, certainly what I can say and this is not giving evidence,
20 because this was my evidence that those reports did not come to Colonel Johan Du Plooy or his protect team from me. It is quite clear from the evidence of Colonel Du Plooy that they had those report, or certainly, the strong inference of them that they came in 2008.

My evidence there was I got them in the first quarter of 2010. So, it is
25 100 percent impossible that the Directorate for Special Operations could

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have got them from me. Okay. I think, I would be repeating my evidence, which I think is fair, in terms of submissions that I did not get, that the DSO did not those report from me.

I got them independently from different sources. So, it would be
5 incorrect for the DoD's evidence or submissions to at least, leave the impression that that could have come from me. They did not. The time, the chronology makes that very clear.

In terms of Colonel Du Plooy's other evidence, there is a document, submitted by Leova Perovsky, which is a clear communication with the,
10 probably the [indistinct] team, which consisted of Advocate Downer and Colonel Du Plooy. This is in late 2008, where she specifically refers to reports and information that she had supplied the, the project [indistinct] team.

Okay. So, it is impossible that I could have done this in 2008, when I
15 only came into possession of them in the first quarter of 2010, certainly, Colonel Du Plooy's evidence, including that, under cross-examination does not provide the slightest inference that they did, it could have come from me.

I know for a fact that the, and that was my evidence. It is not like I am
20 giving evidence that the, that the DSO in fact, I had them, by the time I met Colonel Du Plooy is then used by, in the employ of the police, the Directorate of Priority Crime investigation unit.

What, I think it was my evidence that I met him before, before I came
into possession of those German reports. I see, it is two minutes to one
25 o'clock now. It would certainly help me and probably help everybody

else, if we did have the lunch now, which I will not use for eating lunch. But, to possibly align my oral evidence slightly more effectively. So, if it suits the Commissioners, this might be a good time to break for lunch.

CHAIRPERSON: It is two minutes to one. I think, let us take a lunch
5 adjournment then, until 1:30. Can we try and make sure that we start at 1:30? Unfortunately, the evidence leaders are not now involved. I am sure we should be in a position to start exactly on time, after lunch. Thank you.

COMMISSION ADJOURNS

10

COMMISSION RESUMES

CHAIRPERSON: Thank you.

DR YOUNG: Would you like me to start, Chairperson?

CHAIRPERSON: You may.

DR YOUNG: Okay, thank you. All right. I think I just need to finish off
15 the theme on the German reports very quickly. A note that I made for myself regarding the origin of those reports, involved a quotation from a document, in fact an email by Adv Anton Steinberg, [indistinct] in an email I think to his colleagues, dated the 19th of August 2008, where he says "Wow, this stuff is absolute dynamite." Anyway, I know from that
20 that at that stage they were in possession of those reports, basically at that early stage.

Another relevant point is in the DoD's submissions, they referred to my evidence in the context of relying on pilfer reports. Quite exactly which ones those were I do not know, but if it is in the context of the
25 German reports, as I said that word pilfer is not that much different to

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[indistinct], but it means steal, typically of things of relatively little value. Certainly, my submissions will be that financially those German reports, first of all, were certainly not pilfered. But also, they were also certainly of no great financial value. But, what they were of is extreme value to
5 Project Bomiproteria, and indeed my submissions to the proceedings of this Commission.

In emphasis of that, is that clearly the DoD wanted to I submit make representations why those reports should not be admissible. The only reason for that is by clear dint of logic, is because of their
10 enormous value to the work of this Commission, and of course to my own evidence. They are one of the independent, independent from this country, recordance of investigations which came about oversees into this very matter of corruption, specifically regarding the Corvette platform. Of course there are a lot of ancillary factors that came out of
15 that.

Now, of course I am fully aware of a couple of things. I gave that evidence myself, which is not in a court of law whether it was civil proceedings or criminal proceedings is not the best, but there is this concept of which I am aware of, best evidence. To this particular
20 Commission it was good evidence, and certainly getting towards the best evidence in that category at least, of corruption involving, if not the highest levels of Government, certainly an extremely important role player who our country [indistinct], is the Chief of Acquisitions.

Certainly their reference to the \$3 million bribe for Chippy Shaik
25 and a group represented by him, as well as the other \$22 million bribe

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that is of particular relevance and importance. So, there is no wonder that there were efforts made to suppress that evidence. But, I would, if the right word is beg, or I think my prayers would be, my legal prayers are that they are taken into the balance of things, those German reports.

5 CHAIRPERSON: I am sorry, Dr Young. You are saying that, you know, higher [indistinct] could have been involved. Where is this [indistinct] you are referring to? You said that document refers to Chippy Shaik and possibly higher political office bearers. Who are you referring to?

DR YOUNG: Sorry, maybe I mumbled, but I said that maybe not
10 referred to higher level of ministers of Government, it is certainly to important. So, I do not think that the German investigating reports referred to high levels of Government. I think that... Anyway, that was not the point I was trying to make, it is mainly [indistinct] important decision making. It was the other German documents which was their
15 mutual letter of assistance agreement, what I would call the Embandla dossier, which refers to various levels of Cabinet. But, that was not the point I am making in respect of, I am talking about the admissibility here and why, that is a different point altogether.

If I may, before I start getting down to details, in terms of the
20 process, of course I was also requested to attend as a witness the Commission on the 21st of July last year, just for one day to give my evidence. I did not appear there for various reasons. But, I am trying to put this in the context of what I actually have done, my evidence before the Commission, and the responses I had from both the DoD and for
25 example the legal teams of specifically acting for Adv Hlongwane, as to

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a degree the Inter Ministerial Committee, of course.

Anyway, on that day some kind of document was read by Adv Ndumbi into the record, so it is part of the record, and I think it is relevant, at least to [indistinct] at least the extent, not necessarily the
5 quality of my evidence, but certainly the extent thereof and what I tried to set out to do. Maybe it needs to be in the context of what he said is, Chairperson, it is a simple principle of law that he, or he who alleges must prove, but then goes on to say all that is needed from him, that is me, by this Commission is to repeat such allegations formally here, in
10 public.

Certainly, I think I have grant a huge further net. I have not just made allegations, and whatever I have done was certainly not [indistinct], they are extensively backed by documentary evidence and to all the extensive documents which I submitted in terms of my discovery,
15 as well as the evidence bundles. I cannot quite remember on me relying on documents of my own. Of course, some people can say that is a weakness, certainly in terms of documents of which I was prevue in terms of the greater process, certainly involving the Corvette Combat Suite specifically. So, my evidence has got a certain amount of weight,
20 because it derives from other sources other than my own say so.

But, nevertheless, I went to, you know, mindful of the imperative to prove, I went to great deal of length to actually prove in the context of the Commission of Inquiry, not necessarily in a court of law, the allegations or aspersions or averments that I was making. But, of
25 course I think it is a very interesting legal question, is what where my

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obligations. Certainly I think I went further than them. Another point that came up in the DoD's cross-examination of me, is my repeated reference to the fact that I had no burden of proof in these Commission inquiry.

5 My point of departure for my evidence was to bring what I had, and to tell the truth, the whole truth and nothing but the truth. So, that I tried to do in the best of my ability, and the constraints regarding the true shortness of time. Now of course, regarding the German reports, it would have been far better for me if I had some kind of power, as being
10 a prosecutor or a private prosecutor, which you can be, or for the civil courts as being a plaintiff, I could have done [indistinct] to actually bring the authors of those reports to this country and testify. But, I do not think that was my obligation and my responsibility in these particular proceedings.

15 So, just as Colonel Du Plooy had relied on those copies of the German reports, so did I. But, there is no divergence, so I would submit that that is complete authenticity of those reports, and complete relevance, in fact, not only relevance, but importance and weights of those reports.

20 Another thing in terms of process, it comes up in the DoD's written submissions as well, is the manner in which I approached part of my cross-examination, and that I refused to concede in various instances, of which I think are very few. But certainly, the point that I brought up in that context, is a concept of adversarial versus
25 inquisitorial. I specifically made that point, and I think the Chairman

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asked me to give evidence, factual evidence, and to leave that point. I think that is a relative point in submissions.

I think I heard, I supposed I am not entitled to use the term “my learned colleague”, but Adv Sibeko I think I heard him referred to, or
5 certainly one of the evidence leaders, is that the process was meant to be inquisitorial. But, if I may say so, certainly the manner of my cross-examination I experienced as completely adversarial. But in that context, I was also surprised that one of the points Adv Kuper made, was in response to my complaints of being confronted, in fact I used the
10 term ambush, of bits and pieces of evidence right there and then, fits into this concept of adversarial versus inquisitorial, as well as of the process.

Now, on two instances at least, in fact I think there were three, but two instances I can remember which form part of the DoD’s
15 submissions, one involves not conceding in the face of documents, and the other one was my allegation that a document that had just been placed before me could be fraudulent.

Now, to be honest, as a witness, as a lay person, I am surprised by that, is that Adv Kuper’s response there was that I was not entitled,
20 and the cross-examiner was not obliged to provide any advanced visibility of such documents. Maybe that is true, and I do not know the law, so I am not going to make a statement in that regard, but regarding the greater process, despite me discovering all these documents, not just discovering and producing them, and of course I accepted the fact
25 that my request for a reciprocal process of full discovery by both the

DoD, ARMSCOR was turned down.

Be that as it may, there is another process of getting documents and I certainly listed not only all the documents that I wanted, but of course it was well known, the themes in which I went to present
5 evidence. Of course, so well known was it that in July 2013 I actually produced a pretty extensive, albeit a draft witness statement, to backup my request to cross-examine one of the ARMSCOR witnesses, Frits Nortje. So, that was all very well known.

But, certainly documents in those themes were only presented to
10 me in cross-examination, so my responses there certainly cannot be considered as evasive or dishonest or [indistinct] or whatever other terminology has been used regarding the DoD's responses to my own evidence. Those cannot be correct. But anyway, I think as summary of that statement, there can really be no negativity attached to the way that
15 I presented my oral evidence, and specifically my cross-examination in that respect.

Okay. I think, of course as I have said before, the weight, the mass of my response, and I am not going to be all that long, I do not want to keep the Commission here until 18:00, it involves my answers to
20 the DoD's ones. But of course there are a couple of other ones from the other parties as well. Maybe I should deal with those first, maybe working as a kind of last in first out kind of principle.

Going through the written submissions of the Ramagaga team, I hope I have got the pronunciation better than last time, is just a small
25 point that I want to make, a very small point which also relates to my

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other evidence, and that is that that team, Adv Ramagaga, is on their page 76 and 77, they list the members of the Ministerial Committee, which includes the Minister of Public Enterprise, minister Jeff Radebe, but it does not include the minister preceding him, which was Minister
5 Stella Sigcau, hopefully I have got that pronunciation reasonable at least.

But, that does specifically relates to a couple of points. She was a minister, she was not a Deputy Minister like Ronnie Kasrils, she was a full minister and a member of the Inter Ministerial Committee, I see is
10 the terminology being used. But, that relates to an extremely important point of corruption, and I might as well finish that point if I can. If I have to come back to it, it will only be because I just remembered something extremely important.

But anyway, she was a Minister of the Cabinet and she was a
15 member of MINCOM, and my clear evidence is that British Aerospace paid large amounts of money, at the minister's request, to accommodate her daughter, Portia Imzabela, and her two daughter in the United Kingdom, I think it was for a period of three years, to include her accommodation and education. That would be a lot of money, certainly
20 the threshold, the sort of magic figure of wrong doing is R500 000, I am sure it will exceed that. It is certainly a very, very small potato if I say so myself, in the greater scheme of things, but it is firstly clear evidentiary evidence. I do not think it was controverted in the slightest way in my cross-examination. I have not seen it referred to in the written
25 submissions of any of the parties, so as far as I know, my knowledge as

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little as it may be, is when evidence is not controverted and I gave contrary evidence, that my evidence stands. So, here is an instance, however small it may be, but still significant, of a minister receiving a unlawful, I am not sure whether one could bribe it, I think that bribery is
5 a lay term, the correct legal term is corruption, I think I would put that in the context of corruption. Certainly, the documentary evidence which I
10 educated at great length, both in the first session of my evidence, the first two weeks, [indistinct] is backed up by documentary evidence emanating from [indistinct], a specific person individual who was the
10 Regional Managing Director of British Aerospace, Alan McDonald, who was responsible at least up until the down select phase, British Aerospace Technology. So, it was about January 1999, so the process going from 1995 to 1997, he... [intervene].

CHAIRPERSON: I am sorry, Dr Young. Can I just try and find out from
15 you, at the time when they [indistinct] the Ministerial Committee took a decision to make certain recommendations to get at that, was late Stella Sigcau still part of the Inter Ministerial Committee, or not? Because I think decisions were taken at that time. Was she still part of the Inter Ministerial Committee or not, according to your information?

DR YOUNG: Unfortunately I have no response to this, now I think you
20 are taxing my memory, and it probably is not inappropriate at this stage to go and look for that, but she certainly was a minister. If I cannot answer that response absolutely directly, then what I do remember is that that decision was made on the 21st of August 1998, at the meeting
25 in Durban, and that was early, early days. But, I do not think that that, I

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am not trying to be argumentative, is absolutely imperative.

But the fact that it is recorded in these documents emanating from Alan McDonald, British Aerospace, that they were getting to down select that phase, and that the decision to select the Hawk and the Gripen, if I
5 may say, was not only based on their offer, which included of course Industrial Participation, there is a particular term again, I cannot remember every single thing that has happened, but based on, I think I am pretty sure it was Industrial Participation which fell directly into the scope of the Minister Public Enterprises.

10 So, I think that the evidence, and of course this is a summation of evidence as well, is clearly that the minister, whether she was minister at that particular snapshot in time of the 31st of August 1998, the point is her involvement had been key. I think it is a clear enough indication of ministerial involvement, and certainly the corruption, not necessarily of
15 Minister Sigcau, but of British Aerospace. That is the main point I want to bring up, is that is a clear instance of wrongdoing, which I would submit, if that is the right way of saying it, would amount to corruption.

Okay. I just need to gather my thoughts. Okay. So, I have talked about Minister Sigcau, BAE Systems, I also briefly mentioned Chippy
20 Shaik and the \$3 million bribe in this case by Tissen and the German Frigate Consortium, made by a member thereof, I think it is Tissen. The other one which I see in the Department of Defence's written submissions which get pooh-poohed, is the unfortunate [indistinct] positioning of the term preposterous, if that is the right pronunciation,
25 allegation. But, it is not preposterous at all, but certainly that is one of

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the allegations that I am making, which involve corruption.

There we are talking about a figure of 2.5 million Dutch Marks. Also, in respect of the evidence, the German reports specifically refer to this point, of them having done raids on the executives of Tissen, including the primary person here, Christoff Honings, and being in possession of the bribery agreement.

So, if the German reports are relevant, or admissible to these proceedings, then my allegations involving Yengeni, Tony Yengeni, are certainly not preposterous, they are not even bold. I did not just even Adv Ndumbi's prescription to me, as just make the allegations. I did go further than that. I referred to the German reports, and the German reports actually refer to them being in possession of this very same document, just as they are in possession of the Chippy Shaik, Christoff Honings, the same person, bribery agreement.

I did not only educe into evidence the German reports, but independently I educed the what I call, and it is not disparaging, the *Tutonic* Memorandum. I did that for a reason, because it is well known, common knowledge, common usage of the term [indistinct] French encrypted fax. This is a similar thing, and it is relevant, legally speaking, in terms of what is not called the Executive statement. I think I was also asked by the Chairperson that that would be relevant, not to mention that in terms of factual evidence, but in submission.

My submission is just as the encrypted fax was considered to be an executive statement in terms of the Anti-corruption legislation in this country, then certainly the bribery agreement referred to in the German

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reports, would be an executive statement, both in the context of Chippy Shaik and Toni Yengeni, I am pretty sure of that. But, the *Tutonic* Memorandum which refers to this bribery arrangement would also be an executive statement. That was submitted independently of the German reports. I certainly received it and we went to that to great deal, it was faxed to me from Germany. Of course, I know that independently it was received by the Directorate for Propriety Crime Investigation.

CHAIRPERSON: I am sorry, Dr Young. If I may just interrupt there. Let us assume we accept the contents of the so-called German reports, they talk about bribery agreements, they talk about the two briberies, one related to Mr Toni Yengeni and the other one relating to Mr Chippy Shaik. Mr Chippy Shaik came here and testified and said "I do not know nothing about that", and there was [indistinct] money. Mr [indistinct], who testified on behalf of GFC and JAC came and say "We know nothing about that. We looked at that type of payment, our books does not have that type of payment at all."

What should we do with the evidence of these two people? Then secondly, if we do accept what those German reports are saying, we do not have the agreements that they allegedly have. What sort of recommendation should we make as far as the criminality of the two people mentioned in those two reports are concerned?

DR YOUNG: Okay. I am not going to try to head my [indistinct], but I am being asked an opinion which is relevant for submissions as a lay person. I heard yesterday the reference to making factual findings, and of course that is also in the context of recommendations. I do not think

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based on the evidence that we traversed, including my own submissions right now, that one could actually make an absolute factual finding, because the relevant parties were not examined and cross-examined.

I think in the context of that, the simple logic as a lay person, and
5 natural logic has got a very, very important part of law, is that one could not expect either those two witnesses to have traversed that kind of evidence on their own volition. So, actually it carries no weight. Unfortunately, I do not think either of them were cross-examined and I could not do so, because I certainly could not assume the work of the
10 Commission and cross-examine Nortje and Kamerman and all the DoD witnesses and the German people and Thales people, whoever it is.

So, if one has to have the weight, the weight of my evidence, supported by the German reports in my own view, and my submission is, that that would carry more weight, but not enough weight to make an
15 absolute factual finding that these parties are guilty, because that is the absolute factual finding. But of course, in terms of recommendation, that there is relevance, and believable, credible, plausible evidence that something could have been wrong, and the correct procedure outcome is in the report, is to recommend an investigation. Okay, I am going a
20 little bit further, but I think this is a very fundamental thing when it comes to the Terms of Reference of corruption, because I think it applies to all of the legs of corruption that I have addressed, is that further investigation would have to be done by mandated parties, and I am not one of them, whether I am termed a busybody or whatever it is, is that
25 one would have to have mandated parties.

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We are getting back to the German reports, it was clear on this part of my evidence, as part of my submissions, the German reports and certainly the correspondence that went with it, saying “We are not going to be able to complete this ourselves.” The statute limitations comes in
5 in Germany in 2008, but we hope to engage with you because it does not apply in South Africa and we are prepared to collaborate. Unfortunately, as we also know from Colonel du Plooy’s evidence, is the MLA process did not come about.

But, certainly, there are at least the foundations of new MLA’s,
10 new collaborations between the German police and the South African police. My own understanding is, in terms of criminality, is those are statute limitation in this country.

CHAIRPERSON: If you do not mind, can I interrupt for the last [indistinct]?

15 DR YOUNG: Sorry.

CHAIRPERSON: You say that another agency must investigate. Which agency is that, or who must do that investigation? In our recommendation we must say to the President we suggest that the following agency must do another investigation. Which agency will that
20 be?

DR YOUNG: Okay, I am being asked for an opinion on the fly, and I will give it within my own capability. I think it has to be a criminal investigation. Theoretically speaking it could have been the Special Investigation Unit, but I think it is a criminal investigation because there
25 is criminality on both sides, which are the natural persons and the

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juristic persons are involved here. I cannot think in this country of a unit other than the Directorate of Propriety Crimes Investigation.

CHAIRPERSON: And that will be the unit to which Colonel du Plooy belongs, and that is the same unit which investigated for 10 years. So, 5 we must say to them that we must recommend that they must investigate for another four, five years, the same issues?

DR YOUNG: Sorry, Chairman, you are actually incorrect. The Directorate of Propriety Crime did not investigate for 10 years, they did not exist for 10 years. Initially these investigations were handled by the 10 DSO, where Colonel du Plooy used to work. I think that he only got transferred to the police in 2009, so they could not have investigated for 10 years.

There would certainly, with the weights, and this is not trying to score brownie points, the weight of the extensive work done by this 15 Commission, could certainly credibly and relevantly re-open an investigation. In all aspects the resources that would be needed by the Directorate for Propriety Crime Investigation, including mandates, including a resource, I am not talking about money and manpower, but the interaction with the Germans in terms of an MLA. Without that it is 20 all stillborn.

So, I would certainly, seeing I am being asked for my opinion, that is my opinion and I also do know that Colonel Jan du Plooy, he said, and I think it was his evidence, that he did not go further, I know he was challenged by this, because of a lack of political will. But, I think that is 25 part of my submissions as well. I think if this Commission could get over

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that hurdle, the lack of political will, that would be in my own view, if there is sufficient, I do not know of the right word, let us call it *prima facie* evidence coming out from the evidence of this, that would be the correct way forward.

5 Okay. The other main person whose evidence I addressed at some length, but of course not in the context of himself but primarily British Aerospace, is Fana Hlongwane, and there has been a response from his legal team. Of course I understand that those submissions, oral submissions will come up I think it is next week, as implicated
10 person. But, so far as to say for this and the evidence that I gave was very extremely truncated. I worked for a couple of years on my primary evidence where I am involved as a person, in the Corvette Combat Suite that was my main one, the Corvette to a lesser extent. But, I did deal with Fana Hlongwane's evidence in my extended evidence in the last
15 week, what I call the second session, which started at 09:00 or 10:00, and I was given a very directive to finish that part in two hours. So, it had to be very, very [indistinct], but I submitted first of all in oral evidence like two hours of a summary of the evidence from memory, and I referred to by name the document, 19 documents from what I
20 remember, which contained all this evidence. My understanding as a lay person, because I had unfortunately no disparaging [indistinct] all the lawyers here who have had some involvement with the law, is that submitted documents are in an entirety part of one's evidence. But certainly, those documents go a very, very long way to prove a deep,
25 deep involvement of all those parties involving not so much

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commissions, but covert commissions, which are definitely improper, we know that, because they would not be covert, [indistinct] overt and covert commissions.

Specifically regarding Adv Hlongwane, if I call him Fana
5 Hlongwane it is no disrespect, my understanding of his evidence, which I did go through fairly carefully, was that he admitted to his involvement with commissions and suppliers of the Hawk and the Gripen, only in respect of agreements that he entered into via his own companies, Hlongwane Aerospace if I can remember, and Hlongwane Consulting,
10 from 2003 onwards, and received a whole lot of commissions. I do not want to address that.

But, that was not the point I was really trying to make. It was mainly is that he had received commissions in a covert manner, indirectly via companies where he was the controlling mind, and that
15 was the companies West Unity, Business Limited and CIC, Commercial International Corporation I think it was.

Okay. But not only the covert manner, but what I would call [indistinct] triple arms length manner, where BAE were paying these covert commissions, and they used a very opaque method to pay a
20 special company called Red Diamond Trading Ltd, registered in [indistinct] in the British Virgin Islands. Later I believe an even more obscure company, a country called Panamar. All the covert commissions were routed by Red Diamond, but again, it was not only BAE paying this, they set up a special division called HQMS, Head
25 Quarters Marketing Services, that maintained these covert agreements

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with their covert agents, a whole bunch of them, but specifically in regards of Fana Hlongwane as well, but more particularly a company called Aresto Commercial Inc, through another registered covert commission agent, being I think Sir Alex Roberts based in Switzerland.

5 I did educe into evidence the transcript of the oral evidence, interviewed under oath with the Serious Fraud office, taken in Geneva in Switzerland, the only one done there, which that one he actually signed, unlike the ones done in the United Kingdom, it was signed. So, he gave the evidence under oath and he signed it, and that goes a very, very
10 long way to prove that he received about 10 million Pounds Sterling from British Aerospace via this very [indistinct] route, and a good half, 4.903 billion Pounds Sterling, which is a lot of money, was paid to Fana Hlongwane long before he became a commission agent directly through his own companies with British Aerospace. So, on his own evidence
15 before the Commission, diverged completely from that, and that is one of the founding things I wanted to make in that regard.

Clearly, similarly to Chippy Shaik and the GFC, is that nobody is going to implicate themselves in their evidence in chief. So, these things only come out in cross-examination at best, so I would say the
20 same context is at play here. Unfortunately I could surely not have been expected to cross-examine Fana Hlongwane on the 11th of December last year, when I was thick in the preparation of my own stuff, and I did know of course at that stage that Colonel du Plooy was still coming up. So, if somebody does make the statement, I will not call it an allegation,
25 that Fana Hlongwane was not tackled on this and did not produce them

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to evidence, I will say clearly, it is logical, he would not do so.

I was tackled by this in a bit of a slightly roundabout way by the legal counsel for Fana Hlongwane. I was tackled on this in a slightly obscure way that I had said that, and that I was paraphrasing Fana Hlongwane that he had said that I was only involved with British Aerospace from the year 2003, what was not what I was trying to do. I did not make an admission, I also did not tender an apology. What I did say, for the evidence and submission, is I said "If I said that, or if it was construed in that way, then I withdraw it." But, that is not the point I am trying to make now.

The point is, and the whole bases is the evidence that he gave to the Commission regarding his several millions of Pounds of commissions happened in a much earlier phase. Relevant to this as well, is my evidence was that from a very early time that British Aerospace came out to the country, and I do know it was very, very early, much earlier than 1997, 1998, is that Fana Hlongwane was the special advisor to the Minister of Defence, Joe Modise, and that was I believe from 1994, from the new Government in 1994 until January 1999 I think it was, it might be April 1999, but certainly 1999 which was after [indistinct] preferred supplier status in South Africa terminology.

Now, I do know that Mr Modise had resigned as the minister in July 1998, but Adv Hlongwane was officially in that position until much later, until 1999. I think there are two relevant points here. The evidence that I educed, certainly in terms of the written transcripts of evidence of those relevant BAE parties, and I mentioned them by name

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and that is not necessarily all of them, I think there were 9 or 10 of them, but certainly Alan McDonald, Stewart McIntyre, Neil Erving, McBeeth, they very clearly say when they came to the country, they got introduced to Fana Hlongwane as their man, their advisor in the country.

5 Now, that is not to say that they were necessarily paying him commissions at that stage. I think that the first commissions were paid in September, that we can record, September 1999, which was just before the contracts were signed on the 3rd of December 1999. Certainly, that is a long time before 2003, and the bulk of the
10 commissions that I am talking about that had been paid from September 1999 to 2001.

As relevantly, the evidence Fana Hlongwane gave, was that all the commissions he received were in respect of Industrial Participation, that the work he did for British Aerospace and [indistinct], where BAE
15 did most of the running for SAAB in terms of the Gripen, was in respect of the work that he did for National Industrial Participation. If one is aware of the documents, it is that clearly those payments were nothing to do with Industrial Participation, they were with the military aircrafts themselves, including the payments in respect of the tranches, as we all
20 know the Hawks and the Gripens there were three [indistinct] involved and there were extra payments that came in respect of the approval of the tranches.

There was another substantial payment, and I know it is not 100's and millions of Pounds, but is a significant amount of money in 100's
25 and 1000's of Pounds in respect of the VGS, the Visual Guidance

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System. My evidence is it was involved with the South African Air force's aircraft. In fact, we know that because it involved SAAB, so it could involve South African Airways, but that has nothing to do with NIP, that is to do with the equipment. So, again that evidence was incorrect.

5 The covert agreements which were kept in a strange place in Switzerland at a company called NovalMight in Geneva, unmanned secure venue far away from prying eyes in Farnborough in the United Kingdom, refer to the commissions in terms of percentages which was in respect of the South African Military Aircraft acquisitions, specific the
10 acquisitions of the military aircrafts themselves, not the Industrial Participation. In my view I would say that might have been relevant from 2003, because the bulk of the discharge of the National Industrial Participation did happen in that 2003 to 2010 era, but 2001 to 1999 specifically.

15 So, anyway, my submissions are that Adv Hlongwane's testimony was not correct, and that that is a relevant point of what the Commission Inquiry needs to do about that. Again, I suppose one can look at it in the context which you just brought up, Chairman, is what to do about it. But, if I may say so, and maybe being not bold but bold, is the
20 indications are that this is a very strong, I think Colonel du Plooy used the word indicators or red lights or whatever, it is a very strong red light of corruption. The correct way, in my view, is further investigations.

 I know it sounds shocking that after 15 years one has to have further investigations, but that would be the only correct way forward in
25 respect of these enormous amount of covert commissions that were

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paid by both BAE and very clearly by SAAB as well, let not that be forgotten. SAAB was fully involved in the approval of these covert commissions to all of these multi-various commission agents, the bulk of which was... [intervene].

5 **CHAIRPERSON:** Dr Young, if you do not mind, can I ask another question? Who should now investigate the alleged corruption, or corrupt relationship between Adv Fana Hlongwane and BAE? Who should do that, because with all [indistinct] in this country did their investigation? They followed that [indistinct] in this country, two of them came and
10 testified and said despite the fact that there was that investigation for 10 years, they could not find any proof of [indistinct]. They then made the recommendation that the investigations relating to BAE and GFC must be [indistinct]. So, if you are saying that there might be a need to do another investigation, who should do the investigation?

15 **DR YOUNG:** Well, I cannot equivocate, I will have to say exactly the same party. There is no other party or authority in this country other than the same one. The only difference of course, they would have to collaborate with the Serious Fraud Office in the United Kingdom, and that in my view should be a joint one at least to get the evidence.

20 But, I think another legal reality, a fact is that criminality, which includes fraud and corruption, cuts through all things. In this country, as far as I know, I can stand to be corrected, there is not a statute of limitations in those regards. So, unlike the analogy, lawyers like analogies, I do not think that this analogy would be relevant in this case,
25 and I actually agree with this. I think the analogy is that it would be

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almost impossible to declare the Umbrella Agreements invalid at this stage.

There the legal president is that despite whatever wrongdoing, the supply contracts have to stand. I do not think that that implies regarding
5 the allegations of corruption involving individuals, natural persons and companies. My submissions are that fraud and corruption cuts through it. So, if there is sufficient evidence to resurrect those investigations then that would be the right way forward. There is another angle of looking at this, is that when this Commission Inquiry was instituted in
10 2009 and one of its Terms of Reference was bribery and corruption, what has changed since then to now? Not much, except a couple of years.

One of the major legs of this is impropriety, and bribery and corruption. So, if this Commission has done so much work, which it has
15 at a considerable expense, what was the use of setting it up unless it is going to go forward with something concrete? Surely, something concrete, unlike the acceptance, whatever wrongdoing, material irregularity I think was the term Ms Ramagaga used, does not nullify the contracts. But, in my view is you cannot just accept bribery and
20 corruption, [indistinct] a universal view, semi-universal view, that there is absolutely no chance whatsoever of a successful corruption, that is one of the probabilities of success.

But, I would say on the evidence that has come out of this Commission, that there is sufficient reason to collaborate with the
25 Serious Fraud Office in the UK, the German investigative authorities,

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and together they should be sufficient to reinstitute those investigations and overcome the hurdles which General Meiring and even Colonel du Plooy certainly eluded to, because that has to become common cause. If I did not admit to that, then I suppose I could be accused of being
5 dishonest. But, I would counter that by saying what I have given, what other parties have given, what is on the documentary record was hopefully accepted educed admissible evidence, that they are sufficient to overcome that hurdle.

Okay. It is probably relevant now just to have a very, very quick
10 overview of my written submissions. I am just talking about, I will not say a few minutes because it might be 10 or 20, so it is not a couple of minutes, but it is a [indistinct] positioning or a hanging off the hook of my answers. But, one of the things that came to my attention not too long ago was, the Commission had request the Department of Defence,
15 specifically its attorneys of record being Baumann Gilfillan to address this issue of let us call it the disparity of the evidence given by Admiral Kamerman and myself as regarding the actual amounts of contracts, the number of contracts and the amounts.

Look, to be honest, to be frank I suppose, it is again small
20 potatoes, but it clearly has to be of some importance, some relevance, because at a very late stage in the last several weeks it has been addressed by the Commission. Several weeks ago I received this letter from Baumann Gilfillan, which was a copy of its response to the Commission's request. I answered that letter, on which I was invited to
25 make a response, in terms of a written submission, a self standing one,

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it is only 11 pages.

But, I think it is relevant from the point of view, is that Admiral Kamerman initially stated that my company had received seven contracts. His entire evidence is actually incorrect. I think I summarised
5 by saying part of it is completely untrue, and the rest of it is mainly half truths. But, certainly it is quite characterised by [indistinct], and it is important to have these things on record. I have ventilated this in substantial detail for the mass of this small bit of evidence, so I do not need to go through it, certainly not paragraph by paragraph.

10 But, maybe just as an example, Admiral Kamerman testified under oath that we received a large contract for the torpedo fire control on the submarine project. It is not true, we did not get any contract whatsoever. Nothing, nothing, zero. So, that is a whole untruth. The whole issue of our nature involvement in the submarine contract that we
15 tendered for is also characterised by untruths or partial untruths. We never tendered for any contract whatsoever on the submarine contract with a company called STN Atlas. They approached us, it is untrue that we tendered for anything, they approached us without us knowing and they asked us to be their partner regarding the systems on the Combat
20 Management System, not the Combat System. That is a small, I will not call it an untruth, but it is an inaccuracy, because actually the Combat Suite was put together by HTW, German Submarine Consortium and not STN Atlas.

But again, it was a small, I put this in the exact figures, I will not
25 say to the nearest absolute Rand in actual value to my company, it was

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something like R4.5 million. Work was done in Germany, it did involve some travel, living expenses. Again, pretty small potatoes, smallish ones again involving the fact that we tendered for the Tracking Radar Console Contract. We did not tender for it at all, nothing whatsoever.

5 We had been involved right from the beginning stages of project SITRON, the Corvette project as in the earlier phase, phase 1 was in the 1995 era.

So, those untruths are relevant. I think our total amount of contracts received as a result of the SDP's is in the order of 35 to 45
10 million in brackets, which is not a lot for a company of you know, at that stage we were 35 people. It is not manna from heaven, so the [indistinct] of what we received is unjustified. But, I think that the [indistinct] shows that Admiral Kamerman had stated that we received, on his version, something like a R128 million worth contract. That is not
15 true at all.

The other points that I wanted to make that two of the contracts that we had received, we received because our principle had terminated the contracts because of non conformance. It is just completely 100% untrue. On the Tracker Radar Console we completed the contract. I
20 know that there was legalities involved, but the actual legalities Admiral Kamerman [indistinct] bother to [indistinct] them out, were not that the contract had been terminated by them.

More so, and far clearer on the Submarine Combat Management System side, we received this R6 million worth in contract, including
25 R1.5 million keeping my... [intervene].

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CHAIRPERSON: I am sorry, Dr Young, just out of interest, you say according to your calculation the contract that you received from the SDPP's gave your company about R35 million, which you state is a small amount. My question is, assuming you received all the contracts
5 that you bid for, you much would your company have received?

DR YOUNG: Well, you know, okay, I do not want to be argumentative, but you used that I bid for. But, just to put it in context, when we were approached by the STN company, the company STN Atlas and we had done everything that they were proposing and we signed the letter of
10 understanding, that would have been a lot of money. They contextualise in terms of Dutch Marks, 30 million Dutch Marks. But, we never tendered for that, that was just the total amount of money that could have been involved, that they needed to actually achieve in terms of Defence Industrial Participation. But, we never bid for that.

15 Again, we did not bid for, we did not tender for, but of course we were interested in getting, was the Information Management System which was R38 million. So, if you strictly stick to what the terms used bid for, or tendered for, the amount would be in the R60 to R80 million bracket. Obviously we lost the IMS, which was R38 million and we did
20 not get the System Management System, which was our bid was R26 million. So, it is in that order of magnitude.

I do cover the very small potato, not even a potato, of the so-called the Visby Class Corvettes, which fortunately I see Admiral Kamerman did not [indistinct] to pursue with, but that we received some
25 orders from the company SAAB. SAAB as we know was involved in the

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Aircraft deal. But, I need to state for the record that small contracts were just a few 10's and 1000's of Dollars, I think it is \$35 000 was for two purchase orders, they are not contracts, things that we did not bid for or tendered for but effectively they really had nothing to do with the
5 SDPP's at all. I think that is all I really need to state in that regard.

CHAIRPERSON: Are you done, Dr Young?

DR YOUNG: Yes, I am just getting into... I am now just going to have a quick run through in a similar way to the last one, as my primary written submissions. Okay, there is more of context I do not want to belabour
10 this point, as it is justifiably they do exist, they are hopefully part of the Commission's documents, well maybe not on the written record, but it is probably relevant as the other evidence leaders have run through a summary of their written submissions.

As you correctly pointed out, Chairman, the first eight pages is not
15 relevant to the answering and replying oral submissions, but my written submissions do have a summary of all the elements, which I attached on what I called themes. I will come to this in just a tiny little bit more detail. I think maybe it is always a good idea to give a taster of what is coming up in the introduction, or is relevant, but of course everybody
20 has to be aware of my primary allegations regarding my own primary involvement, which is the Corvette Combat Suite.

We have pretty much touched on the Corvette Platform regarding the German reports. I do not want to say too much on that. Two very important issues for the Commission are, let us go to the second one
25 first, is regarding the quantitative scoring for the Corvette selection. I

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think it is important, because it certainly interphases with other themes of evidence, like Chippy Shaik's involvement as the Chief of Acquisitions, and the reason why the Germans might wanted to pay him and a group represented by him for the \$3 million bribes, or payments, 5 and that is using the process, the evaluation and scoring process, manipulating the winning bid away from the Spanish one to the German one, which was recorded in the, what I call, the *Tutonic* Memorandum, it says exactly that in so many words.

It also relates to my other point, my first point in paragraph 47, is 10 something that also came up in submissions yesterday of Adv Sibeko, which is the Ministerial Directive, ND4/147. I gave evidence on this myself, and I think as an extremely important theme not only of my own evidence, but that from the Commission in its entirety. I have also in the second session of my evidence, my extended evidence, I did discuss 15 Chippy Shaik's evidence to the Commission to some degree, which I had not been able to address in my first session, because firstly I was preparing my more important evidence, and of course Chippy Shaik also came up as a witness much later, I think it was in November last year.

I do refer to the evidence of three Admirals, but it is all in the 20 same context, it will actually be pretty short, it is Admirals Schoultz, Higgs and Green, so that will not take too long, because I just want to make a point there regarding both rationale an utilisation, as well as another witness who came before the Commission, Mr Gerhard Grobler of ARMSCOR. I think, fortunately we could say that the last point there 25 is Adv Fana Hlongwane's evidence, and I think that we have dealt

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adequately with that.

Okay. I think I am not going to... So, that is the context, that is the overall outline of my written submissions. There are 70 pages, everybody received them as far as I know, and I do not need to take the
5 Commission's time to reinterpret what I have said, or even to summarise that, unless of course if I get asked to do so.

So, possibly the next thing that I would do is now turn to the witness statement of the Department of Defence, and address what it put into its heads of arguments, loosely speaking, and try to the best of
10 my ability to answer those statements. In this particular case I have to work more or less linearly. I prefer to maybe work chronologically, but I have the documents in front of me and I am working from notes that I have made.

So, just working on that, I see the Department of Defence
15 submissions were 154 pages, which is not surprising because of course they had a lot of ground to cover. I am not complaining about that at all, but not in substantial portions that did relate to my evidence and I will try to cover not all of it, but some of it.

So, starting at the top there, under the contents, is Dr Young's
20 lack of credibility and the next point is Dr Young's reckless public announcements. In my view, and my submissions are that my evidence had no lack of credibility whatsoever. It was comprehensive, it was not emotive, if I may say so possibly other evidence leaders, and it was backed up by documentary evidence, it was backed up by logic, a very,
25 very few, if any, to invective or other negativity.

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But, the term credibility probably was meant by integrity, and this relates to both the submissions and the cross-examination, in fact more, of both the Department of Defence and the Inter Ministerial Committee. Although the Inter Ministerial Committee, [indistinct], is relied on the
5 evidence of the DoD, that they were on all fours with that. This comes to the point of Dr Young's reckless public announcements.

Now, my submissions are they had nothing to do with my evidence regarding the Arms Deal Commission of Inquiry. That was never my evidence, so it got nothing to do with credibility, it has
10 something to do with integrity. What the Department of Defence has tried to do, clearly because here it stands in front of us, is wash or paint all of my evidence with the same brush of what I posted on my website regarding, to use the term and I am trying to be honest here, I will use the term in the context of Mr Mandela and Mr Mbeki as larceny.

15 But, that was not my evidence before the Commission, okay. It was also things that I wrote much, much later, than in the context of when the Arms Deal came about. It is common knowledge that there has to be known. The Arms Deal per say happened between say 1997, because there are some lead ups to it, and certainly my part of it was
20 more the equipment in 2001. I am sure there might have been Industrial Participation that endured to 2001, but that was not my evidence, and I wrote some of these things in 2014. So, it is impossible that whatever I wrote on my website, in that chronology, could give rise to a lack of credibility. So, if we accept that the term possibly was integrity, my
25 response and my submissions are that the rest of my evidence is not

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tainted by that, in the slightest. It might have and I would also submit that the reality of it is, as the record shows, in terms of my witness statement, the transcript of it, do not show undue responses to certain things, with which I had to endure.

5 I certainly have also even apologised, I think, certainly to the Commission and I had actually even, at their request taken these off my website. But, anyway I think that is an important point of view. There is no lack of credibility in any of my evidence before the Commission oral or submissions or, and certainly not, in terms of the vast amount of
10 written, of documentary evidence.

There, no notion can be attached to that and the lack of credibility and integrity of and whereby I wrote on my website, you know, stems from an emotive, emotive point. I have talked about and justified reliance on pilfered documents. I certainly would be interested to see the DoD's
15 answers to my answers, or I will say, in reply to that, to see exactly which documents I meant to have, well, I do not even know, whether I meant to have pilfered them or they were pilfered by other people.

But, certainly, if it comes to me, I mean, it would be incredulous. In fact, I would use the same terms, preposterous that I have pilfered any
20 of these documents. I can say that, because I think, it is not on giving evidence now. It is, my evidence was then that none of these documents were pilfered.

But, also, in terms of submissions, it is my understanding is that even if the documents were pilfered and it relates to other evidence, which I
25 will, I certainly was involved in [indistinct], where there was so-called

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legal privilege. I think, Advocate Geoff Budlender's submissions were to this Commission that, even if the documents were pilfered that they lose their attorney client privilege, on that basis, once they are, the control is lost of them.

5 So, I am not saying that I pilfered any documents. But, even if I did, or even any other documents and I think my submissions do not only, only apply to my own limited scope, is that other documents, which might have been with, in fact, I also concede they were pilfered. Anyway, I just say they were for argument's sake, is that they would still
10 be admissible.

So that certainly covers the point of it and its [indistinct]. I have covered briefly. I do not think I need to cover it more, Dr Young's refusal to withdraw unsupported allegations. I cannot actually remember too many of these, except, on the one, where I was
15 confronted with documents, regarding the IPMS simulator. I think, we will have to come to that. We will leave that, to likely come to that, in the document.

The next one is Dr Young's duplicitous standards. Anyway, if one looks at these terms that are being used, pilfered and duplicitous and
20 what were the words that we used, right at the beginning, not arrogance, unfortunately is not a criminal wrongdoing. But, dishonesty and whatever, certainly, in my view, these are highly derogatory points that actually, in fact, indeed, and this is no threat, are actually actionable.

But, I quickly checked up on the term duplicitous and it has an
25 extremely negative connotation. That is, ja, it is deceitful and

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treacherous. That is a fairly, a fairly hard core allegation to make, especially in the context of my evidence and I will come to the whole specific context of the BAeSema and ASM Alliance in that regard.

But, be that as it may, it is mainly in answer of these things that I want
5 to answer, not reply. I do not suppose I will get a reply, but these are answers. My next point that I have noted here is it is preposterous to what [indistinct] does, that Tony Yengeni achieved this result.

I am afraid to say, being as polite as I can, the term preposterous is taking it too far. It is not preposterous at all, that is what the
10 documentary evidence shows is that it did happen and the Germans are actually in possession of a bribery that was seized in Christoph Blohm's home, based on that.

The next point I want to make is, I see, I am nicely jumping ahead. I have jumped to page 104 out of 154 is regarding the system
15 management system. And that my evidence was that I had based my allegations on a letter or a document that the context is that we had to submit our quotes simultaneously, actually to the German Frigate Consortium.

But, here, it is put here, in paragraph 2 and 3 that the German Frigate
20 Consortium provided both offers to the Joint Project Team on the 16th of April at 1999. Whereas my evidence was that the ADS, who actually won the contract, in competition with us, had changed its price after the submission date, an exchange of price, in terms of a letter, of three minutes past four on the 16th, three minutes past four in the afternoon.

25 The evidence is pretty clear on that, it was that. Of course, the DoD

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submissions are not complete in this regard. First of all, that it is ...[intervene]

CHAIRPERSON: One moment, Dr Young. Let us assume, we accept your evidence and we are saying you are correct on that point, what
5 should we do about that? Let us assume you we say that you are correct and that ADS's quotation came in late. They were allowed to amend their quotes. Let us assume we agree with you and say you are correct, what then, in terms of our terms of reference?

DR YOUNG: Again, I have to put my big boy's shoes and hat and all
10 that. I would just have to accept it. Because I, unless we come to another point, related to this, okay, well, no okay, probably not related to this direct one, is that so many years after the fact is that one will have to just grin and bear it.

But, of course, that does not mean to say that it should be just left out
15 of the report, which, you know, is that the allegations, which I made were not false. Okay. Now, I am talking from a pure, personal, not a selfish point of view is not the right, exact word. But, you see, because this is something relating to myself.

So, the exact words are not selfish or self-serving, but these are
20 allegations made. So, it is that, you know, I was summonsed to give evidence, regarding my own evidence. These are major allegations that I made, right back, way back when in 2000.

I think it would be correct and relevant and these are just my
submissions, my prayer, in terms of my notice of motion, is that a
25 conclusion that my evidence was correct. There was wrong doing and

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irregularity and impropriety. I am not necessarily, this is certainly not what we are talking about now.

To be careful, okay, that I do not [indistinct] myself into a complete corner, is not bribery and corruption and criminality that cuts through all things. So, the report is, I will not say it is good enough for me. But, I also cannot aim for a bridge too far.

I do not think and I also cannot expect the Commissioners to write a report that just suits me. But, if that, if that is ...[intervene]

CHAIRPERSON: From what you are saying, am I correct that that finding will not affect 1.1. It will not affect 1.2, 1.3, 1.4, 1.5 of our terms of reference, between what you [indistinct]. It will just be a statement, which would make you feel a bit comfortable and you might just be in a position that you have know you now have ventilated. That would be the whole purpose of that [indistinct]. Am I correct to [indistinct].

15 **DR YOUNG:** Okay. I do not think ...[intervene]

CHAIRPERSON: Is that what you are saying?

DR YOUNG: Thanks for putting that as a question. My answer is, no, in terms of, certainly in terms of 1.1 and 1.2, which is rationale and utilisation. But, anyway, even though it is a lower level than the primary contracts, in my view it does not involve impropriety. There were processes that were wrong.

Even if it is a learning experience, the processes that were managed and put on behalf of, by the joint project team, on behalf of the DoD, but administered by this out of control or beyond their control German Frigate Consortium were actually wrong. So, that is an impropriety and

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certainly if it is learning and a lot of money and time has been spent.

If it is just a learning experience for the future that is backed up a report that that would be the appropriate, because it does, it is not to say, it is just a nice to have. It is a pendant to one point x. It is certainly
5 part of one, 1.5 is impropriety. Then that is part of impropriety.

CHAIRPERSON: Okay. And that relates to us, making a recommendation [indistinct] council, because of that.

DR YOUNG: Excuse me? I heard that again, the recommendations ...[intervene]

10 CHAIRPERSON: And that the, us making a recommendation that in fact the contract should be cancelled, or any body should be prosecuted.

DR YOUNG: I, sorry. May I asked, are you talking about the contracts, the Corvette contract? Or is it the SMS contract?

15 CHAIRPERSON: Whatever contract that has been concluded, in terms of the SDPP's. Because of that difficulty that you are, you have referred to and then, secondly, clearly a finding, as you have put forward, may lead to [indistinct] solution.

DR YOUNG: Okay. I will be as brief as a can, in terms of the first,
20 certainly not. I would not, it would be emotional, probably is the best, if I would recommend that you make a, well, a recommendation now that you cancel any contract. It is, unfortunately, I think, they call it spilt milk, or water under the bridge, even for the sms. So, that is the first part that I have heard. Sorry, I just did not, my hearing is not, of the best.

25 CHAIRPERSON: I was saying, assuming we agree with you, as far as

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the, as the allegation goes that you know, your quotation was made available to ADS, assuming [indistinct] everything, can that lead to any criminal prosecution. If so, who should we recommend that they should be charged?

5 DR YOUNG: Okay. I give two short answers to that. I think, the evidence is, at the moment that there is no clear party is, you know, if there was a name of a person, then it would be valid to say that this involves an impropriety of such a magnitude that it could be considered as criminal, maybe.

10 Okay. But, my evidence is that this did happen. It is not only my own evidence. It is also another person, who did not give evidence to this Commission, it is Captain Marais. But, you know a very important point in criminal proceedings and that is, is that what the chances of a successful prosecution are.

15 Because that is known, it is not known that it was a joint project team or the people that collaborated the joint, the German Frigate Consortium. So, it would be completely inappropriate for me to recommend at this stage, that there is sufficient evidence on which to recommend a criminal enquiry.

20 But, it is just that. The evidence shows that there was wrongdoing. Okay. I think, maybe a small point is that hopefully not too much, to belabour the point. I see a point here is on page 105 is:

"Dr Young conceded as much."

I certainly, I do not know what I conceded to, because this statement of
25 the DoD is more or less bald. That, what is missing here is that the, our

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proposals, our bids had to be in, to the GFC, by not the 16th, but by the 15th. They say the GFC provided both offers to the JPT on the 16th.

So, it is actually, in terms of natural logic that the conclusion that Dr Young concedes is much, is actually irrelevant. Next small point is a
5 conclusion that the DoD made here, is in this context is that no prejudice could have been, to C Square I Square, because the JPT accepted ADS's contract, no, sorry, updated offer, after the closing date.

Well, there has to be, there has to be prejudice. I mean, that is a clear tint of logic. Because, however, exactly this price change came
10 about, one does not know. But, of course, if, you know, in terms of a tint of logic as well, is, say that our.

Basically, to put it in the context, our price actually was lower than ADS's at the beginning. That is why, well, they did lower it. But, equally relevant, the other side of that coin of factual reality is, say our price had
15 not been lower, it had been higher, then why would there have been a necessity for ADS, to lower the price?

But, what I am saying is, because there was a manner in which our price had now been exposed, and they were allowed after the dates, well, not after the day, but the time, to change it, they were allowed to
20 do it. So, the cat, the price cat was out of the bag by then. That had to be prejudicial to C Square I Square.

Okay. Now, we can come to the IPMS simulator, which I will not go into great detail at all. I again, it was related to the credibility of witnesses. I would say, here the term credibility is appropriate. I
25 complained or I gave evidence that Admiral Kamerman had stated an

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avermment under oath that, I think it is evidence here already, is that he had stated that C Square I Square had never, never in any way, been selected as the supplier of the IPMS simulator.

Forget what the, if I may say, for purpose of argument, forget what
5 actually happened from much later on, in the next two or three years. The point I was trying to make, for the purpose of this, is that he had said that we never, never been, there is no documentary record whatsoever.

So, and for purpose of this Commission, I refer to the letter, written by
10 Lu Swann, and it was dated the 29th of June 1999, emanating from the decision making Project Control Board, where it states, as an appendix that C Square I Square systems, my company, had been awarded the IPMS simulator. So, clearly, we had been selected.

Maybe that was short lived. There is where I was confronted by some
15 evidence. Let us give it the benefit of the doubt for the moment, there is a piece of, a document right there. I was sitting over here, I presume. No, sorry, it was in Centurion that there was a mistake there.

Of course, and I think that that is also where I said, well maybe this document is a fraud. I do not think that was a direct allegation. But,
20 there are two points here. If we must accept that document, which overturns my evidence, well, of course, absolutely relevant to that part of evidence. Why was I confronted in cross-examination with that, under the following conditions?

Admiral Kamerman had known of my complaints, regarding the IPMS
25 simulator. In fact, he even complained, in his own evidence before the

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Commission that I had not addressed the IMPS simulator in sufficient detail. That was only, in respect of, he was referring to my draft witness statement that I had submitted to the Commission for the purpose of cross-examining witness.

5 So, he knew that that was a relevant point. The other thing is, in terms of the, I do not want to use discovery for a particular, okay, in terms of the process of the Commission, whereby witnesses would be, would be provided with all the relevant documents that they needed, not only for their evidence in chief, the preparation of their witness
10 statements, but of course, and more importantly, in cross-examination.

That document was never provided to me, although it seemed to emanate from the ice box, I think. Okay. But, more importantly, that document should have been provided to me under [indistinct] by the Department of Defence. So, in many ways, I was confronted with
15 something there, for the very first time, which made it extremely difficult to respond, in terms of cross-examination.

But, certainly, two important points come of this, is that Admiral Kamerman's evidence that we had never been selected was wrong, simply wrong. It has to be accepted fact that, it might have been
20 overturned, but that is another point altogether.

Secondly, the way I responded to that was not surprising, under the circumstances. Another quite important point is in paragraph 218 here, where, regarding this same, this letter, written by Lu Swann, is the, as the Department of Defence state that Dr Young would not disclose, how
25 he came to be in possession of this document.

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Now, I am not quite sure why it is even relevant, but seeing it is stated here is I came into possession of this document in quite a number of different ways. I am talking about the letter, now not the one, which I was confronted with, including under [indistinct]. As far as I can
5 remember, it does not matter, because I already had it.

I am pretty sure that I had this document in my discovery schedule. Okay. So, my use of it, in evidence, I could decide, if I have got two or three identical versions of the same document, now I am referring for the purpose of this Commission in 2011, the latest one that I got. Now,
10 certainly, I was not improperly in possession of it at all.

Okay. So, I was in possession of it completely lawfully, legally, whatever it was. Even if I had not been, it should be disclosed to me and under this request of documents. But, certainly, in respect of the very first copy of this document that was given to me, I would submit
15 that that is irrelevant.

I do not think that that is part of the terms of reference of this Commission. I know the Commission basis some of its findings on the authenticity and the admissibility of documents. But, that would only relate to the documents that we used.

20 It is clearly not within terms of reference to find out, where I got the original versions of and to make a statement here would be relevant:

"That Dr Young would not disclose."

Okay. Because that is a very negative inference of me, as a witness, so I would, I would like to answer that, in well, in major terms, so I can.
25 The other point coming on to this is the reliance on complete information

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obtained by the back door. It was exposed, being inherently, but that is a nonsense statement, because I did not rely on the version that was given to me, by somebody from Armscor.

I would say it, and I am now probably giving evidence, but I think one
5 can, way back in 2001, so what? But, certainly there can be no findings, based on the credibility that I got, I based my testimony on incomplete information. First there was no incomplete that is a statement wrong in itself. And I obtained it via the back door.

Well, if I obtained it by the backdoor, I am afraid to say that that
10 means that there is some incredible lack of front door, in terms of being given the correct documents, by everybody concerned, whether it is the DoD or my request for documents, for the purposes of this Commission. The other, okay, I am finishing, I have used the term baldly, to finish of this theme off is that I was to baldly allege that GFC's letter was a fraud.

15 He demonstrates an inability to accept correction and engage with the facts. That is the point I was trying to make, being confronted with a document that I have never seen before. How do I know with that, being confronted with it in March 2015, I think the date was probably the 23rd or 4th of March, when it existed extensively, but never been given it. So,
20 it is not an unfair question to ask. It is not an absolute flat statement that is a fraud, but would not be ...[intervene]

CHAIRPERSON: I am sorry, Dr Young, just hold. I just want to make sure. How long this is going to be, because I see it is already quarter past three. I want to take a decision, whether we should stop at four
25 o'clock or before four o'clock, if I can know, how long you think you are

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still going to be? I am telling you, most of the things that you are talking about now, this evidence that you have already tendered, we are aware of that. You know, I am just saying that it is not new things and I know you should try and summarise them, so that we can finish before four
5 o'clock, unless, if you think you will finish long before four o'clock?

DR YOUNG: No. I said this is the last, the last, not my theme, the last thing is addressing the DoD submissions in answer. So, with due respect, I am also not being argumentative. Maybe it is, well, of course, it is correct that you are aware of it, but it is in answer, so I would not
10 know that you are aware of them. It is, I think, it is my right to respond to things that are made in written submissions that only came to me ...[intervene]

CHAIRPERSON: Dr Young, what I am saying is that we are trying to find out how long you are going to be?

15 DR YOUNG: That I do not know exactly. But, I do have a plane to catch. So, I have made myself available, until much later than four o'clock. I am catching a plane at nine o'clock tonight and not quarter past six. I can be available, but I would also, I would like to be finished, let us say, at four o'clock.

20 CHAIRPERSON: Thank you.

DR YOUNG: I can also hurry up things, up a bit to make that happen. Of course, all that will happen there is just some of the points that I wanted to ventilate. It will be admitted. It will be, not admitted, but omitted, but anyway, I get your point, Chairman, I will, I am pretty,
25 [indistinct] I am getting towards the end of this one.

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Now, one last point, if one looks on quite a few pages later, are the DoD's written submissions, it is:

*"Dr Young's persistence in these allegations that he was cheated out of this contract is to much of an extraordinary arrogance and a reckless
5 propensity to make baseless and dishonest allegations."*

My submissions for purposes of this, is that my submission, my allegations there, were not so much the cheating out of whatever. That was actually a different point. But, mainly, is that my, I stated that there was a record, a written record is that we had, at one stage, at least been
10 selected and I was unaware that there had ever been any [indistinct].

Okay. I am now coming to a theme of the price for the Corvette combat suite. My testimony was that there were price negotiations, coming down from the price of R3.9 billion. At a Project Control Board meeting, the price had been put on the table at R2.3 billion. Here the
15 DoD's submission states that the project team had hoped to achieve such a price.

I think, that submission is wrong. It is that clearly the evidence was is that that was the price that was on the table. Not only that price was on the table, but there was hope of actually decreasing that price further,
20 substantially to such a degree that there were certain amounts of it, like, by R100 million, to get down from R2.3 billion to more.

But, actually achieving the original Cabinet approved ceiling price of 6.001. That is what the documents say, Project Control Board documents. That would have meant, by a tint of arithmetic logic that the
25 price would have been decreased much more than, from 2.3, more like

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R2 million.

But, I do not think it is true that it was just a hope. It was a fact that that is where the price was, at that stage. The rest of my evidence was that, once Chippy Shaik, in that meeting had said that the affordability
5 report had indicated the acceptable price of R2.6 billion, the 2.3, it jumped up to 2.6.

The clear, chronological documents from that date of the 23rd of March to the, to the, at least the end of May show that there was no further interrogation on the negotiation of the price and the price did
10 increase to the 2.6. So, I think, my evidence is pretty solid in that regard.

Sort of inter related with three themes altogether, but I will not belabour certainly, the rest of my evidence in this regard. The changing of the price, involved that of the R300 million that had been eluded.
15 Stated and not eluded to. I put it in the wrong term. Stated, regarding the saving of a price, regarding the Aero Speciale missiles.

I think it suffices to say that that is clearly on the documentary record that there were vast amounts of money to be saved in the price of the, the missiles. The statement by the Department of Defence and their
20 written submissions, which is new, is that:

“Dr Young did not take this up with Ms Christine Guerrier of Thomson CSF, notwithstanding that he was present [indistinct] in the cross-examination on other issues.”

My submissions are here that hopefully we can almost dispense with the
25 whole Thomson CSF and her evidence, Ms Christine Guerrier and my,

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let us say abortive is probably not an impolite way of describing my attempt to cross-examine her. Is, we are talking extremely short. It started at I think it was quarter to five, I think it was.

She stopped giving evidence around about four. There was a break
5 and we stopped at six o'clock. My total cross-examination there was around about an hour. I only knew that she was going to be a witness that morning. I only saw her witness statement at one o'clock at lunch time. Of the few things I did try to cross-examine her on is, even though she had stated in her witness statement that she was involved and the
10 only person allowed to, authorised, by her company to testify, on behalf of the company.

Partly because she was the Vice-President of legal affairs and party that she, her knowledge, she was involved, right back to the beginning of the project. In fact, I think, I saw her, with my own eyes at the signing
15 statement, sorry, signing ceremony on the 3rd of December 1999.

But, anyway, whenever I asked her a question it was that, I got no personal involvement. I cannot answer the question. So, how I could possibly have got answer in respect of Aero Speciale and missiles and of course, it was a different, Aero Speciale is a different company. I
20 know it is linked to Thomson CSF. But, I am afraid to say, not initially, there is a [indistinct] way that that is a nonsense kind of a submission to make.

Again, the next statement, regarding my conspiracy theory, it is not conspiracy theory at all. What I need to say is, as my submissions
25 stated. This is not again, not giving evidence. I tried for years, literally

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for years, have I tried to get the information, regarding the surface to surface missiles out of any, you know legally, there is no pilfering whatsoever.

But under [indistinct], I got a couple of stuff that was unlawfully
5 redacted, tippexed out. I could make no head of tail of this, but the evidence that we traversed, I ventilated, involved a lot of documentary evidence, regarding the reference by DoD, in respect of the prices paid, for the missiles, the total amount of R182 million for the whole system.

The R15 million missile, at least by Admiral Kamerman, but anyway,
10 at the end of the day, there is certainly the information that was provided to me, in terms of documents, never allowed a 100 percent, let us say, finding from me regarding this. But, there is certainly no conspiracy theory here, from me.

It was all logical, it was all linked with reference to documentary
15 evidence educed before the Commission, and I can remember no applications to be made to dismiss those things. So again, of course the DoD dismiss my evidence here, not in terms of credibility or even integrity, but as speculative and mutating subtheory that may have been on the version of been blown out of the water. I am afraid to say that is
20 simple nonsense, and again, this is one of these documents which I was confronted with, produced the documents in front of my face.

The document, which is an irrelevant extract of the Supply Terms, I have been specifically asking for that very, very relevant document in terms of the Commission, which is the Annexures of the Umbrella
25 Agreement, which have sub-annexures relating to the Supply terms that

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never got supplied to me. But, certainly my evidence was that that document was not a definitive document, that this was definitely supplied in terms of an outright purchase at the standard purchase price per missile, plus the fitment of systems and qualification, it certainly was
5 not blown out of the water in the slightest.

The other point I need to make on the missiles so that we can finish that whole theme, is that whatever theories, sub-theories, mutating theories one thing that came out of Admiral Kamerman's evidence, which unfortunately blows his evidence right out of the water,
10 possibly under the threat of [indistinct], whatever it is that Admiral Kamerman admitted that 17 MM40 Aero Spacial exerset MM40 block 2 missiles were not acquired under the Strategic Defence Packages. My own evidence was that parliamentary questions came about, which were answered by the Minister of Defence, that actually I thought it was six
15 and there was a figure of six mentioned, but it is actually a total of eight, would effectivly mean half the missiles were Block 1's and the other half were Block 2's.

The 17th missile is the test missile, but the ones were onboard the ships, which had already been reduced from 32 to 16. Half of them
20 were not Block 2's, that on the evidence had been approved by the decision making bodies, which is the Naval Board, the Project Control Board, and all the evidence was that Block 2 missiles had been approved. But only in this Commission it came out that he had not told the truth regarding this. He says it was based on national security
25 considerations, and that actually MM40 Block 1's and in terms of his

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own evidence, which had been given to another forum but I produced that evidence, that the MM40 Block 1 was a completely different missile.

The Block 2 was a superior missile and that on his own evidence that the Block 1's were much less expensive than Block 2's. So, clearly
5 the Block 1's were not bought for military considerations. The Block 1's were bought because they are much less expensive, and they could fit them into the budget, whatever budget it was. But anyway. So, far from being blown out the water, the accepted evidence is precisely in accordance with my theory, that something was done regarding the
10 reduction of the total price of the missile components in order to fit it in, and that theory, although it is not absolute evidence of bribery and corruption, it certainly is strong evidence of impropriety, just as my evidence set out to achieve.

Here is a point covered Dr Young's credibility. We have covered
15 that, but the statement here is:

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

Now, I am sorry to say, that is just completely wrong. I know Adv
20 Kuper, on behalf of the Department of Defence, says as we know, I think the legal president is if a legal party wants to make that submission they have to warn the witness that that is going to happen. I think I did respond. It is as bold now as it was then. I cannot think, first of all, of any untruthful evidence that I gave. I certainly was not an unreliable
25 witness, and went through absolutely enormous efforts so that my

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evidence on which I relied was factual, was bona fide, was not pilfered, was not even my own stuff. So, that is my submissions here, [indistinct] entirely discredited. To be honest, I did get a little bit of free legal advice before I gave these, is that one is allowed to give these
5 submissions from a subjective point of view, not absolute objective point of view like the evidence leaders. But, in my subjective view, I cannot remember one instance of actually being discredited, or certain entirely discredited. I cannot actually remember evidence that was contemptuous and arrogant.

10 I will, and having gone through this in substantial detail for preparation, being as entirely honest, not that I need to be but I want to be, I think I made one mistake in all of my evidence. I will be happy to be pointed out in answers and replies, is under cross-examination I testified that I met Colonel du Plooy, I thought it was October or
15 November of 2009 in Bredasdorp to discuss my raising of an affidavit that would form the bases of a new formal investigation into the German leg.

Actually, in hindsight, I have to say this at this stage, when I handed in my written statement, 217 pages, I never had chance to
20 check my evidence. I got this thing through, I never had to apply my mind. There might be a mistake, but it was certainly not intentional and it was certainly not even material. I did meet with Colonel du Plooy, I thing the 7th of January 2010 when he drove from Pretoria, he met me in Bredasdorp and we discussed the matter, and that is where he showed
25 me the one or two pages of the German report.

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But, from his own evidence, certainly the documentary evidence was that previously he had encouraged me, or he had advised me to do this affidavit which I submitted, which I think is common cause now in the Knysna police station, which was in November 2009. Anyway, the fact that I thought I met him October, November 2009 was incorrect. I met him face to face I think on the 7th. To show how much effort I put into it, I went back to my cell phone records, which we have got, to look to see when we arranged where to meet, and I put a lot of effort into even that. But, painting my evidence, entirely discredit it, would be putting it somewhat highly.

I have discovered the reckless public announcements, I do not think I need to... Okay, but outrageous, contemptuous, malicious public statements, maybe so. I do not want to score any points whatsoever by repeating my apology, but my submissions are that they have got nothing whatsoever to do with the work of the Commission, except that I have to say I was very, very mindful of some of the evidence in this specific regard. I am pleased to say that it came up in Colonel du Plooy's evidence, specifically about a second KPMG report. We all know the first KPMG report was done for the Shabir Shaik trial and other, which included Zuma and [indistinct], that was the 2004 [indistinct] of it, but Colonel du Plooy deduced into evidence as far as I can see, the much later version, I think it is 2007/2008 version of it, where there is a lot of evidence regarding the involvement and knowledge of both Mr Mandela and Mr Mbeki in the Arms Deal. I do not want to give evidence now, but certainly if one had a look at this thing in

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its holistic total context, one cannot say that my 2013/2014 are just totally outrageous and malicious and contemptuous. They certainly have got a relevant bearing. In fact, I see that particular point that I quoted on my website is actually quoted in the Department of Defence's
5 written submissions here. I have to be very honest, I have not read every single line, I did do PDF searches on my name... [intervene].

CHAIRPERSON: I am sorry, Dr Young, just out of interest, a quotation referring to me and to fellow Commissioner Musi, has that been removed from your website?

10 DR YOUNG: Yes, I actually stated that an hour ago. As soon as I got back from my second session, I got my IT manager, but that was done. In fact, I think I copied the relevant email to Adv Ndumbi.

CHAIRPERSON: [Indistinct].

DR YOUNG: The answer is yes.

15 CHAIRPERSON: I will hope it will not reappear after these proceedings.

DR YOUNG: I think that that might be justifiably considered as contemptuous. So, the answer is no, and I would not do it. I certainly have no intention to say negatively the evidence that I have given to date by trying that cunning stunt.

20 We are getting towards the end. Again, just working chronologically, there is on page 119 unjustified reliance on pilfered documents, and again, we have talked about that. Mainly, my reliance are incomplete and just about incorrect information, and my persistence and contentions. In the SMS contract, we are no longer talking about
25 the IMS contract, is just wrong. Where the DoD is certainly correct is

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they are talking about my serious allegations. They certainly are, although I am not expecting them to be so seriously addressed that they end up in recommendations for criminal prosecution. But, I certainly had no obstinate propensity to make and persist with such [indistinct] 5 allegations, and believe me, I am not tailoring my evidence based on this. It has always been my position, I am not changing my position in the slightest.

Regarding the BAE Semma and the ASM alliance, with those considerable glee, the DoD has now first of all in my cross-examination 10 educed, had extra documents provided by me, which have copies of minutes of meetings with ASM, which to be very frank, I did not even think would be of great relevance or interest, or certainly great interest to the work of the Commission. But, certainly they were for Admiral Kamerman and the Dod. But anyway, the summary of all of that is that 15 Young shown to be guilty of duplicate standards, and basically this is all to do with the fact that my allegations involved a company called Mellar Inc, which had received this \$22 million bribe, bribe according to the Germans at least, via the company based in Liberia, [indistinct], where it was not allowed to do business.

20 So, clearly by any dint of logic, and certainly my submissions, it was a special purpose vehicle, again covertly paid. So, whether it was commissions or not, it would certainly be covert. Now, if it was justifiable, if it was overt there would have been absolutely no reason whatsoever to make that use payment. In this context of course, that 25 the same averments were made in the Mabandla dossier, which was an

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MLA. In fact, that is quite important for as far as where my evidence came from, because that was ANNEXURE 1 in my finding affidavit, for both my Knysna affidavit, and as far as I remember the Constitutional Court affidavit. So, certainly the \$22 million payment, bribe and
5 corruption came from that evidence.

The other evidence was that in the Shabir Shaik trial, Pierre Monot on behalf of ADS and Thomson had testified that they worked the highest political levels. In fact, we know from the other evidence, they met with Thabo Mbeki in Paris in France, I think that has to be almost
10 common cause by now. But, that is high political levels. With great glee the DoD pounced on the reference to the term political with all these minutes. Certainly, there is not the slightest indication that these were the highest political levels that these were politicians at all.

Now, if I may say in submissions, and I did try to, that this was
15 under cross-examination, that the term political is used in company context every day. They talk about company political, head office political, and whatever. Even if we had, as they say here, people close to the political action, they were companies, or employees of the same company who were based in Pretoria, who were close to Pretoria. That
20 does not mean to say there was any wrongdoing. Anyway, greatly they refer to an employee, Marketing Manager Pretoria, John Gower, he was an employee of ASM, of Telumax based in Pretoria. So, he was close to the political powerbase and customer for intelligence. That is not the same thing.

25 **CHAIRPERSON:** I am sorry, Dr Young. You say close to political

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power it can also mean somebody who is a Pretoria, simply in Pretoria then he is close to political power. Is this what you are saying?

DR YOUNG: Absolutely. Being close here, hearing things.

CHAIRPERSON: I am staying in Pretoria, so I am also close to political
5 power.

DR YOUNG: Sorry, I beg your pardon?

CHAIRPERSON: I am staying in Pretoria. My home is in Pretoria, born and bred in Pretoria. So, I am also close to political power. Is it in the same context in relation [indistinct] at that meeting?

10 DR YOUNG: Chairman, okay, I suppose the correct way of saying it factually is to say that you are geographically close to the power. But, that does not mean to say that you are close to power, in fact, I would hope not. I would say in this particular context, geographically is one, but the geography is allowing people to be physically close in meetings
15 or whatever it is. So, it is a bit different to you being close to power. I am not say that that is the same analogy, and the analogy with due respect is not the submission I would like to make. I am not saying it is not relevant or factual, but that is not what I am saying.

What I am saying is that there was nothing wrong with John
20 Gower, who worked for Telemat, being in Pretoria, and attending a cocktail party where people were saying things.

CHAIRPERSON: Okay, I understand.

DR YOUNG: But, just as strongly, I do not want to be guilty of repeating myself too much, but politics and company politics and being close to
25 Richard Charter, what is another thing here, is not wrong in the slightest.

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So, it is not my standard that being close to political power is wrong, and that being duplicitous. What I have said is that if Pierre Monot gives evidence under oath, actually for the defence to judge Hilary Squires, that our intention was to develop high level political contents, as you can see from the documentary record, even from my own. These include like the Minister of Defence, Ronnie Kasrils, [indistinct] Deputy Minister of Defence, every single person you can see there just about. But, primarily with the Chairman of MINCOM... [intervene].

CHAIRPERSON: Is that wrong for them to be close to him? Let us assume he knows.

DR YOUNG: Oh, yes.

CHAIRPERSON: Is it wrong for a business person to know a politician?

DR YOUNG: No, okay. The other way around. The Chairman of the Minister's Committee, Thabo Mbeki, it is wrong for him to be meeting with the companies. It is not so much the other way around, but that is my point.

CHAIRPERSON: Dr Young, let me find out this. The former President Mbeki, what role did he play in the awarding of sub-contracts? What role did he play, because Thomson was [indistinct] involved at the end? What role did the former President Mbeki play, if any?

DR YOUNG: Okay. Now, I am just repeating my evidence, [indistinct] a slightly different theme there, is Deputy President Mbeki at that stage was the Chairman of MINCOM, and the evidence is, and it is not controverted evidence, is firstly that there were encrypted faxes from Thomson back to head office, where they privately met six months prior

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to a person very close to Mbeki, I think it is pretty clear that it was Yusuf Serti, who had said that the Deputy President is ready to guarantee the award of the Combat Suite and its sensors to Thomson CSF.

CHAIRPERSON: Good, that is [indistinct].

5 DR YOUNG: That is wrong.

CHAIRPERSON: We now know the process that got followed in order to award the Combat Suite and the Subsystems. What role did Mr Mbeki play there, if any?

DR YOUNG: Well, it is a global role of... I mean, if he is prepared to
10 state that he is prepared to guarantee them the Combat Suite and the sensors, and met with him in head officer Paris, and as according to the evidence that was led that took a role, and that was the evidence of Captain Nick Marais, that orders came down through to the joint project team that there were instructions to maximise the French content, that
15 all jugs the positions, or move dovetails very, very closely, with the fact that instructions were given and things were made to happen through, for example through Chippy Shaik. So, there is nothing that our evidence has given that shows that that is illogical, or incredible, or propostorous, or any other adjective that... [intervene].

20 CHAIRPERSON: I think that is a theory which is not supported by all the facts. It is a theory which is not supported by all the facts, and I will tell you why. People who were involved in those [indistinct], they came and gave evidence, and none of them mentioned that [indistinct] with any instruction from anybody. Admiral Kamerman came and testify
25 none of them ever said that the decision is [indistinct] from anybody.

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We have never heard any evidence from all the witnesses of ARMSCOR and the DoD, who ever said that former President Mbeki gave instructions to do A, B, C and D. That is why I am calling it a feel which is not based on any facts, because all these witnesses, none of them
5 came out with that theory, you are the one who comes up with the theory. Now, you say to us he could have influenced the awarding of the Sub Systems. I find that a bit strange.

DR YOUNG: With respect, Chairman, I am not coming up with that now, that was my evidence in March. Just to remind you, [indistinct] ...
10 [intervene].

CHAIRPERSON: Even if you stated it in March, it does not change from the theory. Even when you started in March people came here, about 47 people came and testified. None of them ever said they were given instructions by the former President to do A, B, C and D, and those are
15 people who were involved. You, as outsider, know that they were given instruction, when in actual fact they deny that they were ever given instruction from anybody to do what you [indistinct]. I find that a bit strange, but you know, it is not time to argue. You have made a submission, maybe let us get to the next point.

DR YOUNG: Okay, well that is good. I think possibly in the context, is that the only of those 47 witnesses to which you referred, I cannot think of any one, maybe there are two of them, whose place it would have been to actually give that, or maybe Chippy Shaik. There will be three, that will be Admiral Kamerman, Frits Nortje and maybe Chippy Shaik.
25 But, two points is that it would not be in Admiral Kamerman's interests to

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give such evidence. He was not cross-examine, okay, through no fault of my own or anybody else's. Certainly in the circumstances that is something that would have happened.

But, what I have done, and hopefully it is incontrovertible as I can,
5 as I have listed in my written submissions many points where Admiral
Kamerman's evidence is just purely untrue. In fact, I have to be honest,
I have to use the term, a number of it are pure lies, and lots of them.
Pure, pure lies. I am afraid to say that based on that, on cannot think
that on a negative [indistinct] that he did not even bring up that point,
10 that he would have educed that in evidence and said "Well, actually I did
get instructions from Thabo Mbeki to do that", because he knows that
will be a wrongdoing.

So, I am afraid to say, and it is not meant to be legal argument,
Chairman... [intervene].

15 **COMMISSIONER MUSI**: Dr Young, can you not move to another point?
Can you move to another point?

DR YOUNG: Sorry, this is another point.

COMMISSIONER MUSI: Can you not move to another point?

DR YOUNG: This is Admiral Kamerman's evidence, which is another
20 point. I will submit that... [intervene].

CHAIRPERSON: I see, Dr Young, it is 15:58, you said you will be
through by 16:00. You have two minutes, because I think we need to
adjourn now.

DR YOUNG: Okay. Just quickly going through my highlighted points. It
25 is pretty close to me that I have addresses just about everything that I

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intended to do. So, in my own view, in summary, that I certainly addressed a sufficient number of points in sufficient detail, to provide a credible and reasonable response to the evidence that I gave in March.

So, I think I can more or less... Okay, there is one very quick
5 point. MD147, this came up yesterday. If I may very quickly. The whole point of MD147 is actually whether or not it was approved by the Council of Defence, is actually a red herring, because MD147 has to be common cause, it was put up together by General du Preez and his team in respect of foreign initiated single source contracts, that does
10 not, and it has to be common cause, it does not apply to the SDPP's. They were not a foreign initiated, they were initiated by the Department of Defence in terms of RFI's in September 1997, and they were not single source.

So, MD147 in that respect, is a non... Okay, what I also want to
15 say, in my own evidence is that Chippy Shaik in this Commission says, [indistinct] that MD147 was approved, whereas my evidence was it showed in his two JIT2001 evidence, that he knew it was not approved, and I quoted every single thing, including him quoting to the paragraph number 613 of his famous Council of Defence minutes, which have now
20 disappeared.

My understanding is that only the original disappeared, but anyway, I do not have them. But anyway, it was clearly known to Chippy Shaik that they were no approved. But, my point is that they were in fact, MD147 was in fact used, but clearly wrongly. It
25 superseded MODAC, [indistinct] System procedures is according to

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MODAC, not MD147, but it gave rise to a whole bunch of things like SOFCOM and the Project Control Board and the joint project team, which were actually all unofficial organisations that made extremely far reaching decisions, not only as far as the SDPP's were concerned. Like
5 the famous formulae, which I did not get to, but the Project Control Board deselecting the IMS, and it was made a Project Control Board.

So, all of those bodies, and the decisions they make, were in fact irregular and improper.

CHAIRPERSON: [Indistinct]. Say in other words then [indistinct] as the
10 [indistinct] because it was done in terms of procedures which are now approved. If that answer is yes, does it also relating your company of contracts, that it was also irregular and illegal. Lastly, what should we do? Let us assume we are [indistinct] was never approved, what should we do? What are the points [indistinct] thereof?

15 DR YOUNG: Okay. I think to answer your first question, is yes, the entire SDPP's are irregular, just as the [indistinct] are irregular. But, my submissions is not that that should trump all things. It is the same submissions I have given and it is on all fours with the other evidence leaders. In terms of the value, part of the value of this Commission, is
20 there should be a report, a recommendation that these things should not be allowed to happen. There needs to be tighter control of the whole process. I think fewer individuals should be responsible for these kind of things. So, I am not submitting that MD147 should lead to criminal charge and that kind of stuff. But, I think it is relevant, because it is
25 clear that whatever wrongdoing was not captured by the fact that the

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correct procedures were not used, and the incorrect procedures, without all the checks and balances were actually used.

CHAIRPERSON: I suppose that is the end of your submission. As I said, it is already 16:05.

5 **DR YOUNG**: Yes, I think logically, factually that pretty much is the end of my submissions and response. But, I think if I may just have 30 seconds just to thank the Commissioners again for my opportunity to make these oral submissions, for listening to me and asking value added questions, and my evidence leaders who helped me make this
10 possible. They did not help me with these written submissions, so if there is any blame in this it does not accrue to them whatsoever, these would be my own. Unfortunately Mahlapi Sello was not there [indistinct] on the last Friday. But, again, if I may just thank Adv Sibeko and Adv Sello for their considerable amount of assistance that they gave me in
15 making my appearance before the Commission an non-traumatic one. I think that would conclude all of my submissions.

CHAIRPERSON: Thank you, Dr Young. I think I should also thank you for coming to make these closing submissions, and [indistinct] points that you made, they were be hold ready to answer [indistinct].

20 **DR YOUNG**: Thank you, sir.

CHAIRPERSON: Adv Cane, I thought maybe we will come to you after Dr Young, but I see it is already 16:05, and one or two people who whispered to me that today they would want to go home at 16:00, and not at 18:00 like yesterday. So, unfortunately we cannot start with your
25 today, we will have to start with you on Friday morning, 09:00 on Friday.

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ADV CANE: Yes, thank you, Commissioner, that is in order.

CHAIRPERSON: Thank you. I think the other parties was supposed to [indistinct] if I am not wrong. If not, I will ask Adv Ndumbi to phone them again, just to remind them that they will have to make their submissions

5 on Friday. I see you are looking at me Adv Moerane?

ADV MOERANE: No, Chair, we are in the Commission's hands.

CHAIRPERSON: Thank you. Maybe in that case let us adjourn until Friday, and Friday we will start at 09:00. Thank you.

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(COMMISSION ADJOURNS)

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